

**CARLSON LYNCH SWEET
KILPELA & CARPENTER, LLP**

Todd D. Carpenter (CA 234464)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: 619.756.6994
Facsimile: 619.756.6991
tcarpenter@carlsonlynch.com

Edwin J. Kilpela
Gary F. Lynch
1133 Penn Avenue, 5th Floor
Pittsburgh, Pennsylvania 15222
Telephone: (412) 322-9243
Facsimile: (412) 231-0246
ekilpela@carlsonlynch.com
glynch@carlsonlynch.com

*Attorneys for Plaintiff and
Proposed Class Counsel*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALYSSA HEDRICK, on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

NEW YORK & COMPANY, INC., a
DELAWARE corporation, NEW YORK
& COMPANY STORES, INC., a NEW
YORK corporation, and DOES 1- 50,
inclusive,

Defendants.

Case No. '17CV1153 AJB JMA

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.**

IDEMAND FOR JURY TRIAL

1 Plaintiff ALYSSA HEDRICK brings this action on behalf of herself and all others
2 similarly situated against Defendant NEW YORK & COMPANY, INC. and Defendant
3 NEW YORK & COMPANY STORES, INC. (collectively “Defendants”), and states:

4 **I. NATURE OF ACTION**

5 1. This is a class action regarding Defendants’ false and misleading
6 advertisement of regular “OUR PRICE” prices, and corresponding phantom “% Off”
7 savings on clothing, accessories, and fashion apparel sold in their New York & Company
8 outlet stores. During the Class Period (defined below), Defendants advertised false price
9 discounts for merchandise sold throughout their outlet stores.

10 2. During the Class Period, Defendants continually misled consumers by
11 advertising clothing, accessories, and fashion apparel at discounted, “% Off” prices in
12 their outlet stores. Defendants would offer substantial, continual discounts from their
13 “OUR PRICE” (*i.e.* the price listed on the original price tag) prices. Defendants’ “OUR
14 PRICE” prices in their outlet stores were false and misleading, because their “OUR
15 PRICE” prices were either never offered to the general public, or they were offered for an
16 inconsequential period and then continuously discounted, rendering the “OUR PRICE”
17 price false, evasive, and misleading. The advertised discounts were nothing more than
18 mere phantom markdowns because the represented “OUR PRICE” prices in the outlet
19 stores were artificially inflated and were not the predominant prices at which Defendants
20 offered for sale or sold their outlet store products.

21 3. Defendants list the “OUR PRICE” regular price¹ on the price tag for almost
22 every product offered for sale in their outlet stores. The represented “OUR PRICE” prices
23 on the price tags in the outlet stores were artificially inflated and were not the
24 predominant prices at which Defendants offered or sold their outlet store products. In fact,
25 based on Plaintiff’s investigation, Defendants never used or offered for sale their outlet

26 _____
27 ¹ The false “regular” prices in the outlet stores are commonly referred to as “OUR
28 PRICE” prices. The words “OUR PRICE” are set forth on almost every price tag in the
outlet stores to indicate the “regular” price at which merchandise was purportedly offered
for sale.

1 store products at the “OUR PRICE” price. As such, the “OUR PRICE” price constitutes a
2 sham regular price.

3 4. Defendants convey their deceptive pricing scheme to consumers through in-
4 store signage offering steep discounts from the “OUR PRICE” prices listed in the outlet
5 stores. *See* Exhibit A. For example, Defendants prominently display their pricing scheme
6 by advertising deep discounts on various items throughout their outlet stores. There are
7 typically large placard signs advertising the sale price or the “% Off” of the regular price
8 tag price. *See* Exhibit A.

9 5. In the New York & Company outlet stores, Defendants convey their prices to
10 consumers by advertising the “regular” price of the goods sold on the price tag as the
11 “OUR PRICE.” *See* Exhibit A, p.4 (displaying the “OUR PRICE” price listed on the
12 item’s price tag). Defendants then offer a “% Off” discount from the “OUR PRICE” price.
13 *See* Exhibit A, pp. 1-3. However, the “OUR PRICE” price offered on the price tag is a
14 false regular price because Defendants never sell their outlet store products at the “OUR
15 PRICE” price. The “OUR PRICE” price is never actually the “regular” or market” price
16 for the goods sold at the outlet stores; rather, it is a fictional price from which Defendants
17 offer deep discounts to lure consumers into believing they are receiving a substantial
18 discount. Defendants utilize the “OUR PRICE” price to mislead consumers into believing
19 they are purchasing New York & Company merchandise that Defendants once sold or
20 offered for sale at the “OUR PRICE” at their outlet stores.

21 6. Defendants manufacture and sell a completely different line of clothing in
22 their outlet stores than those sold in their retail stores. The only channel Defendants ever
23 sell the majority (90%) of their outlet store clothing is at the New York & Company outlet
24 stores, not at Defendants’ traditional retail stores. Defendants manufacture their branded
25 outlet clothing strictly for distribution in their outlet stores. It follows that Defendants
26 never actually sell their outlet-made clothing at the “OUR PRICE” price. Instead, they
27 uniformly and systematically at all times offer deep discounts from the “OUR PRICE”
28 regular price tag prices.

1 7. By commonly offering 30%-50% off the “OUR PRICE” price tag in their
2 outlet stores, Defendants create the false impression that consumers are getting goods
3 traditionally sold in the New York & Company retail stores, when in fact they are
4 purchasing clothing that Defendants manufactured specifically for their outlet stores. In
5 reality, Defendants never sold their outlet store clothing at the “OUR PRICE” price; thus,
6 the “OUR PRICE” price is simply a false regular price used to create the (false)
7 impression of significant savings geared to encourage consumer purchasing.

8 8. Since Defendants’ “OUR PRICE” never existed, it certainly did not
9 constitute the prevailing market retail price for such products within the three months next
10 immediately preceding the publication of the sales tag. Because Defendants sell their own
11 exclusive, branded merchandise, there is no other market price for the products other than
12 the price set at Defendants’ outlet stores. The difference between the sale price and the
13 “OUR PRICE” price constitutes a false savings percentage designed to lure consumers
14 into purchasing products they believe are significantly discounted.

15 9. Through their false and misleading marketing, advertising and pricing
16 scheme, Defendants violated, and continue 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 of and amount of price reductions.
19 Specifically, Defendants violated, and continue to violate California’s Business &
20 Professions Code §§ 17200, *et seq* (the “UCL”), California’s Business & Professions
21 Code §§ 17500, *et seq* (the “FAL”), the California Consumers’ Legal Remedies Act,
22 California Civil Code §§ 1750, *et seq* (the “CLRA”), and the Federal Trade Commission
23 Act (“FTCA”), which prohibits “unfair or deceptive acts or practices in or affecting
24 commerce” (15 U.S.C. § 45(a)(1)) and false advertisements. 15 U.S.C. § 52(a).

25 10. Plaintiff brings this action on behalf of herself and other similarly situated
26 consumers who have purchased one or more clothing, accessories, and fashion apparel at
27 Defendants’ outlet stores that were deceptively represented as discounted from false
28 regular prices in order to halt the dissemination of this false, misleading, and deceptive

1 price scheme, to correct the false and misleading perception it has created in the minds of
2 consumers, and to obtain redress for those who have purchased Defendants' products.
3 Plaintiff seeks restitution and other equitable remedies under the UCL and FAL; and
4 restitution and damages under the CLRA.

5 **II. JURISDICTION AND VENUE**

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

10 12. The Southern District of California has personal jurisdiction over Defendants
11 named in this action because Defendants conduct business in the State of California.
12 Defendants have sufficient minimum contacts in California, and/or otherwise intentionally
13 avail themselves of the California market through the ownership and operation of 47
14 outlet stores within the State of California.

15 13. Venue is proper under 28 U.S.C. § 1391(b) because Defendants transact
16 substantial business in this District and a substantial part of the events or omissions giving
17 rise to Plaintiff's claims arose here.

18 **III. PARTIES**

19 **Plaintiff**

20 14. ALYSSA HEDRICK now resides in Phoenix, Arizona. At all relevant times
21 during the events described herein, Plaintiff lived in San Diego, California. Plaintiff, in
22 reliance on Defendants' false and deceptive advertising, marketing and "discount" pricing
23 scheme, purchased a hot pink sleeveless women's keyhole top with silver hardware, for
24 approximately \$13.47, exclusive of tax, on or around April 27, 2016 at a New York &
25 Company outlet store, located at Las Americas Premium Outlets, 4211 Camino De La
26 Plaza, San Diego, CA 92173. *See* Exhibit B, Plaintiff's purchase receipt. Plaintiff went
27 shopping in order to buy some clothing for herself. When she entered the New York &
28 Company outlet store, she noticed a large rectangular sign sitting on a table above a

1 clothing rack. The sign she observed looked similar to the sign in Exhibit A, pp. 1-3. The
2 sign advertised that the women's tops hanging on the rack were "40% Off." She found a
3 hot pink sleeveless women's keyhole top with silver hardware and examined the regular
4 "OUR PRICE" price as announced by the price tag as \$24.95. *See* Exhibit C.12, picture of
5 top Plaintiff purchased. The price tag looked similar to the price tag depicted in Exhibit A,
6 p.4. She understood the discount sign to mean that the tops were on sale for "40% Off"
7 their regular price.

8 15. Ms. Hedrick believed she was receiving a significant discount. Ms. Hedrick
9 believed the top she was purchasing was recently offered for sale in the New York &
10 Company outlet store for the advertised regular price of \$24.95. However, Defendants
11 never sold the top in any New York & Company outlet store at the regular price of \$24.95
12 in the 90 days preceding her purchase. The top Ms. Hedrick purchased had been
13 continuously and substantially discounted for at least several months, and possibly longer,
14 according to Plaintiff's counsel's investigation. Defendants used the false or severely
15 outdated "OUR PRICE" regular price as a means to deceive Ms. Hedrick into believing
16 that she was getting a good deal and a steep discount on the top she purchased. Therefore,
17 Ms. Hedrick did not receive the benefit of the bargain and was damaged by purchasing the
18 top.

19 16. Plaintiff would not have purchased the top without the misrepresentations
20 made by Defendants. As a result, Plaintiff has been personally victimized by and suffered
21 economic injury as a direct result of Defendants' unlawful, unfair and fraudulent conduct.

22 17. Defendants know that their comparative price advertising is false, deceptive,
23 misleading and unlawful under California law.

24 18. Defendants fraudulently concealed from and intentionally failed to disclose
25 to Plaintiff and other members of the proposed class the truth about their advertised price
26 and former prices.

27 19. At all relevant times, Defendants have been under a duty to Plaintiff and the
28 proposed class to disclose the truth about their false discounts.

1 20. Plaintiff relied upon Defendants’ artificially inflated market price and false
2 discounts when purchasing her top at Defendants’ outlet store. Plaintiff would not have
3 made such purchases but for Defendants’ representations of fabricated regular “OUR
4 PRICE” prices and false discounts.

5 21. Plaintiff and the Class reasonably and justifiably acted and relied on the
6 substantial price differences that Defendants advertised, and made purchases believing
7 that they were receiving a substantial discount on an item of greater value than it actually
8 was. Plaintiff, like other class members, was lured in, relied on, and damaged by these
9 pricing schemes that Defendants carried out.

10 22. Defendants intentionally concealed and failed to disclose material facts
11 regarding the truth about false former price advertising in order to provoke Plaintiff and
12 the proposed class to purchase New York & Company branded products in their outlet
13 stores.

14 **Defendants**

15 23. Plaintiff is informed and believes, and upon such information and belief
16 alleges, Defendant New York & Company, Inc. is a Delaware Corporation with its
17 principal executive offices in New York, New York.

18 24. Plaintiff is informed and believes, and upon such information and belief
19 alleges, Defendant New York & Company Stores, Inc. is a New York Corporation with its
20 principal executive offices in New York, New York.

21 25. Defendants operate New York & Company retail stores, outlet stores, as well
22 as the nyandcompany.com website, and advertise, market, distribute, and/or sell clothing
23 and clothing accessories in California and throughout the United States. Defendants
24 maintain 47 outlet stores in the State of California and over 300 outlet stores nationwide.
25 This action involves only those products Defendants sell at their outlet store locations.

26 26. Plaintiff does not know the true names or capacities of the persons or entities
27 sued herein as DOES 1-50, inclusive, and therefore sues such Defendants by such
28 fictitious names. Plaintiff is informed and believes, and upon such information and belief

1 alleges, that each of the DOE Defendants is in some manner legally responsible for the
2 damages suffered by Plaintiff and the Class members as alleged herein. Plaintiff will
3 amend this Complaint to set forth the true names and capacities of these Defendants when
4 they have been ascertained, along with appropriate charging allegations, as may be
5 necessary.

6 **IV. FACTUAL BACKGROUND**

7 27. In the spring of 2015, Plaintiff's counsel launched an investigation to observe
8 and evaluate the pricing practices of dozens of San Diego County retail stores engaged in
9 improper sale-discounting practices. Plaintiff's counsel tracked the stores by sending
10 investigators into shopping malls and outlet malls to record the prices of the
11 corresponding discounts of products offered for sale. Utilizing this data and online
12 research, Plaintiff's counsel identified retailers who were engaged in improper sale-
13 discounting practices. Plaintiff's counsel focused their investigation on retailers who
14 advertised their products by utilizing "false" regular prices from which discounts were
15 advertised and by identifying those retailers who were continuously advertising their
16 products at discounted prices.

17 28. Plaintiff's counsel identified Defendants engaging in deceptive pricing
18 practices at their outlet stores as follows: Defendants listed each item for sale with a price
19 tag, which contains the language "OUR PRICE" and the corresponding price of the item.
20 The "OUR PRICE" price tags are false regular prices. Defendants continuously offer a
21 discounted "% Off" from the false "OUR PRICE" price tags. The "OUR PRICE" prices
22 are never actually offered at the outlet stores. Rather, the "OUR PRICE" prices are
23 elusive and used only as a baseline to advertise the continuous discounts.

24 29. The discounts from the false "OUR PRICE" prices are communicated to
25 consumers through the use of in store placards and signage. See Exhibit A, pp. 1-3. The
26 signs convey a certain percentage off of the false "OUR PRICE" prices. Plaintiffs'
27 counsel's investigation revealed that the in-store discounts frequently change every couple
28 of weeks, but the products are never sold at their "OUR PRICE" prices in the outlet stores.

1 30. Plaintiffs' investigation entailed one or more investigators entering
2 Defendants' outlet stores to observe the "OUR PRICE" prices and corresponding
3 discounts on items offered for sale. Plaintiff's investigations were conducted at
4 Defendants' stores, including: the New York & Company outlet store located at 415
5 Parkway Plaza, El Cajon, CA 92020 and the New York & Company outlet store located at
6 4211 Camino De La Plaza, San Diego, CA 92173².

7 31. Plaintiffs' investigations revealed all items in the outlet store were
8 discounted at all times. Plaintiffs' investigators never discovered an item that was offered
9 for sale at the "OUR PRICE" price. The sales in each of the outlet stores would change
10 over time, but none of the items in the outlet store would be offered for sale at the "OUR
11 PRICE" price. Set forth in Exhibit C is an example of the products Plaintiff investigated
12 and determined to be continuously discounted from their false "OUR PRICE" price in the
13 outlet stores for 90 days or more.

14 32. The substantial number and variety of products continuously discounted
15 demonstrates that Defendants are engaged in systematic and pervasive practice of
16 improperly discounting their products for sale in their outlet stores.

17 33. Defendants engaged in a systematic scheme to continuously discount its
18 merchandise in its outlet stores without ever offering the merchandise for sale at the
19 "OUR PRICE" price.

20 34. New York & Company, Inc.'s 10-K Annual Report ("Report") for the United
21 States Securities and Exchange Commission for the fiscal year ending on January 30,
22 2016 identifies the channels through which Defendants sell their merchandise: New York
23 & Company retail stores, New York & Company Outlet stores, and their eCommerce
24 store ("website").

25 35. Within this Report, Defendants represent to the public that their "Outlet
26 stores offer a merchandise mix consisting of apparel and accessories that is approximately
27

28 ² The period of the various investigations are set forth in Exhibit C.

1 90% exclusive to the Outlet stores, and some merchandise that can be found at New York
2 & Company and clearance merchandise."

3 36. Since approximately 90% of the merchandise sold at Defendants' outlet
4 stores is sold exclusively at those outlet stores, it is reasonable to conclude that
5 Defendants manufacture apparel and accessories specifically for their outlet stores.

6 37. This is further evidenced by Defendants' return policy that states,
7 "[m]erchandise purchased at a New York & Company Outlet stores may only be returned
8 to New York & Company Outlet stores." See New York & Company Returns and
9 Exchanges, <http://www.nyandcompany.com/static/help/returns/policy/>, last accessed
10 January 23, 2017 (emphasis added).

11 38. Defendants operate their systematic false pricing scheme within the margins
12 of the relevant market it creates. The relevant market for Defendants' outlet store
13 merchandise is defined by the outlet-specific inventory offered for sale exclusively at
14 Defendants' outlet stores.

15 39. Defendants know that their comparative price advertising is false, deceptive,
16 misleading and unlawful under California law.

17 40. Defendants fraudulently concealed from and intentionally failed to disclose
18 to Plaintiff and other members of the proposed class the truth about its advertised price
19 and former prices.

20 41. At all relevant times, Defendants have been under a duty to Plaintiff and the
21 proposed class to disclose the truth about their false discounts.

22 42. Plaintiff relied upon Defendants' artificially inflated "OUR PRICE" and false
23 discounts when purchasing her top at Defendants' outlet store. Plaintiff would not have
24 made such purchase but for Defendants' representation of the fabricated original "OUR
25 PRICE" and false discount.

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

1 was. Plaintiff, like other class members, was lured in, relied on, and damaged by these
2 pricing schemes that Defendants carried out.

3 44. Defendants intentionally concealed and failed to disclose material facts
4 regarding the truth about false former price advertising in order to provoke Plaintiff and
5 the proposed class to purchase New York & Company branded products in their outlet
6 stores.

7 **V. CLASS ALLEGATIONS**

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

11 All persons residing in the State of California who purchased one or more
12 items from Defendants' outlet store, which was offered at a purported
13 discount from an "OUR PRICE" or regular price at any time from June 9,
14 2013 to the date of certification (the "Class Period").

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

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

26 48. **Existence and Predominance of Common Questions of Law and Fact:**
27 This action involves common questions of law and fact, which predominate over any
28 questions affecting individual Class members. These common legal and factual questions

1 include, but are not limited to, the following:

- 2 a. Whether, during the Class Period, Defendants used false regular or
3 “OUR PRICE” price labels and falsely advertised price discounts on
4 their New York & Company branded products they sold in their outlet
5 stores;
- 6 b. Whether, during the Class Period, the regular or “OUR PRICE” prices
7 advertised by Defendants were the prevailing market prices for the
8 respective New York & Company branded products during the three
9 month period preceding the dissemination and/or publication of the
10 advertised former prices;
- 11 c. Whether Defendants’ alleged conduct constitutes violations of the laws
12 asserted;
- 13 d. Whether Defendants informed consumers of the last date on which the
14 purported regular “OUR PRICE” price did prevail prior to placing
15 discounted products on sale or offering them as final sale items;
- 16 e. Whether Defendants informed consumers that the regular or “OUR
17 PRICE” prices of the products sold in their outlet stores were fictional
18 prices; prices at which the products had never been offered for sale;
- 19 f. Whether Defendants engaged in unfair, unlawful and/or fraudulent
20 business practices under the laws asserted;
- 21 g. Whether Defendants engaged in false or misleading advertising; and
- 22 h. Whether Plaintiff and Class members are entitled to damages and/or
23 restitution and the proper measure of that loss.

24 49. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the
25 Class because, *inter alia*, all Class members have been deceived (or were likely to be
26 deceived) by Defendants’ false and deceptive price advertising scheme, as alleged herein.
27 Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all
28 members of the class.

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

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

16 52. All Class members, including Plaintiff, were exposed to one or more of
17 Defendants' misrepresentations or omissions of material fact claiming that former regular
18 or "OUR PRICE" advertised prices were in existence. Due to the scope and extent of
19 Defendants' consistent false discount price advertising scheme, disseminated in a years-
20 long campaign to consumers via a number of different platforms – in-store displays, print
21 advertisements, etc. – it can be reasonably inferred that such misrepresentations or
22 omissions of material fact were uniformly made to all members of the Class. In addition,
23 it can be reasonably presumed that all Class members, including, Plaintiff affirmatively
24 acted in response to the representations contained in Defendants' false advertising scheme
25 when purchasing New York & Company branded merchandise at Defendants' outlet
26 stores.

27 53. Defendants keep extensive computerized records of their customers through,
28 *inter alia*, customer loyalty programs and general marketing programs. Defendants also

1 monitor all transactions through XBR reporting & analysis software. Defendants have one
2 or more databases through which Defendants can identify and ascertain a significant
3 majority of Class members. Defendants also maintain contact information, including
4 email and home addresses, through which Defendants can disseminate notice of this
5 action in accordance with due process requirements.

6 **VI. CAUSES OF ACTION**

7
8 **FIRST CAUSE OF ACTION**
9 **Violation Unfair Competition Law**
10 **Business and Professions Code § 17200 et seq.**

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

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

16 56. The UCL imposes strict liability. Plaintiff need not prove that Defendants
17 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices –
18 but only that such practices occurred.

19 ***“Unfair” Prong***

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

25 58. Defendants’ actions constitute “unfair” business acts or practices because, as
26 alleged above, Defendants engaged in misleading and deceptive price comparison.
27 Defendants’ advertised regular or “OUR PRICE” prices were nothing more than
28 fabricated regular prices leading to phantom “% Off” markdowns. Defendants’ acts and
practices offended an established public policy because they engaged in immoral,

1 unethical, oppressive, and unscrupulous activities that are substantially injurious to
2 consumers.

3 59. The harm to Plaintiff and Class members outweighs the utility of
4 Defendants’ practices. There were reasonably available alternatives to further
5 Defendants’ legitimate business interests, other than the misleading and deceptive conduct
6 described herein.

7 ***“Fraudulent” Prong***

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

10 61. Defendants’ acts and practices alleged above have deceived Plaintiff and are
11 highly likely to deceive members of the consuming public. Plaintiff relied on Defendants’
12 fraudulent and deceptive representations regarding their “OUR PRICE” prices at
13 Defendants’ outlet stores, and the corresponding discounts for the New York & Company
14 branded products, which Defendants sell. These misrepresentations played a substantial
15 role in Plaintiff’s decision and that of the proposed class to purchase the products at steep
16 discounts, and Plaintiff would not have purchased their products without Defendants’
17 misrepresentations.

18 ***“Unlawful” Prong***

19 62. A business act or practice is “unlawful” under the UCL if it violates any
20 other law or regulation.

21 63. Defendants’ acts and practices alleged above constitute unlawful business
22 acts or practices as they have violated state and federal law in connection with their
23 deceptive pricing scheme. The Federal Trade Commissions Act (“FTCA”) prohibits
24 “unfair or deceptive acts or practices in or affecting commerce” (15 U.S.C. § 45(a)(1))
25 and prohibits the dissemination of any false advertisements. 15 U.S.C. § 52(a). Under the
26 Federal Trade Commission, false former pricing schemes, similar to the ones
27 implemented by Defendants, are described as deceptive practices that would violate the
28 FTCA:

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

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

20 16 C.F.R. § 233.1(a) and (b) (emphasis added).

21 64. In addition to federal law, California law also expressly prohibits false
 22 former pricing schemes. California’s False Advertising Law, Bus. & Prof. Code §17501,
 23 (“FAL”), entitled “*Worth or value; statements as to former price,*” states:

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

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

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

65. As detailed in Plaintiff’s Third Cause of Action below, the California

1 Consumer Legal Remedies Act, Civ. Code § 1770(a)(9), prohibits a business from
2 “[a]dvertising goods or services with intent not to sell them as advertised,” and subsection
3 (a)(13) prohibits a business from “[m]aking false or misleading statements of fact
4 concerning reasons for, existence of, or amounts of price reductions.”

5 66. The violation of any law constitutes an “unlawful” business practice under
6 the UCL.

7 67. As detailed herein, the acts and practices alleged were intended to or did
8 result in violations of the FTCA, the FAL, and the CLRA.

9 68. Defendants’ practices, as set forth above, have misled Plaintiff, the
10 proposed class, and the public in the past and will continue to misled in the future.
11 Consequently, Defendants’ practices constitute an unlawful, fraudulent, and unfair
12 business practice within the meaning of the UCL.

13 69. Defendants’ violation of the UCL through their unlawful, unfair, and
14 fraudulent business practices are ongoing and present a continuing threat that members of
15 the public will be deceived into purchasing products based on price comparisons of
16 arbitrary and inflated regular “OUR PRICE” prices to “% Off” sale prices. These false
17 comparisons created phantom markdowns and lead to financial damage for consumers,
18 like Plaintiff and the proposed Class.

19 70. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent
20 injunctive relief to order Defendants to cease this unfair competition, as well as
21 disgorgement and restitution to Plaintiff and the Class of all Defendants’ revenues
22 associated with its unfair competition, or such portion of those revenues as the Court may
23 find equitable.

24 **SECOND CAUSE OF ACTION**
25 **Violation of the California False Advertising Law,**
26 **California Business & Professions Code § 17500, *et seq.***

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

72. Cal. Bus. & Prof. Code § 17500 provides:

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

[Emphasis added].

10 73. The “intent” required by Section 17500 is the intent to dispose of property,
11 and not the intent to mislead the public in the disposition of such property.

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

17 75. Defendants’ routine of advertising continuing discounted prices from false
18 regular or “OUR PRICE” prices in their outlet stores associated with their New York &
19 Company branded outlet store products, which were never the true prevailing “market”
20 prices of those products and were materially greater than the true prevailing prices, was an
21 unfair, untrue and misleading practice. This deceptive marketing practice gave consumers
22 the false impression that the products were regularly sold at New York & Company outlet
23 stores for a substantially higher price than they actually were—therefore, leading to the
24 false impression that the New York & Company branded products were worth more than
25 they actually were.

26 76. Defendants misled consumers by making untrue and misleading statements
27 and failing to disclose what is required as stated in the Code, as alleged above.

28 77. As a direct and proximate result of Defendants’ misleading and false
advertisements, Plaintiff and Class members have suffered injury in fact and have lost

1 money. As such, Plaintiff requests that this Court order Defendants to restore this money
2 to Plaintiff and all Class members. Otherwise, Plaintiff, Class members and the broader,
3 general public will be irreparably harmed and/or denied an effective and complete
4 remedy.

5 **THIRD CAUSE OF ACTION**
6 **Violation of the Consumers Legal Remedies Act (“CLRA”),**
7 **California Civil Code § 1750, *et seq.***

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

9 79. This cause of action is brought pursuant to the Consumers Legal Remedies
10 Act (CLRA), California Civil Code § 1750, *et seq.* Plaintiff and each member of the
11 proposed class are “consumers” as defined by Cal. Civ. Code § 1761(d). Defendants’ sale
12 of the New York & Company branded products at their outlet stores to Plaintiff and the
13 Class were “transactions” within the meaning of Cal. Civ. Code § 1761(e). The products
14 purchased by Plaintiff and the Class are “goods” within the meaning of Cal. Civ. Code §
15 1761(a).

16 80. Defendants violated and continue to violate the CLRA by engaging in the
17 following practices proscribed by Cal. Civ. Code § 1770(a)(13) in transactions with
18 Plaintiff and the Class which were intended to result in, and did result in, the sale of New
19 York & Company outlet store products:

- 20 a. Advertising goods or services with intent not to sell them as
21 advertised; (a)(9); and
22 b. Making false or misleading statements of fact concerning reasons for,
23 existence of, or amounts of price reductions; (a)(13).

24 81. At no time did Defendants disclose to Plaintiff that the “OUR PRICE” prices
25 for the outlet products were fictional prices. Every discount offered in Defendants’ outlet
26 stores is therefore deceptive and misleading. Defendants failed to disclose to Plaintiff and
27 members of the class that 90% of the merchandise sold at Defendants’ outlet stores was
28 never sold in their retail stores or in any other store except Defendants’ outlet stores.

1 Defendants’ use of the regular or “OUR PRICE” price tags misleads consumers, including
2 Plaintiff into believing that the represented price on the outlet store products was a real,
3 former price, when in fact it was not. Therefore, the discounts offered from the false
4 “OUR PRICE” price tags were phantom discounts—false representations intended to
5 improperly influence consumers into purchasing products at higher prices than they would
6 have paid if Defendants had not engage in the deceptive conduct.

7 82. Pursuant to § 1782(a) of the CLRA, on June 9, 2017, Plaintiff’s counsel
8 notified Defendants in writing by certified mail of the particular violations of § 1770 of
9 the CLRA and demanded that it rectify the problems associated with the actions detailed
10 above and give notice to all affected consumers of Defendants’ intent to act.

11 83. If Defendants fail to appropriately respond to Plaintiff’s letter or agree to
12 rectify the problems associated with the actions detailed above and give notice to all
13 affected consumers within 30 days of the date of written notice, as proscribed by §1782,
14 Plaintiff will amend her complaint to pursue claims for actual, punitive, and statutory
15 damages as appropriate against Defendants. As to this cause of action, at this time,
16 Plaintiff seeks only injunctive relief.

17 **VII. PRAYER FOR RELIEF**

18 84. Wherefore, Plaintiff, on behalf of herself and on behalf of the other members
19 of the Class, requests that this Court award relief against Defendants as follows:

- 20 a. An order certifying the class and designating ALYSSA HEDRICK as
21 the Class Representative and her counsel as Class Counsel;
- 22 b. Awarding Plaintiff and the proposed Class members damages;
- 23 c. Awarding restitution and disgorgement of all profits and unjust
24 enrichment that Defendants obtained from Plaintiff and the Class
25 members as a result of their unlawful, unfair and fraudulent business
26 practices described herein;
- 27 d. Awarding declaratory and injunctive relief as permitted by law or
28 equity, including: enjoining Defendants from continuing the unlawful

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practices as set forth herein, and directing Defendants to identify, with Court supervision, victims of its misconduct and pay them all money they are required to pay;

- e. Order Defendants to engage in a corrective advertising campaign;
- f. Awarding attorneys' fees and costs; and
- g. For such other and further relief as the Court may deem necessary or appropriate.

///
///
///

1 **VIII. DEMAND FOR JURY TRIAL**

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

3
4
5 Dated: June 9, 2017

**CARLSON LYNCH SWEET
KILPELA & CARPENTER, LLP**

6
7 /s/ Todd D. Carpenter

8 Todd D. Carpenter (CA 234464)
9 402 West Broadway, 29th Floor
10 San Diego, California 92101
11 Telephone: (619) 347-3517
12 Facsimile: (619) 756-6990
13 tcarpenter@carlsonlynch.com
14 bcasola@carlsonlynch.com

15 Edwin J. Kilpela
16 Gary F. Lynch
17 1133 Penn Avenue, 5th Floor
18 Pittsburgh, Pennsylvania 15222
19 Telephone: (412) 322-9243
20 Facsimile: (412) 231-0246
21 ekilpela@carlsonlynch.com
22 glynch@carlsonlynch.com

23
24
25
26
27 *Attorneys for Plaintiff*
28

JS 44 (Rev. 06/17)

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
 ALYSSA HEDRICK, on behalf of herself and all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Todd D. Carpenter, Carlson Lynch Sweet Kilpela & Carpenter, LLP
 402 West Broadway, 29th Floor San Diego, CA 92101
 (619) 756-6994

DEFENDANTS
 NEW YORK & COMPANY, INC., a DELAWARE corporation, NEW YORK & COMPANY STORES, INC., a NEW YORK corporation, and DOES 1-50, inclusive,
 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)

'17CV1153 AJB JMA

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

1 U.S. Government Plaintiff

3 Federal Question Plaintiff (mxn) (U.S. Government Not a Party)

2 U.S. Government Defendant

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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS---Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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. §1332(d); 28 U.S.C. §1331
 Brief description of cause:
Violation of unfair competition law; False and Misleading Advertising; etc....

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 06/09/2017 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. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – 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 SWEET
KILPELA & CARPENTER, LLP**

Todd D. Carpenter (CA 234464)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: (619) 756-6994
Facsimile: (619) 756-6991
tcarpenter@carlsonlynch.com

Attorneys for Plaintiff and Class Counsel

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALYSSA HEDRICK, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

NEW YORK & COMPANY, INC., a
DELAWARE corporation, NEW YORK
& COMPANY STORES, INC., a NEW
YORK corporation, and DOES 1-50,
inclusive,

Defendants.

Case No.: '17CV1153 AJB JMA

**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 at Carlson Lynch Sweet Kilpela & Carpenter, LLP, and the counsel of record for Plaintiff in the above-entitled action.

2. Defendants New York & Company, Inc. and New York & Company Stores, Inc. have done and are doing business in the County of San Diego. Such business includes

1 the marketing, distributing, and sale of women’s clothing at New York & Company outlet
2 stores.

3 3. Plaintiff Alyssa Hedrick purchased her shirt from a New York & Company
4 outlet store in San Diego, California.

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

7 Executed this 9th day of June 2017 in San Diego, California.

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9 */s/ Todd D. Carpenter*

10 Todd D. Carpenter
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EXHIBIT A



FIND YOUR FIT

EVERYTHING!

NO EXCLUSIONS

50%
OFF



OUTLET DEAL

\$12

NY
&C

OUTLET DEAL

\$12

30%
OFF

NEW YORK & COMPANY
OUTLET



IVY & C

DEPT	CLASS
32	363
STYLE	COLOR
3695	647
SIZE	MFG
000	95570


32143540
0

OUR PRICE
\$39.95

EXHIBIT B

NEW YORK

NEW YORK & COMPANY OUTLET
4211 CAMINO DE LAPLAZA #
SAN DIEGO, CA 92173
619-428-5741

Transaction: 8381 Date: 4/27/16
Store: 3559 Register: 1
358237 Time 16:21:06

Item	Qty	Price	Amount
SA KEITHOR W/100%	1	13.47	13.47
3009666			0.99
Select 50% off			11.48
10% off			1.15
Net Price: 13.47			
		subtotal	13.47
		DISTRICT 50%	0.07
		COUNTY 1 250%	0.17
		STATE 6 250%	0.84
		total	14.55

Cash

Change
Cash 14.55

You have saved \$11.48.

SOLD ITEM COUNT = 1



913559018381161182

THANK YOU

EXHIBIT C

Exhibit C

Item:	"Our" Price:	Sale Price:	First Observed:	Continuously discounted at various discounts for 90 days or until out of stock:	Outlet Store:	Exhibit
Women's floral top	\$64.95	50% off	9/11/2016	90 days+	Las Americas Outlet, 4211 Camino De La Plaza, San Diego, CA 92173	C.1
7 th Avenue Pants; Straight leg	\$44.95	40% off	8/24/2016	90 days+	Las Americas Outlet	C.2
Average Pant Straight leg	\$44.95	40% off	8/24/2016	90 days+	Las Americas Outlet	C.3
Black Slacks	\$39.95	50% off	8/24/2016	90 days+	Las Americas Outlet	C.4
Jeans Average	\$54.95	50% off	9/13/2016	90 days+	Las Americas Outlet	C.5
Camo Leggings	\$59.95	\$39.99	9/13/2016	90 days+	Las Americas Outlet	C.6
Grey Fringy Cover	\$39.95	50% off	9/13/2016	45 days; out of stock	Las Americas Outlet	C.7
Cami	\$12.95	50% off	9/13/2016	45 days; out of stock	Las Americas Outlet	

Pink Patterned Collared Blouse	\$36.95	50% off	9/13/2016	45; days out of stock	Las Americas Outlet	C.8
7 th Avenue Pants; Straight leg	\$39.95	40% off	8/19/2015	90 days+	Las Americas Outlet	C.9
Average Pant Straight leg	\$39.95	40% off	8/19/2015	90 days+	Las Americas Outlet	
Black Slacks	\$39.95	40% off	8/19/2015	90 days+	Las Americas Outlet	
Women's Cardigan sweater tops	\$39.95	30% off	07/14/2016	90 days+	Las Americas Outlet	
Women's Jean Jackets	\$54.95	30% off	07/14/2016	90 days+	Las Americas Outlet	C.10
Women's bright colored jeans; Style 3695	\$39.95	30% off	07/14/2016	90 days+	Las Americas Outlet	Depicted in Exhibit A
7 th Avenue Pants; Straight leg	\$44.95	30% off	1/14/2016	90 days+	Las Americas Outlet	
Average Pant Straight leg	\$44.95	30% off	1/14/2016	90 days+	Las Americas Outlet	
Women's sleeveless two pocket blouse	\$32.95	30% off	1/14/2016	90 days+	Las Americas Outlet	C.11
Women's sleeveless zero pocket key-hole blouse	\$24.95	30% off	1/14/2016	90 days+	Las Americas Outlet	C.12

C.1



C.2



C.3



C.4



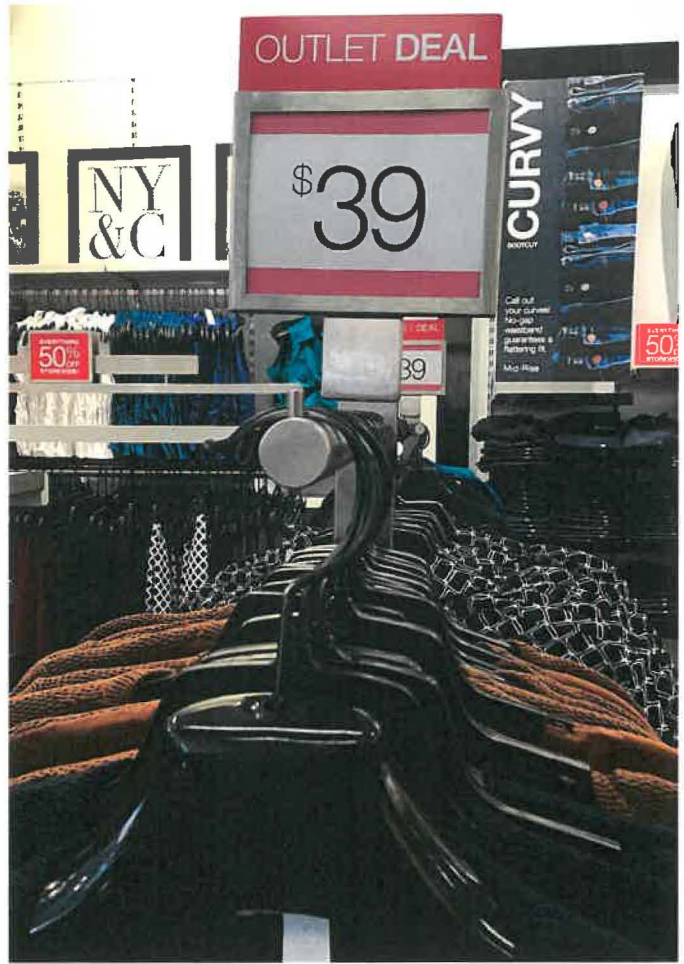
C.5



C.6



C.7



C.8



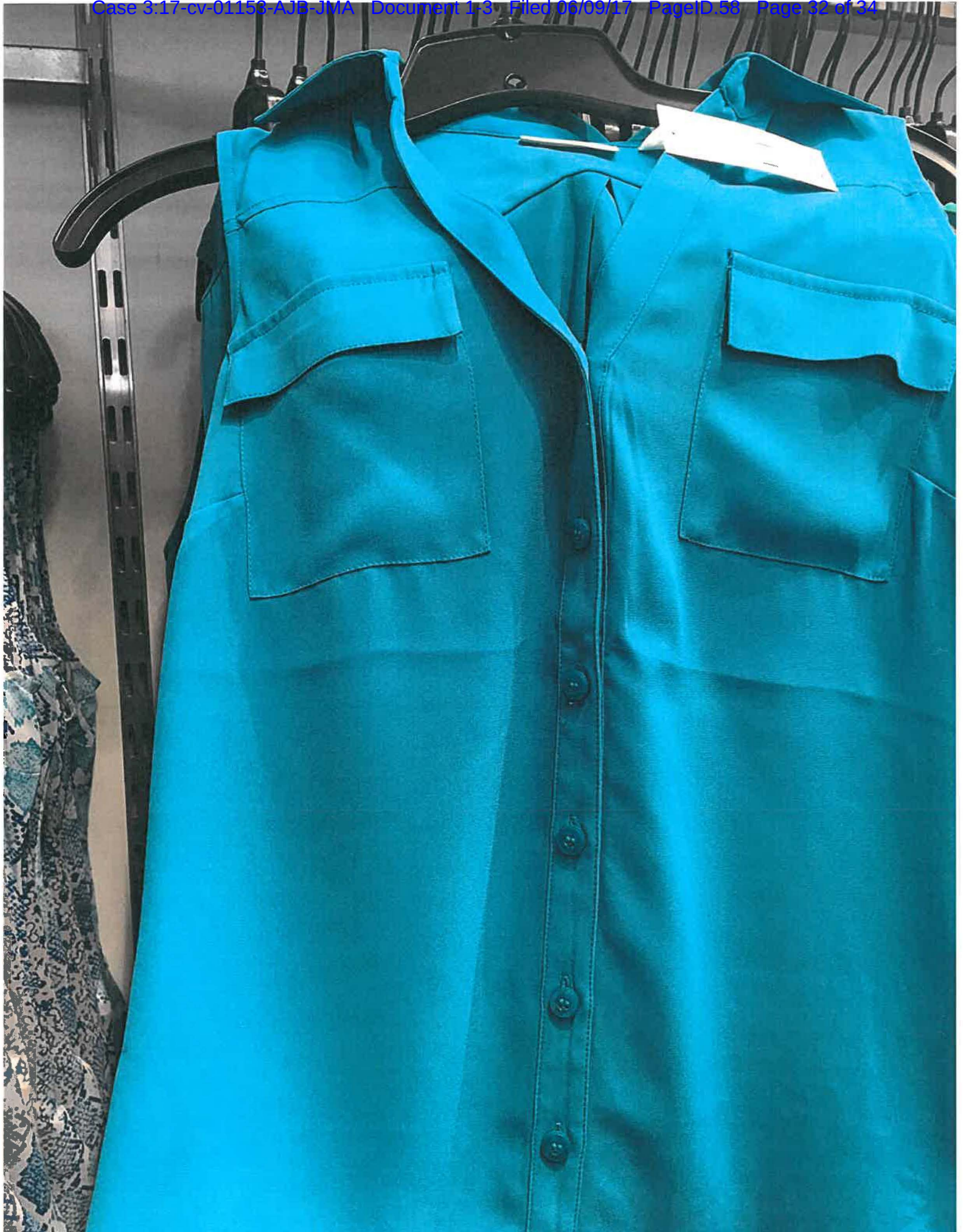
C.9



C.10



C.11



C.12

