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

12
13 **SHERRY ROSTAMI, and all**
14 **other similarly situated,**

15 Plaintiffs,

16 v.

17 **MACY’S, INC., and**
18 **DOES 1-20,**

19 Defendants.

Case No: '18CV1449 BEN WVG

**CLASS ACTION COMPLAINT
FOR VIOLATIONS OF:**

- (1) **THE CONSUMER LEGAL REMEDIES ACT, Cal. Civ. Code § 1750, et seq.;**
- (2) **THE UNFAIR COMPETITION LAW, Bus. & Prof. § 17200, et seq.;**
- (3) **THE ROSENTHAL FAIR DEBT COLLECTIONS PRACTICES ACT, Cal. Civ. Code § 1788, et seq.;**
- (4) **THE ELECTRONIC FUND TRANSFER ACT, 15 U.S.C. 1693, et seq.; and**
- (5) **FRAUD**

JURY TRIAL DEMANDED



Introduction

1. SHERRY ROSTAMI (“Plaintiff”) brings this Class Action to enjoin the deceptive business practices of MACY’S, INC. (“Defendant”) with regard to Defendant’s deceptive, misleading, and fraudulent billing practices in charging Plaintiff for purchases made at Defendant’s online store.
2. The deceptive and misleading billing practices of Defendant causes consumers to suffer monetary damages.
3. These unlawful business practices constitute violations of: (1) California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, et seq.; (2) California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, et seq.; (3) California’s Rosenthal Fair Debt Collection Practices Act (“RFDCPA”), Cal. Civ. Code § 1788.17, et seq, and (4) the Electronic Fund Transfer Act, 15 U.S.C. § 1693, et seq.; and (5) Common law fraud.
4. This conduct caused damages to Plaintiff and others similarly situated, and requires restitution and injunctive relief to remedy and prevent further harm.
5. Defendant’s billing practices also caused Defendant’s competitors to suffer a competitive disadvantage because these misleading billing practices force Defendant’s competition to choose between engaging in the same deceptive business practices as Defendant or suffer a financial and competitive disadvantage by not engaging in this same deceptive behavior.
6. While violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.
7. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain directly to Plaintiff, which Plaintiff alleges on personal knowledge.
8. Unless otherwise stated, the conduct engaged in by Defendant took place in California.



1 9. Defendant represents to consumers who buy merchandise on its website that the
2 purchase price for its merchandise is the price that consumers pay at checkout.
3 However, without authorization, Defendant later charges consumers additional
4 amounts that the consumes never authorized. These additional charges are false,
5 deceptive, and misleading.

6 10. Defendant does not provide consumers with a receipt—or any notice for that
7 matter—for these additional, unauthorized purchases.

8 11. By processing these additional, unauthorized charges, Defendant is misleading
9 the public regarding the cost of its merchandise.

10 **Jurisdiction and Venue**

11 12. This court has original and supplemental jurisdiction under 15 U.S.C. § 1693, *et*
12 *seq.*, 28 U.S.C. § 1331, and 28 U.S.C. § 1367. In addition, this court has
13 jurisdiction under 28 U.S.C. § 1332 because the amount in controversy exceeds
14 \$75,000 and the parties are domiciled in separate states.

15 13. Because Defendant does business within the State of California, personal
16 jurisdiction is established. Furthermore, Defendant regularly conducts business
17 in the California through its department stores and online store.

18 14. Venue is proper under state law under Code of Civil Procedure § 395 because
19 the conduct complained of occurred within the Court’s judicial district and
20 Defendant conducts substantial business in the County of San Diego.

21 **Parties**

22 15. Plaintiff is a natural person who resides in the City of San Diego, State of
23 California.

24 16. Defendant is an Ohio corporation that operates nationwide retail stores,
25 including an online store.

26 17. The true names and capacities of Does 1-20 are unknown to Plaintiff, who
27 therefore sues these Defendants by such fictitious names. Plaintiff will seek to
28 amend this Complaint and include these Doe Defendants’ true names and

1 capacities when they are ascertained. The fictitiously named Defendants are
2 responsible in some manner for the conduct alleged herein and for the damages
3 suffered by Plaintiff.

4 **Factual Allegations**

5 18. At an unknown time before December, 2016, Plaintiff began shopping at
6 macy's.com. From December 2016 to July 2017, Plaintiff made a series of
7 purchases from Defendant's online store, all of which are recorded in her
8 account under her purchase history.

9 19. Plaintiff made various purchases on the Macy's website using her Wells Fargo
10 debt card.

11 20. Rather than charge Plaintiff the total sum of each purchase, Defendant charged
12 Plaintiff for multiple sums that were supposed to add up to the total.

13 21. Plaintiff alleges on information and belief that this breakdown was designed to
14 deceive consumers into believing that Defendant charged consumers in an
15 amount equal to their purchase.

16 22. However, Defendant was using this tactic to deceive consumers, overcharging
17 them for various, unexplained, and unauthorized amounts, which were larger
18 than the purchase price for the items bought.

19 23. For instance, in July of 2017, Plaintiff bought \$126.73 in merchandise. Rather
20 than charge Plaintiff for one payment of \$126.73, Defendant charged Plaintiff
21 two payments of \$100.21 and \$13.71. In addition, on July 11, 2018, Defendant
22 billed Plaintiff for three separate charges of \$139.19, \$4.57, and \$21.37. None of
23 these additional charges were authorized or appear on Plaintiff's purchase
24 history.

25 24. In or around July 11, 2017—and for the first time since Plaintiff opened her
26 online account with Defendant—Plaintiff began to suspect that Defendant was
27 overcharging her for online purchases. Plaintiff then reviewed her bank
28 statements and purchase history and discovered that Defendant had indeed been

1 charging her for additional items that she did not purchase, did not receive, and
2 did not authorize.

3 25. Without Plaintiff's authorization, Defendant overcharged Plaintiff at least
4 \$2,321.52 at the following rates during the following months:

Dates	Authorized Charges	Unauthorized Charges
December, 2016	\$137.84	\$259.7
January, 2017	\$161.59	\$467.01
February, 2017	\$1,719.69	\$353.73
March, 2017	\$396.01	\$0.00
April, 2017	\$795.23	\$805.38
May, 2017	\$472.94	\$220.55
June, 2017	\$281.25	\$50.03
July, 2017	\$113.92	\$165.12
Total	\$4,502.88	\$2,321.52

16 26. None of the unauthorized charges are reflected in Plaintiff's purchase history but
17 are reflected on Plaintiff's bank statement as Macy's.com

18 27. In addition, Plaintiff purchased several items that were later returned. Although
19 her purchase history confirmed that she had been reimbursed for all of her
20 returns, her bank statement did not reflect all of these reimbursements. From
21 time to time, Defendant would redeposit money into Plaintiff's account, but
22 these reimbursements were not earmarked and did not correspond with her the
23 reimbursements identified in her purchase history. On information and belief,
24 Plaintiff alleges that Defendant owes Plaintiff thousands of dollars in
25 reimbursements.

26 28. If Defendant wanted to increase its profit, it could simply raise the price of its
27 merchandise, without misleading the public.
28

1 29.Had Defendant raised the cost of its merchandise, consumers would know how
2 much each item actually costs.

3 30.By breaking down purchase prices into multiple charges, while including
4 additional charges in excess of the total, consumers are deceived into thinking
5 that their merchandise will cost less than it actually does.

6 31.Defendant knew, or in the exercise of reasonable care, should have know, that
7 the addition of these additional charges was false, deceptive, and misleading.

8 32.Defendant could have easily raised the price of its merchandise. Instead,
9 Defendant deliberately chose to add these charges to the consumers' bill after
10 their purchases were complete. This made it less likely that the consumers would
11 notice the additional charges.

12 33.Defendant deceived its consumers in order to receive the benefit of its false,
13 misleading, and deceptive charges.

14 **Class Allegations**

15 34.Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
16 this Complaint as though fully stated herein.

17 35.Many consumers never realize that they are being overcharged for their
18 purchases and are tricked into believing that they are being charged for not more
19 than the purchase price.

20 36.Unless a consumer conducts a detailed audit of all of the charges and compares
21 them to amounts charged, it is impossible for them to discover the higher
22 amount that Defendant charges without any authorization or justification.

23 37.Had Plaintiff known that she would be overcharged for purchases, she would not
24 shop at Defendant's online store.

25 38.Plaintiff brings this action individually and on behalf of all others similarly
26 situated against Defendant, pursuant to Federal Rules of Civil Procedure, Rules
27 23(a), 23(b)(1), 23(b)(2) and 23(b)(3).
28



1 39. The class that Plaintiff represents is defined as follows: all persons who
2 purchased merchandise from Defendant's online store and who were charged
3 additional amounts, without their consent or knowledge, above what they paid at
4 checkout. This class consists of all those consumers who were the victims of
5 such charges within the last four years.

6 40. This Class also consists of a subclass that has claims under the Rosenthal Fair
7 Debt Collection Practices Act and the Electronic Funds Transfer Act. This sub
8 class consists of all those consumers who fell victims of such charges with the
9 last year.

10 41. Excluded from the Class are Defendant and any of its officers, directors, and
11 employees. Plaintiff reserves the right to modify or amend the Class definition
12 before the Court determines whether certification is appropriate.

13 42. The "Class Period" is four years before the filing of the Complaint in this action.

14 43. **Ascertainability.** Plaintiff does not know the number of members in the Class,
15 but Plaintiff currently believes that there are thousands, if not more, members of
16 each Class within the State of California. Because of the nature of Defendant's
17 services, Defendant must keep detailed and accurate records of payments and
18 servicing. Therefore, the members of each Class are ascertainable through
19 Defendant's records and Defendant's agents' records regarding online payments.
20 This matter should therefore be certified as a Class Action to assist in the
21 expeditious litigation of this matter.

22 44. **Numerosity.** The numerosity requirement of Fed. R. Civ. P. Rule 23(a)(1) is
23 satisfied for the above Class because the members of the Class are so numerous
24 and geographically disbursed that joinder of each Class members is impractical,
25 and the disposition of their claims in a Class Action will provide substantial
26 benefits both to the parties and to the court.

27 45. **Existence and Predominance of Common Questions of Law and Fact.** There
28 is a well-defined community of interest in the questions of law and fact involved

1 affecting the parties to be represented. Common questions of fact and law exist
2 in this matter that predominate over questions that may affect individual Class
3 members. All members of this Class have been subject to the same conduct and
4 their claims are based on the standardized business practices of Defendant. The
5 common legal and factual questions include, but are not limited to, the
6 following:

- 7 • Whether Defendant represents that the price of its merchandise is the
8 purchase price that consumers pay at checkout;
- 9 • Whether Defendant arbitrarily changes the price of its merchandise after
10 consumers have made the purchase; and
- 11 • Whether Defendant processes these additional amounts without the
12 consumers' knowledge or consent;

13 **46. Typicality.** As a person who was wrongfully charged with unauthorized and
14 unspecified items by Defendant or its representatives, Plaintiff is asserting
15 claims that are typical of the Class. Plaintiff's claims involve the same violations
16 of law by Defendant as other Class members' claims. Plaintiff and members of
17 the Class also sustained damages arising out of Defendant's common course of
18 conduct complained herein. Accordingly, Plaintiff satisfies the "typicality"
19 requirement of Fed. R. Civ. P., Rule 23(a)(3) with respect to the Class.

20 **47. Adequacy of Representation.** Plaintiff will fairly and adequately represent and
21 protect the interests of other members of the Class in that Plaintiff has no
22 interests antagonistic to any member of the Class. Further, Plaintiff has retained
23 counsel experienced in handling class action claims and claims involving
24 violations of consumer laws—including all of the causes of action alleged
25 herein. Thus, Fed. R. Civ. P., Rule 23(a) (4) is satisfied.

26 **48. Superiority.** A class action is superior to all other available means for the fair
27 and efficient adjudication of this controversy. Individualized litigation would
28 create the danger of inconsistent and/or contradictory judgments arising from the

1 same set of facts. Individualized litigation would also increase the delay and
2 expense to all parties and court system and the issues raised by this action. The
3 damages or other financial detriment suffered by individual Class members may
4 be relatively small compared to the burden and expense that would be entailed
5 by individual litigation of the claims against the Defendant. The injury suffered
6 by each individual member of the proposed class is relatively small in
7 comparison to the burden and expense of individual prosecution of the complex
8 and extensive litigation necessitated by Defendant's conduct. It would be
9 virtually impossible for members of the proposed Class to individually redress
10 effectively the wrongs to them. Even if the members of the proposed Class could
11 afford such litigation, the court system could not. Individualized litigation
12 increases the delay and expense to all parties, and to the court system, presented
13 by the complex legal and factual issues of the case. By contrast, the class action
14 device presents far fewer management difficulties, and provides the benefits of
15 single adjudication, economy of scale, and comprehensive supervision by a
16 single court. Therefore, a class action is maintainable.

17 49. Unless the Class is certified, Defendant will retain monies received as a result of
18 Defendant's unlawful and deceptive conduct alleged herein. Unless a class- wide
19 injunction is issued, Defendant will also likely continue to engage in unlawful
20 and misleading business practices, and members of the Class will continue to be
21 misled, harmed, and denied their rights under California law.

22 50. Further, Defendant has acted or refused to act on grounds that are generally
23 applicable to the class so that declaratory and injunctive relief is appropriate to
24 the Class as a whole, making class certification appropriate pursuant to Fed. R.
25 Civ. P. 23(b)(2).
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First Cause of Action
Violation of California Consumers Legal Remedies Act
Cal. Civ. Code Section 1750, et seq.

51. California Civil Code Section 1750 et seq., entitled the Consumers Legal Remedies Act (hereinafter “CLRA”), provides a list of “unfair or deceptive” practices in a “transaction” relating to the sale of “goods” or “services” to a “consumer.” The Legislature’s intent in promulgating the CLRA is expressed in Civil Code Section 1760, which provides, *inter alia*, that its terms are to be:

Construed liberally and applied to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection.

52. Defendant’s sale of merchandise constitutes “services” as defined pursuant to Civil Code Section 1761(b).

53. Plaintiff and the Class members purchased merchandise from Defendant for personal and family purposes. Therefore, Plaintiff and the Class are “consumers” as defined pursuant to Civil Code Section 1761(d).

54. Each of Plaintiff’s and the Class members’ payments to Defendant constituted a “transaction” as defined pursuant to Civil Code Section 1761(e).

55. Civil Code Section 1770(a)(14) provides that:

The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

(14) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve

56. Defendant violated Civil Code Section 1770(a)(14) by charging Plaintiff additional sums in excess of the stated total, as reflected by the purchase price at



1 the time of checkout; and it did this after the purchase was made and without
2 Plaintiff's and the Class's knowledge and consent.

3 57.Civil Code Section 1770(a)(9) states that:

4 “(a) The following unfair methods of competition and unfair or
5 deceptive acts or practices undertaken by any person in a transaction
6 intended to result or which results in the sale or lease of goods or
7 services to any consume are unlawful:

8 (20) Advertising that a product is being offered at a specific price plus
9 a specific percentage of that price unless (A) the total price is set forth
10 in the advertisement, which may include, but is not limited to, shelf
11 tags, displays, and media advertising, in a size larger than any other
12 price in that advertisement, and (B) the specific price plus a specific
13 percentage of that price represents a markup from the seller's costs or
14 from the wholesale price of the product. This subdivision shall not
15 apply to in- store advertising by businesses that are open only to
16 members or cooperative organizations organized pursuant to Division
17 3 (commencing with Section 12000) of Title 1 of the Corporations
18 Code where more than 50 percent of purchases are made at the specific
19 price set forth in the advertisement.”

20 58.Defendants violated Civil Code Section 1770(a)(9) and (20) by failing to
21 provide consumers with the precise cost of its goods or the formula that is used
22 to calculated the total amount of their purchases.

23 59.Rather, it charged Plaintiff and the Class a specified sum at checkout. Later, it
24 charged them additional amounts without their knowledge or consent. It did not
25 provide them with notice of these additional charges or an explanation of where
26 they came from, what they represent, and why they were imposed. Plaintiff and
27 the Class simply incurred random charges from Defendant's online store for
28 amounts that were not reflected in their purchase history.

59. These additional charges were not listed on any billing statement or disclosures
from Defendant, and thus, Defendant improperly applied the fee in violation of
Civil Code Section 1770(a)(9).

1 61. Defendant applied these additional charges after had made the purchase. Thus,
2 they are unlawful because they exceed the amount consumers authorized
3 Defendant to charge, in violation of Civil Code Section 1770(a)(20).

4 62. On information and belief, Defendant's violations of the CLRA set forth herein
5 were done with awareness of the fact that the conduct alleged was wrongful and
6 was motivated solely for Defendant's self-interest, monetary gain and increased
7 profit.

8 63. Plaintiff further alleges that Defendant committed these acts knowing the harm
9 that would result to Plaintiff and Defendant engaged in such unfair and
10 deceptive conduct notwithstanding such knowledge.

11 64. Plaintiff believed Defendant's representations that the items she purchased cost
12 only what she was charged at checkout. Had Plaintiff known that Defendant
13 would charge her for additional amounts without her authorization or
14 knowledge, Plaintiff would not have purchased merchandise from Defendant's
15 online store.

16 65. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by
17 Defendant through a series of unauthorized charges.

18 66. As a direct and proximate result of Defendant's violations of the CLRA, Plaintiff
19 and members of the Class are entitled to a declaration that Defendant violated
20 the Consumer Legal Remedies Act.

21 67. In prosecuting this action for the enforcement of important rights affecting the
22 public interest, Plaintiff seeks the recovery of attorneys' fees, which is available
23 to a prevailing plaintiff in class action cases such as this matter.
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Second Cause of Action
Violations of the Unfair Competition Law
Cal. Bus. & Prof. Code §§ 17200 et seq.

68. Plaintiff repeats, re-alleges and incorporates by reference the above allegations as if fully stated herein.

69. Plaintiff and Defendant are each “person[s]” as defined by California Business & Professions Code § 17201. California Business & Professions Code § 17204 authorizes a private right of action on both an individual and representative basis.

70. “Unfair competition” is defined by Business and Professions Code Section § 17200 as encompassing several types of business “wrongs,” four of which are at issue here: (1) an “unlawful” business act or practice, (2) an “unfair” business act or practice, (3) a “fraudulent” business act or practice, and (4) “unfair, deceptive, untrue or misleading advertising.” The definitions in §17200 are drafted in the disjunctive, meaning that each of these “wrongs” operates independently from the others.

A. “Unlawful” Prong

71. In violating the CLRA, Defendant violated California’s Unfair Competition Law, Business & Professions Code §§17200 *et seq.*, which provides a cause of action for an “unlawful” business act or practice perpetrated on members of the California public.

72. Defendant had other reasonably available alternatives to further its legitimate business interest, rather than resorting to conduct described herein. For example, Defendant could have included these additional, unauthorized charges in the purchase price of the items that Plaintiff purchased.

73. Plaintiff and the putative class members reserve the right to allege other violations of law, which constitute other unlawful business practices or acts, as such conduct is ongoing and continues to this date.



B. “Unfair” Prong

1
2 74. Defendant's actions and representations constitute an “unfair” business act or
3 practice under § 17200 in that Defendant’s conduct is substantially injurious to
4 consumers, offends public policy, and is immoral, unethical, oppressive, and
5 unscrupulous as the gravity of the conduct outweighs any alleged benefits
6 attributable to such conduct. Without limitation, it is an unfair business act or
7 practice for Defendant to knowingly or negligently represent to consumers, that
8 the total amount of each purchase—the amount that Plaintiff and the Class were
9 required to pay at the time of checkout—was the total amount that Plaintiff and
10 the Class were required to pay for their respective purchases. However,
11 Defendant continued to tack on charges after the purchase was made, and it did
12 so without the consumer’s consent or knowledge. Moreover, at no point did
13 Defendant tell the consumer that it was processing these additional charges.

14 75. Further, Defendant failed to explain its calculation of the purchase price and did
15 not warn Plaintiff or the Class that they would or may incur additional, arbitrary
16 charges. These charges caught Plaintiff by surprise and were only discovered
17 through her scrupulous investigation.

18 76. Such conduct by Defendant is "unfair" because it offends established public
19 policy and/or is immoral, unethical, oppressive, unscrupulous and/or
20 substantially injurious to consumers in that consumers are led to believe that the
21 purchase price represents the entire amount the the consumer is required to pay,
22 when in fact Defendant secretly and arbitrarily continued to charged the
23 consumers beyond the stated total.

24 77. At a date presently unknown to Plaintiff, and as set forth above, Defendant has
25 committed acts of false and misleading representations regarding the cost of its
26 merchandise by adding additional charges after consumers had purchased items
27 from its website.
28



1 78. Defendant could and should have furthered its legitimate business interests by
2 stating the correct purchase price that the consumer is required to pay or by
3 explaining how it calculates the purchase price and processes payments. These
4 were reasonably available alternatives that would have furthered Defendant's
5 legitimate business interest.

6 79. Plaintiff and other members of the Class could not have reasonably avoided the
7 injury suffered by each of them. Indeed, Defendant processed these additional
8 charges after the purchases were already made and without Plaintiff's and the
9 Class's consent or knowledge. It was only through scrupulous investigation that
10 Plaintiff discovered Defendant's billing practices, and this happened after the
11 fact.

12 **C. "Fraudulent" Prong**

13 80. Defendant's representations were false, misleading and/or likely to deceive the
14 consuming public within the meaning of Business & Professions Code §§ 17200
15 *et seq.* Defendant engaged in fraudulent acts and business practices by
16 knowingly or negligently representing to Plaintiff, and other similarly situated
17 consumers, their total purchase price, while secretly adding additional charges
18 without their knowledge and consent.

19 81. Plaintiff and the Class did not agree to these additional charges and were
20 deceived into believing that they would be charged the purchased price only.

21 82. Defendant fraudulently absconded with Plaintiff's and Class's money and failed
22 to provide them with notice that Defendant would process additional charges. In
23 addition, Defendant did not provide Plaintiff or the Class with a calculation
24 these charges, or an itemization of the total purchase price.

25 83. Plaintiff reserves the right to allege further conduct that constitutes other
26 fraudulent business acts or practices. Such conduct is ongoing and continues to
27 this date.
28



1 84. The fraudulent, unlawful and unfair business practices and false and misleading
2 advertising of Defendant, as described above, presents an ongoing threat to
3 consumers in that they will continue to be misled by the fees imposed by
4 Defendant, when consumers attempt to make payment.

5 **D. “Unfair, Deceptive, Untrue or Misleading Advertising” Prong**

6 85. Defendant’s advertising is unfair, deceptive, untrue or misleading in that
7 consumers are led to believe that the purchase price is the total amount that they
8 are required to pay when they checkout, when in fact Defendant continues to
9 charge them additional amounts without their knowledge or consent.

10 86. Reasonable consumers would likely be deceived and misled by Defendant’s
11 advertising scheme, and interpret Defendant’s purchase price as the total amount
12 they are required to pay. The scheme involves charging the consumer a stated
13 sum at the checkout, plus additional amounts that are charged to the consumers
14 card after the purchase is already made. Reasonable consumers would likely to
15 be deceived and misled to believe that the totality of what they are required to
16 pay is the purchase price stated at the time of checkout.

17 87. As a direct and proximate result of the aforementioned acts and representations
18 of Defendant, Defendant received and continues to hold monies rightfully
19 belonging to Plaintiff and other similarly situated consumers.

20 88. Defendant has engaged in unlawful, unfair and fraudulent business acts or
21 practices, entitling Plaintiff, and putative class members, to a judgment and
22 equitable relief against Defendant, as set forth in the Prayer for Relief. Pursuant
23 to Business & Professions Code § 17203, as result of each and every violation of
24 the UCL, which are continuing, Plaintiff is entitled to restitution and injunctive
25 relief against Defendant, as set forth in the Prayer for Relief.

26 89. Plaintiff and members of the putative class have suffered an injury in fact and
27 have lost money or property as a result of Defendant’s unfair competition, as
28



1 more fully set forth herein. Plaintiff and members of the putative class have been
2 injured as they relied on Defendant intentional misrepresentations.

3 90. Defendant, through its acts of unfair competition, has unfairly acquired monies
4 from Plaintiff and members of the putative Class. It is impossible for Plaintiff to
5 determine the exact amount of money that Defendant has obtained without a
6 detailed review of the Defendant's books and records. Plaintiff requests that this
7 Court restore these monies and enjoin Defendant from continuing to violate
8 California Business & Professions Code §§ 17200 *et seq.*, as discussed herein.

9 91. Plaintiff and other similarly situated consumers residing within California, will
10 continue to be exposed to and harmed by Defendant's unfair business practices
11 unless Defendant is enjoined from continuing to engage in the unlawful, unfair,
12 fraudulent, untrue, and deceptive business acts and practices as described herein.

13 92. Plaintiff further seeks an order requiring Defendant to make full restitution of all
14 moneys wrongfully obtained and disgorge all ill-gotten revenues and/or profits,
15 together with interest thereupon.

16 93. Plaintiff also seeks attorneys' fees and costs pursuant to, *inter alia*, California
17 Civil Code Section 1021.5.

18 **Third Cause of Action**

19 **Violations of Rosenthal Fair Debt Collection Practices Act**

20 **Cal. Civ. Code §§ 1788-1788.32**

21 94. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
22 as though fully stated herein.

23 95. As discussed above, Plaintiff allegedly incurred a financial obligation that was
24 owed and due to Defendant, namely, the additional, unauthorized charges. This
25 obligation is, therefore, a "debt," a "consumer debt," and a "consumer credit," as
26 those terms are defined by Cal Civ. Code § 1788.2(d) and Cal Civ. Code §
27 1788.2(f). In addition, Claimant is a "debtor," as that term is defined by Cal Civ.
28 Code § 1788.2(h).





1 96. On behalf of itself, Defendant regularly collects or attempts to collect, directly
2 or indirectly, money that is owed or due, or asserted to be owed or due, as
3 illustrated below. Therefore, Defendant is a “debt collector,” as that term is
4 defined by Cal. Civ Code § 1788.2(c). Defendant attempts to collect debts
5 constitute “debt collection,” as that term is defined by Cal. Civ. Code
6 § 1788.2(b).

7 97. Defendant’s failure to inform Plaintiff and the Class of the available methods of
8 additional charges is likely to deceived the least sophisticated consumer who
9 would believe that the purchase price listed at the time of checkout is the cost of
10 Defendant’s merchandise.

11 98. Defendant violated the RFDCA by collecting on money not owed.

12 99. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to
13 any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages
14 for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal.
15 Civ. Code § 1788.30(b); and reasonable attorney’s fees and costs pursuant to
16 Cal. Civ. Code § 1788.30(c) from Defendant.

17 **Fourth Cause of Action**

18 **Violations of the Electronic Fund Transfer Act**

19 **15 U.S.C. 1693, et seq.**

20 100. Plaintiff repeats, re-allege and incorporate herein by reference all of the
21 paragraphs above.

22 101. Plaintiff, on behalf of herself and the Class, asserts that Defendant failed to:

- 23 • Provide consumers with a notice describing the additional charges that
24 complies with 12 C.F.R. §§ 205.17(b)(1)(i), (d);
 - 25 • Provide consumers with a reasonable opportunity to affirmatively
26 consent, or opt in, to additional charges in accordance with 12 C.F.R. §
27 205.17(b) (1)(ii);
- 28

- 1 • Obtain the consumers' affirmative consent and authorization to the
- 2 additional charges in accordance with 12 C.F.R. § 205.17(b)(1)(iii); or
- 3 • Provide consumers with a confirmation of their consent in accordance
- 4 with 12 C.F.R. § 205.17(b)(1)(iv).

5 102. Nonetheless, Defendant imposed these additional charges on Plaintiff and the
6 Class unauthorized debit card transactions in violation of 12 C.F.R. § 205.17(b),
7 (c).

8 103. As a result of Defendant's violations of EFTA, Defendant is liable to Plaintiff
9 and the EFTA Class for actual and statutory damages pursuant to 15 U.S.C. §
10 1693m.

11 104. As a result of Defendant's violations of the EFTA, Defendant is liable to
12 Plaintiff and the EFTA Class for actual and statutory damages and Plaintiff and
13 the Class are entitled to recover costs of suit and their reasonable attorneys' fees.

14 **Fifth Cause of Action**

15 **Fraud**

16 105. Defendant represented that the purchases prices stated at the time of checkout
17 were the sum total that Plaintiff and the Class were required to pay for their
18 respective purchases.

19 106. These representations were false because Defendant continued to charge
20 Plaintiff and the Class additional sums above the stated purchase price.

21 107. Defendant knew that these representation was false because it is the only party
22 that sets the purchase price.

23 108. Defendant knew that its purchase prices were false when its made these
24 representations because it sets the purchase price, which it then provides to the
25 consumer at checkout.

26 109. Plaintiff and the Class reasonably relied on this representation because
27 Defendant did not tell them that it would charge them additional amounts at a
28 later time, and did not provide them with notice that such charges were made



1 after the charges were processed. It was only through scrupulous investigation
2 that Plaintiff discovered Defendant’s fraudulent billing practices.

3 110. As a result of Defendant’s acts, Plaintiff and the Class were harmed because
4 Defendant took their money without their consent or knowledge, and they did
5 not receive anything in return for these fraudulent charges.

6 111. Plaintiff’s and the Class’s reliance on Defendant’s representations were a
7 substantial factor in causing their harm. Plaintiff and the Class authorized
8 Defendant to charge them for the purchase price. They did not authorize any
9 additional charges. Their reliance on Defendant’s representations led them to
10 make the purchase and, in turn, suffer from Defendant’s fraudulent billing
11 practices.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiff prays that judgment be entered against Defendant, and
14 that Plaintiff and Class members be awarded damages from Defendant as follows:

- 15 • That this action be certified as a Class Action, Plaintiff be appointed as
16 the representative of the Class, and Plaintiff’s attorneys be appointed
17 Class counsel; and

18 **First Cause of Action**

19 **Violation of California Consumers Legal Remedies Act Cal. Civ. Code Section**
20 **1750, et seq.**

- 21 • That Defendant be enjoined from continuing the wrongful conduct alleged
22 herein pursuant to Cal. Civ. Code § 1782(d) and required to comply with
23 all applicable laws;
- 24 • Defendant is compelled to disclose all applicable fees to consumers,
25 provides consumers with the formula to calculate the fee, and offers
26 methods of payments free of charge;



- 1 • That Plaintiff and each of the other members of the Class recover their
- 2 costs of suit, including reasonable attorneys’ fees and costs as provided by
- 3 law; and
- 4 • That Plaintiff and the members of the Class be granted any other relief the
- 5 Court may deem just and proper.

Second Cause of Action

Violation of California Business & Professions Code section 17200, et seq.

- 8 • That Defendant be enjoined from continuing the wrongful conduct alleged
- 9 herein and required to comply with all applicable laws;
- 10 • That Plaintiff and each of the other members of the Class recover the
- 11 amounts by which Defendant has been unjustly enriched, plus actual
- 12 damages, punitive damages, and statutory damages;
- 13 • That Plaintiff and each of the other members of the class recover their
- 14 costs of suit, including reasonable attorneys’ fees and expenses pursuant
- 15 to California Code of Civil Procedure § 1021.5;
- 16 • That Plaintiff and the members of the Class be granted any other relief the
- 17 Court may deem just and proper;

Third Cause of Action

**Violation of Rosenthal Fair Debt Collection Practices Act Cal. Civ. Code §§
1788-1788.32 (RFDCPA)**

- 21 • An award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code
- 22 §1788.30(b) against Defendant;
- 23 An award of actual damages in an amount to be determined at trial
- 24 pursuant to Cal. Civ. Code § 1788.30(a) against Defendant;
- 25 • An award of cost of litigation and reasonable attorneys’ fees, pursuant to
- 26 Cal. Civ. Code § 1788.30(c); and
- 27 • Any other relief the Court may deem just and proper.
- 28



1 **Fourth Cause of Action**

2 **Violations of the Electronic Fund Transfer Act**

3 **15 U.S.C. 1693, et seq.**

- 4 • Declaring Defendant’s overdraft fee policies and practices to be wrongful,
5 unfair, unconscionable, and in violation of the EFTA;
- 6 • Awarding restitution of all overdraft fees at issue paid to Defendant by
7 Plaintiff and the Classes as a result of the wrongs alleged herein in an
8 amount to be determined at trial;
- 9 • Compelling disgorgement of the ill-gotten gains derived by Defendant
10 from its misconduct;
- 11 • Awarding actual damages in an amount according to proof;
- 12 • Awarding punitive and exemplary damages;
- 13 • Awarding statutory damages;
- 14 • Awarding pre-judgment interest at the maximum rate permitted by
15 applicable law;
- 16 • Reimbursing all costs and disbursements accrued by Plaintiff in
17 connection with this action, including reasonable attorneys’ fees pursuant
18 to applicable law; and
- 19 • Awarding such other relief as this Court deems just and proper.

20 **Fifth Cause of Action**

21 **Fraud**

- 22 • Awarding actual damages in an amount according to proof;
- 23 • Punitive damages and exemplary damages;
- 24 • Reimbursing all costs and disbursements accrued by Plaintiff in
25 connection with this action, including reasonable attorneys’ fees pursuant
26 to applicable law; and
- 27 • Awarding such other relief as this Court deems just and proper.
- 28



TRIAL BY JURY

Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

Hyde & Swigart, APC

Date: June 25, 2018

By: s/Yana A. Hart
Yana A. Hart, Esq.
Attorneys for Plaintiff



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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
Sherry Rostami, and all others similarly situated
(b) County of Residence of First Listed Plaintiff San Diego
(c) Attorneys (Firm Name, Address, and Telephone Number)
Yana A. Hart, Esq., Hyde & Swigart 619-233-7770
2221Camino Del Rio South, Suite 101, San Diego, CA 92108

DEFENDANTS
Macy's, Inc. and Does 1-20
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
'18CV1449 BEN WVG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (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)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

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

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

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. §1693 et seq. ("EFTA")
Brief description of cause:
Defendant violated Electronic Fund Transfer Act

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ 5,000,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE
DOCKET NUMBER

DATE 06/25/2018
SIGNATURE OF ATTORNEY OF RECORD s/ Yana A. Hart

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [CA Woman Claims Macy's Overcharges Consumers Who Shop Online](#)
