

CARLSON LYNCH LLP
Todd D. Carpenter (CA 234464)
Alyshia K. Lord (CA 306555)
1350 Columbia Street, Ste. 603
San Diego, California 92101
Telephone: 619.762.1910
Facsimile: 619.756.6991
tcarpenter@carlsonlynch.com
alord@carlsonlynch.com

*Attorneys for Plaintiff and
Proposed Class Counsel*

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

JACKIE FISHER, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

CHICO’S FAS, INC., a Florida
corporation, and DOES 1- 50, inclusive,

Defendant.

Case No. '19CV856 DMS MSB

CLASS ACTION

COMPLAINT

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

DEMAND FOR JURY TRIAL

1 Plaintiff JACKIE FISHER brings this action on behalf of himself and all others
2 similarly situated against Defendant CHICO’S FAS, INC. (“Defendant” or “CHICO’S”),
3 and states:

4 **I. NATURE OF ACTION**

5 1. “If everyone is getting a deal, is anyone really getting a deal?”¹ This class
6 action targets Chico’s unlawful, unfair, and fraudulent business practice of advertising
7 fictitious prices and corresponding phantom discounts on its Chico’s “direct to outlet”
8 branded/or trademarked lines of merchandise. This practice of false reference pricing occurs
9 when a retailer fabricates a fake regular, original, and/or former reference price, and then
10 offers an item for sale at a deep “discounted” price. The result is a sham price disparity that
11 misleads consumers into believing they are receiving a good deal and induces them into
12 making a purchase. Retailers drastically benefit from employing a false reference pricing
13 scheme and experience increased sales.

14 2. The California legislature and federal regulations prohibit this misleading
15 practice. The law recognizes the reality that consumers often purchase merchandise
16 marketed as being “on sale” purely because the proffered discount seemed too good to pass
17 up. Accordingly, retailers have an incentive to lie to customers and advertise false sales.
18 The resulting harm is tangible- the bargain hunter’s expectations about the product he
19 purchased is that it has a higher perceived value and he may not have purchased the product
20 but for the false savings.

21 3. Chicos’ utilizes a false and misleading reference price in the marketing and
22 selling of its Chico’s “direct to outlet” merchandise sold at its outlet stores. Chico’s
23 advertises its merchandise for sale by attaching a price tag on the item that sets forth a
24 fictitious, “reference price,” and then employs large signage immediately next to the items
25 for sale that states, “ ___% Off,” indicating the items are on sale for a designated “ ___

26 _____
27 ¹ David Streitfeld, *It’s Discounted, but is it a Deal? How List Prices Lost Their Meaning*,
28 New York Times, <https://www.nytimes.com/2016/03/06/technology/its-discounted-but-is-it-a-deal-how-list-prices-lost-their-meaning.html>, (March 6, 2016), last accessed April 28, 2017.

1 Off.” See *e.g.* Exhibit A. The “___% Off” price, or sale price, is substantially discounted
2 from the “reference” price. See *id.*

3 4. However, the “reference” price is total fiction. The “direct to outlet”
4 merchandise sold at Chico’s outlet stores is created specifically for Chico’s outlet stores².
5 Thus, the only market price for the Chico’s direct to outlet store merchandise is the price at
6 which the merchandise is sold in the Chico’s outlet stores.

7 5. The Chico’s outlet store merchandise is *never* offered for sale, nor actually
8 sold, at the represented “reference” price. Thus, the “reference” price is false and is used
9 exclusively to induce consumers into believing that the merchandise was once sold at the
10 “reference” price and from which the false and discount and corresponding sale price is
11 derived. Chico’s deceptive pricing scheme has the effect of tricking consumers into
12 believing they are receiving a significant deal by purchasing merchandise at a steep
13 discount, when in reality, consumers are paying for merchandise at its regular or original
14 retail price.

15 6. The advertised discounts are fictitious because the “reference” reference price
16 does not represent a *bona fide* price at which Chico’s previously sold a substantial quantity
17 of the merchandise for a reasonable period of time as required by the Federal Trade
18 Commission (“FTC”). In addition, the represented “reference” price was not the prevailing
19 market retail price within the three months immediately preceding the publication of the
20 advertised former “reference” price, as required by California law.

21 7. Through its false and misleading marketing, advertising, and pricing scheme,
22 Chico’s violated and continues to violate California and federal law prohibiting advertising
23 goods for sale as discounted from former prices that are false, and prohibiting misleading
24 statements about the existence and amount of price reductions. Specifically, Chico’s
25 violated and continues to violate: California’s Unfair Competition Law, Business &
26 Professions Code §§ 17200, *et seq.* (the “UCL”); California’s False Advertising Law,
27

28 ² Upon information and belief, Chico’s sells *some* merchandise that was originally offered for sale in its full line stores; that merchandise is not the subject of this action.

1 Business & Professions Code §§ 17500, *et seq.* (the “FAL”); the California Consumer Legal
2 Remedies Act, California Civil Code §§ 1750, *et seq.* (the “CLRA”); and the Federal Trade
3 Commission Act (“FTCA”), which prohibits “unfair or deceptive acts or practices in or
4 affecting commerce” (15 U.S.C. § 45(a)(1)) and false advertisements (15 U.S.C. § 52(a)).

5 8. Plaintiff brings this action on behalf of himself and other similarly situated
6 consumers who have purchased one or more Chico’s “direct to outlet” merchandise at
7 Defendant’s Chico’s outlet store that were deceptively represented as discounted from false
8 former “reference” prices. Plaintiff seeks to halt the dissemination of this false, misleading,
9 and deceptive pricing scheme, to correct the false and misleading perception it has created
10 in the minds of consumers, and obtain redress for those who have purchased merchandise
11 tainted by this deceptive pricing scheme. Plaintiff also seeks to enjoin Chico’s from using
12 false and misleading misrepresentations regarding retail price comparisons in its labeling
13 and advertising permanently. Further, Plaintiff seeks to obtain damages, restitution, and
14 other appropriate relief in the amount by which Chico’s was unjustly enriched as a result of
15 its sales of merchandise offered at a false discount.

16 9. Finally Plaintiff seeks reasonable attorneys’ fees pursuant to California Code
17 of Civil Procedure § 1021.5, as this lawsuit seeks the enforcement of an important right
18 affecting the public interest and satisfies the statutory requirements for an award of
19 attorneys’ fees.

20 **II. JURISDICTION AND VENUE**

21 10. This Court has original jurisdiction of this Action pursuant to the Class Action
22 Fairness Act, 28 U.S.C §1332 (d)(2). The matter in controversy, exclusive of interest and
23 costs, exceeds the sum or value of \$5,000,000 and at least some members of the proposed
24 Class have a different citizenship from Chico’s.

25 11. The Southern District of California has personal jurisdiction over Chico’s
26 because Chico’s is a corporation or other business entity authorized to conduct and does
27 conduct business in the State of California. Chico’s is registered with the California
28 Secretary of State to do sufficient business with sufficient minimum contacts in California,

1 and/or otherwise intentionally avails itself of the California market through the ownership
2 and operation of its outlet store in California.

3 12. Venue is proper under 28 U.S.C. § 1391 (b)(2) because Chico’s transacts
4 substantial business in this District. A substantial part of the events giving rise to Plaintiff’s
5 claims arose here.

6 **III. PARTIES**

7 **Plaintiff**

8 13. JACKIE FISHER resides in San Diego, California. Plaintiff was doing some
9 last-minute Christmas shopping at the outlet mall when he entered Defendant’s store.
10 Plaintiff, in reliance on Chico’s false and deceptive advertising, marketing and discounting
11 pricing schemes, purchased two women’s shirts at the Chico’s outlet store located at 5001
12 Willows Road, Suite 308, Alpine, CA 91901, on December 22, 2018. Mr. Fisher examined
13 several shirts and tops within the store. As he shopped, he noticed the accompanying in-
14 store signage represented that the items he preferred were being offered for “50% Off.” He
15 examined the items and evaluated the price tags and the accompanying in-store signage.
16 The first item, Deanna Shirrtail Texas T, was advertised on the price tag as having a
17 reference price of \$29.97. The in-store signage represented that the shirt was “50% Off” the
18 reference price. The second item, the Angela 3 quarter piece was advertised on the price tag
19 as having a reference price of \$27.47. The in-store signage represented that the piece was
20 “50% Off” the reference price.

21 14. After observing the price tags on the item and the accompanying signage, Mr.
22 Fisher believed that he was receiving a significant discount on the items he had chosen.
23 Because he liked the items and felt that the discounted price would likely not last, and that
24 he was getting a significant bargain on the merchandise, he proceeded to the register and
25 purchased the two shirts. Mr. Fisher believed that he was purchasing authentic Chico’s
26 merchandise that was previously available at the Chico’s retail store or other department
27 stores at the full reference price. He paid a total of \$61.90.

28 15. However, the products were never offered for sale at the reference price listed

1 on the price tags and certainly not within the 90 days preceding Mr. Fisher’s purchases.
2 Plaintiff was damaged in his purchase because Defendant’s false reference price
3 discounting scheme inflated the true market value of the items he purchased. Plaintiff is
4 susceptible to this reoccurring harm because he cannot be certain that Chico’s has corrected
5 this deceptive pricing scheme and he desires to shop at Chico’s in the future. Plaintiff does
6 not have the resources on his own to determine whether Defendant is complying with
7 California and Federal law with respect to its retail pricing practices.

8 **Defendant**

9 16. Plaintiff is informed and believes, and upon such information and belief
10 alleges, Defendant Chico’s is a Florida corporation with its principal executive offices
11 located at 11215 Metro Parkway, Ft. Myers, Florida 33966. Chico’s maintains the Chico’s
12 brand, a line of women’s clothing, jewelry, accessories, and more. Chico’s operates Chico’s
13 retail and outlet stores and the Chicos.com website, and advertises, markets, and sells its
14 merchandise in California and throughout the United States.

15 17. Plaintiff does not know the true names or capacities of the persons or entities
16 sued herein as DOES 1-50, inclusive, and therefore sues such Defendants by such fictitious
17 names. Plaintiff is informed and believes, and upon such information and belief alleges,
18 that each of the DOE Defendants is in some manner legally responsible for the damages
19 suffered by Plaintiff and the Class members as alleged herein. Plaintiff will amend this
20 Complaint to set forth the true names and capacities of these Defendants when they have
21 been ascertained, along with appropriate charging allegations, as may be necessary.

22 **IV. FACTUAL BACKGROUND**

23 **The Fraudulent Sale Discounting Scheme**

24 18. Chico’s is a women’s clothing store with over 600 Chico’s boutiques
25 nationwide. Chico’s specializes in the sale of women’s clothing, shoes, jewelry, accessories,
26 and more. Chico’s directly markets its merchandise to consumers in the State of California
27 and throughout the United States via its in-store advertisements and its e-commerce website
28 (www.Chicos.com). Chico’s sells its own branded merchandise at its retail stores, outlet

1 stores, and through its e-commerce website. This case involves only the Chico’s “direct to
2 outlet” branded merchandise sold at Chico’s outlet stores.

3 19. The Chico’s “direct to outlet,” merchandise sold in the Chico’s outlet stores is
4 exclusively sold at the Chico’s outlet stores and it is not sold anywhere else. Thus, there is
5 no other market for the Chico’s outlet store merchandise other than at Defendant’s Chico’s
6 outlet stores.

7 20. Chico engages in a scheme to defraud its customers by perpetually discounting
8 its merchandise in its outlet stores. Chico consistently advertises its merchandise with a
9 false reference price and corresponding sale price immediately next to the item that states,
10 “___% Off.” The reference price conveys to the customer the purported regular, or original,
11 price of the item. The “___% Off” sale price conveys to the customer a deeply discounted
12 price at which the item is presently being offered for sale. The “reference” price is conveyed
13 to the consumer on the price tag attached to the item while the “___% Off,” or sale price, is
14 advertised by large, colorful signage placed immediately next to the item. *See e.g. Exhibit*
15 *A.*

16 21. However, at no time is the Chico’s outlet store merchandise ever offered for
17 sale anywhere at the original price. The “reference” price is merely a false original price,
18 which Chico’s utilizes to deceptively manufacture a deeply discounted sale price referred
19 to as the “___% Off” price on the merchandise sold at the Chico’s outlet retail stores during
20 the Class period. Chico’s uses the false reference price to create the impression of
21 significant value to the consumer. Value that has never been manifested in a market-based
22 price. The discount is illusory – the market price of the items sold is artificially inflated
23 due to the perception of a discount. Plaintiff is owed the difference between the artificially
24 inflated price and the true market price of the item.

25 22. This practice is not accidental. Rather, this practice is a fraudulent scheme
26 intended to deceive consumers into: 1) making purchases they otherwise would not have
27 made; and/or 2) paying substantially more for merchandise consumers believed was heavily
28 discounted and thus, worth more than its actual value.

1 23. Retailers, including Chico’s, understand that consumers are susceptible to a
2 good bargain, and therefore, Chico’s has a substantial interest in lying in order to generate
3 sales. A product’s “reference” price matters to consumers because it serves as a baseline
4 upon which consumers perceive a product’s value. In this case, Chico’s has marked its
5 merchandise with an original or false reference price which conveys to consumers,
6 including to Plaintiff, “the product’s worth and the prestige that ownership of the product
7 conveys.” *See Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1106 (9th Cir. 2013) (citing Dhruv
8 Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative or Deceptive?*,
9 11 J. Pub. Pol’y & Mktg. 52, 55 (Spring 1992) (“By creating an impression of savings, the
10 presence of a higher reference price enhances subjects’ perceived value and willingness to
11 buy the product.”); *id.* at 56 (“[E]mpirical studies indicate that as discount size increases,
12 consumers’ perceptions of value and their willingness to buy the product increase, while
13 their intention to search for a lower price decreases.”).

14 24. Chico’s pricing advertisements uniformly include both the false reference
15 price on the price tag attached to the item with a corresponding placard, or sign, placed next
16 to the item that reads, “___% Off.” This uniform scheme intends to and does provide
17 misinformation to the customer. This misinformation communicates to consumers,
18 including Plaintiff, that the Chico’s products have a greater value than the advertised
19 discounted price.

20 25. As the Ninth Circuit recognizes, “[m]isinformation about a product’s ‘normal’
21 price is...significant to many consumers in the same way as a false product label would
22 be.” *See Hinojos*, 718 F.3d at 1106.

23 **Plaintiff’s Investigation**

24 26. Plaintiff’s investigation of Chico’s revealed that Chico’s direct to outlet store
25 merchandise is priced uniformly. That is, Chico’s merchandise sold at Chico’s outlet stores
26 bears a price tag with a false reference price and a substantially discounted “___% Off” sale
27 price. Plaintiff’s counsel’s investigation confirmed that the merchandise purchased by Mr.
28 Fisher was priced with a false reference price and a corresponding discounted price for at

1 least the 90-day period immediately preceding Plaintiff's purchase.

2 27. Plaintiff's investigation cataloged the pricing practices of the Chico's outlet
3 store located at the Viejas Outlet Center, 5001 Willows Road, Suite 308, Alpine, CA 91901
4 ("Alpine"), for several months before and after Mr. Fisher's purchase. The false reference
5 price and corresponding discount price scheme was both uniform and identical on almost
6 all of the merchandise sold at Chico's outlet store. The only thing that changed was the
7 requisite % Off on certain merchandise items.

8 28. The fraudulent pricing scheme applies to all Chico's "direct to outlet" store
9 merchandise offered on sale at the Chico's outlet store, including the two shirts purchased
10 by Plaintiff.

11 **Plaintiff and the Class are Injured by Chico's Deceptive Pricing Scheme**

12 29. The reference prices listed and advertised on Chico's "direct to outlet" store
13 products are fake reference prices, utilized only to perpetuate Chico's fake discount scheme.

14 30. Chico's knows that its comparative price advertising is false, deceptive,
15 misleading, and unlawful under California and federal law.

16 31. Chico's fraudulently concealed from and intentionally failed to disclose to
17 Plaintiff and other members of the Class the truth about its advertised discount prices and
18 former reference prices.

19 32. At all relevant times, Chico's has been under a duty to Plaintiff and the Class
20 to disclose the truth about its false discounts.

21 33. Plaintiff relied upon Chico's artificially inflated "reference" price and false
22 discounts when purchasing the two women's shirts from Chico's. Plaintiff would not have
23 made such purchase but for Chico's representations regarding the false "reference" price
24 and the fictitious sales price of the merchandise. Plaintiff may in the future shop at Chico's
25 outlet stores.

26 34. Plaintiff and the Class reasonably and justifiably acted and relied on the
27 substantial price differences that Chico's advertised, and made purchases believing that they
28 were receiving a substantial discount on an item of greater value than it actually was.

1 Plaintiff, like other Class members, was lured in, relied on, and was damaged by the
2 deceptive pricing scheme that Chico's carried out.

3 35. Chico's intentionally concealed and failed to disclose material facts regarding
4 the truth about false former price advertising in order to provoke Plaintiff and the Class to
5 purchase merchandise in its Chico's outlet stores.

6 **V. CLASS ALLEGATIONS**

7 36. Plaintiff brings this action on behalf of himself and all other similarly situated
8 Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil
9 Procedure and seeks certification of the following Class against Chico's for violations of
10 California state laws:

11 All persons, within the State of California, from May 7, 2015 through the
12 present (the "Class Period"), who purchased from Chico's outlet stores one or
13 more "direct to outlet" products at discounts from the advertised "reference"
14 price and who have not received a refund or credit for their purchase(s).

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

21 37. **Numerosity:** The class members are so numerous that joinder of all members
22 is impracticable. Plaintiff is informed and believes that the proposed Class contains
23 hundreds of thousands of individuals who have been damaged by Chico's conduct as
24 alleged herein. The precise number of Class members is unknown to Plaintiff.

25 38. **Existence and Predominance of Common Questions of Law and Fact:** This
26 action involves common questions of law and fact, which predominate over any questions
27 affecting individual Class members. These common legal and factual questions include,
28 but are not limited to, the following:

- a. Whether, during the Class Period, Chico’s used false “reference” price labels and falsely advertised price discounts on its Chico’s direct to outlet branded products sold in its retail outlet stores;
- b. Whether, during the Class Period, the “reference” prices advertised by Chico’s were the prevailing market prices for the respective Chico’s direct to outlet store merchandise during the three months preceding the dissemination and/or publication of the advertised former prices;
- c. Whether Chico’s alleged conduct constitutes violations of the laws asserted;
- d. Whether Chico’s engaged in unfair, unlawful and/or fraudulent business practices under the laws asserted;
- e. Whether Chico’s engaged in false or misleading advertising;
- f. Whether Plaintiff and Class members are entitled to damages and/or restitution and the proper measure of that loss; and
- g. Whether an injunction is necessary to prevent Chico’s from continuing to use false, misleading or illegal price comparison.

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

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

41. **Superiority:** The nature of this action and the nature of laws available to Plaintiff and the Class make the use of the class action format a particularly efficient and appropriate procedure to afford relief to him and the Class for the wrongs alleged. The damages or other financial detriment suffered by individual Class members is relatively

1 modest compared to the burden and expense that would be entailed by individual litigation
2 of their claims against Chico’s. It would thus be virtually impossible for Plaintiff and Class
3 members, on an individual basis, to obtain effective redress for the wrongs done to them.
4 Absent the class action, Class members and the general public would not likely recover, or
5 would not likely have the chance to recover, damages or restitution, and Chico’s will be
6 permitted to retain the proceeds of its fraudulent and deceptive misdeeds.

7 42. All Class members, including Plaintiff, were exposed to one or more of
8 Chico’s misrepresentations or omissions of material fact claiming that former “reference”
9 advertised prices were in existence. Due to the scope and extent of Chico’s consistent false
10 “discount” price advertising scheme, disseminated in a years-long campaign to California
11 consumers, it can be reasonably inferred that such misrepresentations or omissions of
12 material fact were uniformly made to all members of the Class. In addition, it can be
13 reasonably presumed that all Class members, including Plaintiff, affirmatively acted in
14 response to the representations contained in Chico’s false advertising scheme when
15 purchasing Chico’s outlet merchandise at Chico’s retail outlet store.

16 43. Chico’s keeps extensive computerized records of its customers through, *inter*
17 *alia*, customer loyalty programs and general marketing programs. Chico’s has one or more
18 databases through which a significant majority of Class members may be identified and
19 ascertained, and it maintains contact information, including email and home addresses,
20 through which notice of this action could be disseminated in accordance with due process
21 requirements.

22 VI. CAUSES OF ACTION

23 FIRST CAUSE OF ACTION

24 **Violation of California’s Unfair Competition Law (“UCL”) 25 California Business and Professions Code § 17200, *et seq.***

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

28 45. 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”

1 advertising. Cal. Bus. Prof. Code § 17200.

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

5 ***“Unfair” Prong***

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

10 48. Chico’s actions constitute “unfair” business practices because, as alleged
11 above, Chico’s engaged in misleading and deceptive price comparison advertising that
12 represented false “reference” prices and corresponding deeply discounted prices. The
13 discounted prices were nothing more than fabricated “reference” prices leading to phantom
14 markdowns. Chico’s acts and practices offended an established public policy of
15 transparency in pricing, and engaged in immoral, unethical, oppressive, and unscrupulous
16 activities that are substantially injurious to consumers.

17 49. The harm to Plaintiff and Class members outweighs the utility of Chico’s
18 practices. There were reasonably available alternatives to further Chico’s legitimate
19 business interests other than the misleading and deceptive conduct described herein.

20 ***“Fraudulent” Prong***

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

23 51. Chico’s acts and practices alleged above constitute fraudulent business acts or
24 practices as they have deceived Plaintiff and are highly likely to deceive members of the
25 consuming public. Plaintiff relied on Chico’s fraudulent and deceptive representations
26 regarding its “reference” prices for the direct to outlet products which Chico’s sells
27 exclusively at its Chico’s outlet stores. These misrepresentations played a substantial role
28 in Plaintiff’s decision to purchase those products at steep discounts, and Plaintiff would not

1 have purchased those products without Chico’s misrepresentations.

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

4 **“Unlawful” Prong**

5 53. Chico’s acts and practices alleged above constitute unlawful business acts or
6 practices as they have violated state and federal law in connection with their deceptive
7 pricing scheme. The Federal Trade Commission’s Act (“FTCA”) prohibits “unfair or
8 deceptive acts or practices in or affecting commerce” (15 U.S.C. § 45(a)(1)) and prohibits
9 the dissemination of any false advertisements. 15 U.S.C. § 52(a). Under the Federal Trade
10 Commission, false former pricing schemes, similar to the ones implemented by Chico’s,
11 are described as deceptive practices that would violate the FTCA:

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

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

16 C.F.R. § 233.1(a) and (b) (emphasis added).

54. In addition to federal law, California law also expressly prohibits false former
pricing schemes. California’s False Advertising Law, Bus. & Prof. Code §17501, (“FAL”),

1 entitled “*Worth or value; statements as to former price,*” states:

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

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

9 Cal. Bus. & Prof. Code § 17501 (emphasis added).

10
11 55. As detailed in Plaintiff’s Third Cause of Action below, the Consumer Legal
12 Remedies Act, Cal. Civ. Code § 1770(a)(9), (“CLRA”), prohibits a business from
13 “[a]dvertising goods or services with intent not to sell them as advertised,” and subsection
14 (a)(13) prohibits a business from “[m]aking false or misleading statements of fact
15 concerning reasons for, existence of, or amounts of price reductions.”

16 56. The violation of any law constitutes an “unlawful” business practice under the
17 UCL.

18 57. As detailed herein, the acts and practices alleged were intended to or did result
19 in violations of the FTCA, the FAL, and the CLRA.

20 58. Chico’s practices, as set forth above, have misled Plaintiff, the proposed Class,
21 and the public in the past and will continue to mislead in the future. Consequently, Chico’s
22 practices constitute an unlawful, fraudulent, and unfair business practice within the meaning
23 of the UCL.

24 59. Chico’s violation of the UCL, through its unlawful, unfair, and fraudulent
25 business practices, are ongoing and present a continuing threat that Class members and the
26 public will be deceived into purchasing products based on price comparisons of arbitrary
27 and inflated “reference” prices and substantially discounted sale prices. These false
28 comparisons created phantom markdowns and lead to financial damage for consumers like

1 Plaintiff and the Class.

2 60. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent
3 injunctive relief and order Chico’s to cease this unfair competition, as well as disgorgement
4 and restitution to Plaintiff and the Class of all Chico’s revenues associated with its unfair
5 competition, or such portion of those revenues as the Court may find equitable.

6 **SECOND CAUSE OF ACTION**
7 **Violation of California’s False Advertising Law (“FAL”)**
8 **California Business & Professions Code § 17500, *et seq.***

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

11 62. Cal. Bus. & Prof. Code § 17500 provides:

12 It is unlawful for any...corporation...with intent...to dispose of...personal
13 property...to induce the public to enter into any obligation relating thereto, to
14 make or disseminate or cause to be made or disseminated...from this state
15 before the public in any state, in any newspaper or other publication, or any
16 advertising device, or by public outcry or proclamation, or in any other manner
or means whatever, including over the Internet, any statement...which is
untrue or misleading, and which is known, or which by the exercise of
reasonable care should be known, to be untrue or misleading...”

17 (Emphasis added).

18 63. The “intent” required by Section 17500 is the intent to dispose of property, and
19 not the intent to mislead the public in the disposition of such property.

20 64. Similarly, this section provides, “no price shall be advertised as a former price
21 of any advertised thing, unless the alleged former price was the prevailing market
22 price...within three months next immediately preceding the publication of the
23 advertisement or unless the date when the alleged former price did prevail is clearly,
24 exactly, and conspicuously stated in the advertisement.” Cal Bus. & Prof. Code § 17501.

25 65. Chico’s routine of advertising discounted prices from false “reference” prices,
26 which were never the prevailing market prices of those direct to outlet products and were
27 materially greater than the true prevailing prices, was an unfair, untrue, and misleading
28

1 practice. This deceptive marketing practice gave consumers the false impression that the
2 products were regularly sold on the market for a substantially higher price than they actually
3 were; therefore, leading to the false impression that the “direct to outlet” products sold on
4 at the Chico’s outlet store were worth more than they actually were.

5 66. Chico’s misled consumers by making untrue and misleading statements and
6 failing to disclose what is required as stated in the Code alleged above.

7 67. As a direct and proximate result of Chico’s misleading and false
8 advertisements, Plaintiff and Class members have suffered injury in fact and have lost
9 money. As such, Plaintiff requests that this Court order Chico’s to restore this money to
10 Plaintiff and all Class members, and to enjoin Chico’s from continuing these unfair
11 practices in violation of the UCL in the future. Otherwise, Plaintiff, Class members, and
12 the broader general public, will be irreparably harmed and/or denied an effective and
13 complete remedy.

14 **THIRD CAUSE OF ACTION**
15 **Violation of California’s Consumers Legal Remedies Act (“CLRA”),**
16 **California Civil Code § 1750, *et seq.***

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

19 69. This cause of action is brought pursuant to the CLRA, Cal. Civ. Code § 1750,
20 *et seq.* Plaintiff and each member of the proposed Class are “consumers” as defined by Cal.
21 Civ. Code § 1761(d). Chico’s sale of its “direct to outlet” merchandise in its retail outlet
22 store to Plaintiff and the Class were “transactions” within the meaning of Cal. Civ. Code §
23 1761(e). The products purchased by Plaintiff and the Class are “goods” within the meaning
24 of Cal. Civ. Code § 1761(a).

25 70. Chico’s violated and continues to violate the CLRA by engaging in the
26 following practices proscribed by Cal. Civ. Code § 1770(a) in transactions with Plaintiff
27 and the Class which were intended to result in, and did result in, the sale of its merchandise:

- 28 **a.** Advertising goods or services with intent not to sell them as advertised;
(a)(9);

1 **b.** Making false or misleading statements of fact concerning reasons for,
2 existence of, or amounts of price reductions; (a)(13).

3 71. Pursuant to § 1782(a) of the CLRA, on May 7, 2019, Plaintiff's counsel
4 notified Chico's in writing by certified mail of the particular violations of § 1770 of the
5 CLRA and demanded that it rectify the problems associated with the actions detailed above
6 and give notice to all affected consumers of Chico's intent to act. If Chico's fails to respond
7 to Plaintiff's letter, fails to agree to rectify the problems associated with the actions detailed
8 above, or fails to give notice to all affected consumers within 30 days of the date of written
9 notice, as proscribed by Section 1782, Plaintiff will move to amend his Complaint to pursue
10 claims for actual, punitive, and statutory damages, as appropriate against Chico's. As to
11 this cause of action, at this time, Plaintiff seeks only injunctive relief.

12 **VII. PRAYER FOR RELIEF**

13 72. Wherefore, Plaintiff, on behalf of himself and on behalf of the other members
14 of the Class, requests that this Court award relief against Chico's as follows:

- 15 **a.** An order certifying the class and designating Jackie Fisher as the Class
16 Representative and his counsel as Class Counsel;
- 17 **b.** Awarding Plaintiff and the proposed Class members damages;
- 18 **c.** Awarding restitution and disgorgement of all profits and unjust
19 enrichment that Chico's obtained from Plaintiff and the Class members
20 as a result of its unlawful, unfair, and fraudulent business practices
21 described herein;
- 22 **d.** Awarding declaratory and injunctive relief as permitted by law or
23 equity, including: enjoining Chico's from continuing the unlawful
24 practices as set forth herein, and directing Chico's to identify, with
25 Court supervision, victims of its misconduct and pay them all money
26 they are required to pay;
- 27 **e.** Order Chico's to engage in a corrective advertising campaign;
- 28 **f.** Awarding attorneys' fees and costs; and

1 g. For such other and further relief as the Court may deem necessary or
2 appropriate.

3 **VIII. DEMAND FOR JURY TRIAL**

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

5
6 Dated: May 7, 2019

CARLSON LYNCH LLP

7
8 /s/ Todd D. Carpenter

9 Todd D. Carpenter (CA 234464)
10 1350 Columbia Street, Ste. 603
11 San Diego, California 92101
12 Telephone: (619) 762-1910
13 Facsimile: (619) 756-6991
14 tcarpenter@carlsonlynch.com

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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

JACKIE FISHER, on behalf of himself and all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Todd d. Carpenter (CA Bar No: 234464) 619-762-1910 1350 Columbia Street, Ste. 603 San Diego, CA 92101

DEFENDANTS

CHICO'S FAS, INC.

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)

'19CV856 DMS MSB

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

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes categories like Citizen of This State, Citizen of Another State, and Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

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. section 1332(d)
Brief description of cause: 1) Violation of Cal. Bus. & Prof. 17200; 2) Violation of Cal. Bus. & Prof. 17500; 3) Violation of Cal. Civ. Code 1750

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 05/07/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Todd D. Carpenter

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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

- V. **Origin.** Place an "X" in one of the seven 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.
 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

- 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.

CARLSON LYNCH LLP
Todd D. Carpenter (CA Bar No. 234464)
Alyshia K. Lord (CA Bar No. 306555)
1350 Columbia St., Ste. 603
San Diego, California 92101
Tel: (619) 762-1900
Fax: (619) 756-6991
tcarpenter@carlsonlynch.com
alord@carlsonlynch.com

*Attorneys for Plaintiff and
Class Counsel*

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

JACKIE FISHER, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

CHICO’S FAS, INC., a Florida
corporation, and DOES 1-50, inclusive,

Defendant.

Case No.: ’19CV856 DMS MSB

**DECLARATION IN SUPPORT OF
JURISDICTION**

I, Todd D. Carpenter, declare under penalty of perjury the following:

1. I am an attorney duly licensed to practice before all of the courts in the State of California. I am a partner and part-owner of Carlson Lynch, LLP and the counsel of record for Plaintiff in the above-entitled action.

2. Defendant Chico’s FAS, Inc. (“Chico’s”) has done and is doing business in the County of San Diego. Such business includes the marketing, distributing, and sale of its women’s clothing, shoes, jewelry, accessories, and more at its Chico’s retail outlet stores.

3. Plaintiff Jackie Fisher purchased a Deanna Shirrtail Texas T and an Angela 3 quarter shirt at a Chico’s outlet store in Alpine, California.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed this 7th day of May 2019 in San Diego, California.
4

5 /s/ Todd D. Carpenter
6 Todd D. Carpenter
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EXHIBIT A



APPAREL
PRICE V
TOP S4 S4 V BASIC KN
MIDRIB/HEATHER GRAY
S/07/6177



\$26.95



New York
New York



sweaters

50% OFF full-priced styles

TICKET PRICE	WHAT YOU PAY	TICKET PRICE	WHAT YOU PAY
\$14.00	\$7.00	\$49.00	\$24.50
\$19.00	\$9.50	\$54.00	\$27.00
\$24.00	\$12.00	\$59.00	\$29.50
\$29.00	\$14.50	\$64.00	\$32.00
\$34.00	\$17.00	\$69.00	\$34.50
\$39.00	\$19.50	\$74.00	\$37.00
\$44.00	\$22.00	\$79.00	\$39.50





ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Chico's Advertises Fake Discounts at Outlet Stores, Class Action Claims](#)
