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

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

Plaintiff,

vs.

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

Defendant.

Case No. '19CV856 DMS MSB

**CLASS ACTION**

**COMPLAINT**

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

**DEMAND FOR JURY TRIAL**

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

4 **I. NATURE OF ACTION**

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

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

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

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

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

3 4. However, the “reference” price is total fiction. The “direct to outlet”  
4 merchandise sold at Chico’s outlet stores is created specifically for Chico’s outlet stores<sup>2</sup>.  
5 Thus, the only market price for the Chico’s direct to outlet store merchandise is the price at  
6 which the merchandise is sold in the Chico’s outlet stores.

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

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

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

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

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

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

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

## 20 **II. JURISDICTION AND VENUE**

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

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

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

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

6 **III. PARTIES**

7 **Plaintiff**

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

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

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

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

#### 8 **Defendant**

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

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

#### 22 **IV. FACTUAL BACKGROUND**

##### 23 **The Fraudulent Sale Discounting Scheme**

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

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

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

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

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

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

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

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

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

### 23           **Plaintiff’s Investigation**

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



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

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

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

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

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

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

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

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

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

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

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

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

6 **V. CLASS ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

## 22 VI. CAUSES OF ACTION

### 23 FIRST CAUSE OF ACTION

#### 24 **Violation of California's Unfair Competition Law ("UCL")** 25 **California Business and Professions Code § 17200, *et seq.***

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

28 45. The UCL defines "unfair business competition" to include any "unlawful,  
unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading"

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

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

5 ***“Unfair” Prong***

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

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

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

20 ***“Fraudulent” Prong***

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

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

1 have purchased those products without Chico's misrepresentations.

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

4 ***"Unlawful" Prong***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Plaintiff and the Class.

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

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

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

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

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

17 (Emphasis added).

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

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

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



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

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

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

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

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

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

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

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

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

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

12 **VII. PRAYER FOR RELIEF**

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

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

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

3 **VIII. DEMAND FOR JURY TRIAL**

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

5  
6 Dated: May 7, 2019

**CARLSON LYNCH LLP**

7  
8 /s/ Todd D. Carpenter

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