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 THE PEOPLE OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF
 CALIFORNIA,

Plaintiff,

v.

KOHL'S DEPARTMENT STORES, INC.
 and DOES 1-10, inclusive,

Defendants.

Case No. _____

**COMPLAINT FOR EQUITABLE
 RELIEF AND CIVIL PENALTIES FOR
 VIOLATIONS OF:**

**(1) California Business & Professions
 Code §§ 17200, *et seq.* (Unfair
 Competition Law); and**

**(2) California Business & Professions
 Code §§ 17500, *et seq.* (False Advertising
 Law).**

1 The People of the State of California (“People”) allege the following against
2 Defendant Kohl’s Department Stores, Inc. (“Kohl’s”):

3 **I. INTRODUCTION**

4 1. The People bring this civil law enforcement action against Kohl’s to
5 address the unlawful, unfair, and fraudulent business practice commonly referred to as “false
6 reference pricing.”¹ “False reference pricing” is the act of misrepresenting the original or regular
7 price of some good that is purportedly offered at a “sale price,” a business practice that Kohl’s
8 engages in to increase sales. To illustrate, Kohl’s may advertise a dress for \$35, representing that
9 this constitutes a 30% discount off of its “regular” price of \$50, even though Kohl’s did not
10 previously sell the dress at this purported “regular” price.

11 2. Retailers employ false reference pricing because it misleads consumers into
12 believing they are “getting a good deal,” thereby increasing sales. The United States Court of
13 Appeals for the Ninth Circuit succinctly stated: “Most consumers have, at some point, purchased
14 merchandise that was marketed as being ‘on sale’ because the proffered discount seemed too
15 good to pass up. Retailers, well aware of consumers’ susceptibility to a bargain, therefore have
16 an incentive to lie to their customers by falsely claiming that their products have previously sold
17 at a far higher ‘original’ price in order to induce customers to purchase merchandise at a
18 purportedly marked-down ‘sale’ price. Because such practices are misleading—and effective—
19 the California legislature has prohibited them.” *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1101
20 (9th Cir. 2013).

21 3. Kohl’s has engaged in false reference pricing as a frequent business
22 practice, thereby misleading consumers. In fact, the People’s investigation has uncovered that
23 Kohl’s’ use of false reference prices applies to thousands of products. Further, Kohl’s continues
24 to engage in such deceptive (and illegal) acts, despite representing to a federal district court (in
25 April 2016) that it would no longer do so: “Kohl’s agrees that its comparative advertising and

26 ¹ In addition to the instant action, the People are contemporaneously filing similar actions
27 against J.C. Penney Corporation, Inc., Macy’s, Inc., and Sears Holdings Management Corporation
28 and Sears, Roebuck & Co. in the Los Angeles County Superior Court. The People anticipate
submitting notices of related cases, and thereafter requesting that all of these matters be
coordinated.

1 pricing practices, as of the date of this Amended Settlement Agreement, and continuing forward,
2 will not violate Federal or California law, including California’s specific price-comparison
3 advertising statutes.”²

4 4. Despite these public representations, Kohl’s continues to engage in this
5 misleading and deceptive business practice. While the private plaintiffs’ bar has actively pursued
6 retailers, including Kohl’s, for false reference pricing, it has been unable to curb this industry
7 practice. It is, therefore, incumbent on the People to take action, and the People respectfully
8 request this Court’s assistance to protect Californians from such misleading and deceptive
9 business acts and practices.

10 **II. THE PARTIES**

11 5. The People bring this civil law enforcement action by and through Michael
12 N. Feuer, the Los Angeles City Attorney, pursuant to statutory authority provided under
13 California Business and Professions Code sections 17200, *et seq.* (“Unfair Competition Law”) and
14 17500, *et seq.* (“False Advertising Law”).³

15 6. Kohl’s Department Stores, Inc. is the primary operating company of Kohl’s
16 Corporation, a publicly-traded Wisconsin corporation (NYSE: KSS), with its principal executive
17 offices in Menomonee Falls, Wisconsin. According to Kohl’s Corporation’s 2015 Annual Report
18 (for the fiscal year ending January 30, 2016) filed with the U.S. Securities & Exchange
19 Commission, Kohl’s sells moderately-priced apparel, footwear, accessories, and beauty and home
20 products. Kohl’s’ merchandise includes both national brands, and private and exclusive brands
21 which are available only at Kohl’s.

22 7. The true names and capacities of Defendants sued herein as Does 1 through
23 10, inclusive, are unknown to the People. The People therefore sue these Defendants by such
24 fictitious names. When the true names and capacities of these Defendants have been ascertained,
25 the People will seek leave of this Court to amend this Complaint to insert in lieu of such fictitious
26

27 ² See Amended Settlement Agreement (Dkt. 73-1) at p. 12, *Russell v. Kohl’s Department*
28 *Stores, Inc.*, No. 5:15-cv-01143-RGK-SP (C.D. Cal., Apr. 20, 2016).

³ All further references are to California codes, unless otherwise noted.

1 names the true names and capacities of the fictitiously-named Defendants. The People are
2 informed and believe, and thereon allege, that these Defendants participated in, and in some part
3 are responsible for, the illegal acts alleged herein. Each reference in this Complaint to Kohl's is
4 also a reference to all Defendants sued as Does.

5 8. Whenever reference is made in this Complaint to any act or omission of
6 Kohl's, such reference shall be deemed to mean that Kohl's officers, directors, employees, agents,
7 and/or representatives did, ratified, or authorized such act or omission while actively engaged in
8 the management, direction, or control of the affairs of Kohl's, or while acting within the course
9 and scope of their duties.

10 9. Whenever reference is made in this Complaint to any act or omission of
11 Defendants, such reference shall be deemed to mean the act or omission of each Defendant acting
12 jointly and severally.

13 **III. JURISDICTION AND VENUE**

14 10. Venue is proper in Los Angeles County, pursuant to Business and
15 Professions Code section 17204, because the violations alleged in this Complaint occurred in the
16 City and County of Los Angeles. This Court has jurisdiction pursuant to Article VI, section 10 of
17 the California Constitution and section 393 of the Code of Civil Procedure.

18 11. This Court has personal jurisdiction over Kohl's because: (i) a substantial
19 portion of the wrongdoing alleged in this Complaint took place in the State of California,
20 (ii) Kohl's is authorized to do business in this state, (iii) Kohl's has sufficient minimum contacts
21 with this state, and/or (iv) Kohl's otherwise intentionally avails itself of the markets in this state
22 through the promotion, marketing, and sale of its products in this state, thus rendering this Court's
23 exercise of jurisdiction permissible under traditional notions of fair play and substantial justice.

24 **IV. KOHL'S – COMPANY PROFILE**

25 12. Kohl's, one of the largest retailers in the United States, directly markets its
26 merchandise to consumers in the City of Los Angeles, across the State of California, and
27 throughout the nation via its e-commerce website (www.kohls.com) and other mediums.

28 13. In 2015 alone, Kohl's invested over \$1 billion in gross marketing costs.

14. Kohl's marketing strategies have proven to be successful. In 2015, Kohl's grossed over \$19.2 billion in total net sales. In addition, Kohl's website now has tens of millions of visitors each month. However, Kohl's success has, in significant part, been the product of unlawful, unfair, and fraudulent marketing and advertising practices.

15. Kohl's misleading and deceptive false price advertising scheme has played a major role in Kohl's overall marketing and business strategy, and Kohl's has leveraged its marketing expertise and technology to perpetrate a false price advertising scheme of massive proportions to the detriment of California consumers.

V. FALSE REFERENCE PRICING – AN OVERVIEW

16. A retailer's "reference price," the stated price presented alongside the retailer's "on sale" price, provides consumers a reference point with which to evaluate the prospective purchase. The reference price is often described with terms such as "Regular Price," "Original Price," "Former Price," and/or "List Price."

17. A retailer's reference price impacts the consumer's behavior in the marketplace. As the reference price increases, so does the consumer's perception of the value of the transaction, the consumer's willingness to make the purchase, and the amount of money the consumer is willing to pay for the product.

18. When the reference price is bona fide and truthful, it helps consumers make informed purchasing decisions. In contrast, consumers are harmed when merchants advertise their products alongside falsely-inflated former prices, *i.e.*, "false reference prices," as consumers are provided a false sense of value. In this situation, the reference price is no longer informative but deceptive because consumers are deprived of a full and fair opportunity to accurately evaluate the specific sales offer in its relevant market.

19. The hidden nature of false discount pricing makes it effective. Consumers, unaware of the practices at issue, instead complete their purchases feeling like they "got a good deal." In addition, retailers make falsely-discounted sales without suspicion because consumers do not have access to the comprehensive historical pricing information necessary to reveal the fraud.

1 20. Beyond the adverse impact upon consumers' welfare, the practice of
2 employing false reference pricing also negatively affects the integrity of competition in retail
3 markets. A retailer's use of false reference prices constitutes an unfair method of competition,
4 injuring honest competitors that sell the same or similar products, or otherwise compete in the
5 same market, using only valid and accurate reference prices.

6 21. Over the past forty years, a substantial body of research on the effects of
7 reference prices (also referred to in the relevant literature as "advertised reference prices,"
8 "external reference prices," and "comparative prices") shows that reference prices: (i) impact
9 consumers' perceptions of the value of the sales deal; (ii) impact consumers' willingness to make
10 the purchase; and (iii) decrease consumers' intentions to search for a lower price. Consumers
11 form an "internal reference price," also known as an "expected price," an "aspirational price"
12 (a price the consumer would like to pay), or a "normative price" (a price that is "fair").
13 Consumers store and retrieve the "internal reference price" from memory to judge the merits of a
14 specific price offer. Even where an advertised reference price is exaggerated and not itself
15 completely believed, perceptions of value increase in comparison to a promotion with no
16 advertised reference price. Thus, retailers' use of reference prices influences consumers'
17 "internal reference price," and subsequently, increase consumers' willingness to purchase the
18 product.

19 22. As a result of its effectiveness as a marketing practice, the use of false
20 reference prices has proliferated recently, in both frequency and in degree. *See, e.g.,* David A.
21 Friedman, *Reconsidering Fictitious Pricing*, 100 Min. L. Rev. 921, 923 (2016).

22 **VI. SPECIFIC LAWS RELATING TO FALSE REFERENCE PRICING**

23 23. Under California law, "[n]o price shall be advertised as a former price of
24 any advertised thing, unless the alleged former price was the prevailing market price...within
25 three months next immediately preceding the publication of the advertisement." CAL. BUS. &
26 PROF. CODE § 17501.

1 24. With respect to sales to consumers, California law prohibits “[m]aking
2 false or misleading statements of fact concerning reasons for, existence of, or amounts of price
3 reductions.” CAL. CIV. CODE § 1770(a)(13).

4 **VII. KOHL’S CONTINUES TO ENGAGE IN DECEPTIVE ADVERTISING**

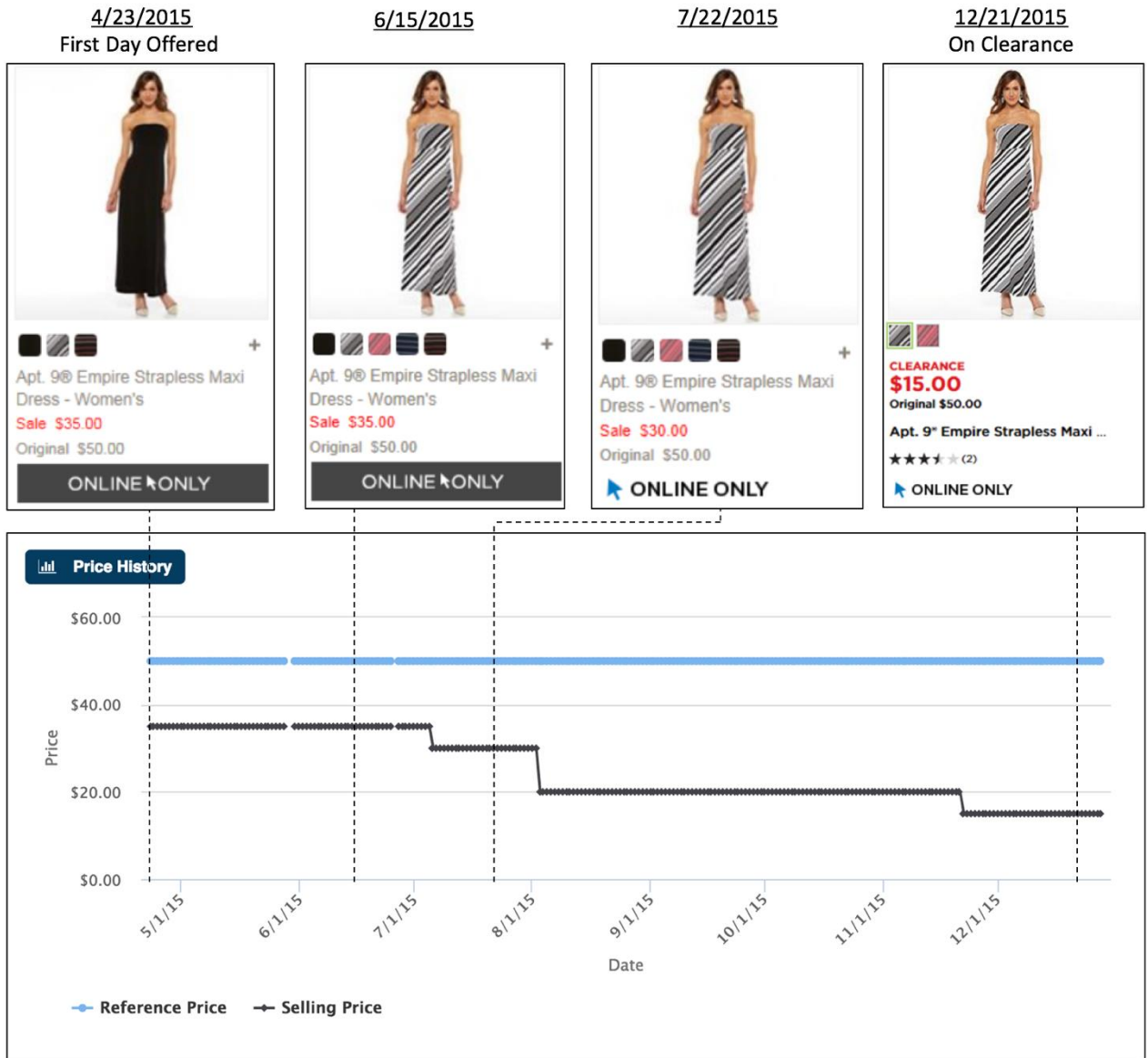
5 25. Kohl’s creates an illusion of savings by engaging in false reference pricing.

6 26. Kohl’s intends that customers will perceive that its reference prices
7 actually stand for former prices regularly charged by Kohl’s.

8 27. Kohl’s deliberately and artificially sets the false reference prices high so
9 that customers feel that they are getting a bargain when purchasing products.

10 28. For example, on April 23, 2015, Kohl’s first offered for sale online an
11 “Apt. 9® Empire Strapless Maxi Dress – Women’s,” a Kohl’s exclusive in-house product, as
12 shown in the screenshot below:

Apt. 9® Empire Strapless Maxi Dress - Women's
Product ID: 2044003



29. On the first day Kohl's offered this item for sale online, the website reflected an "original" price of \$50 and a "sale" price of \$35.

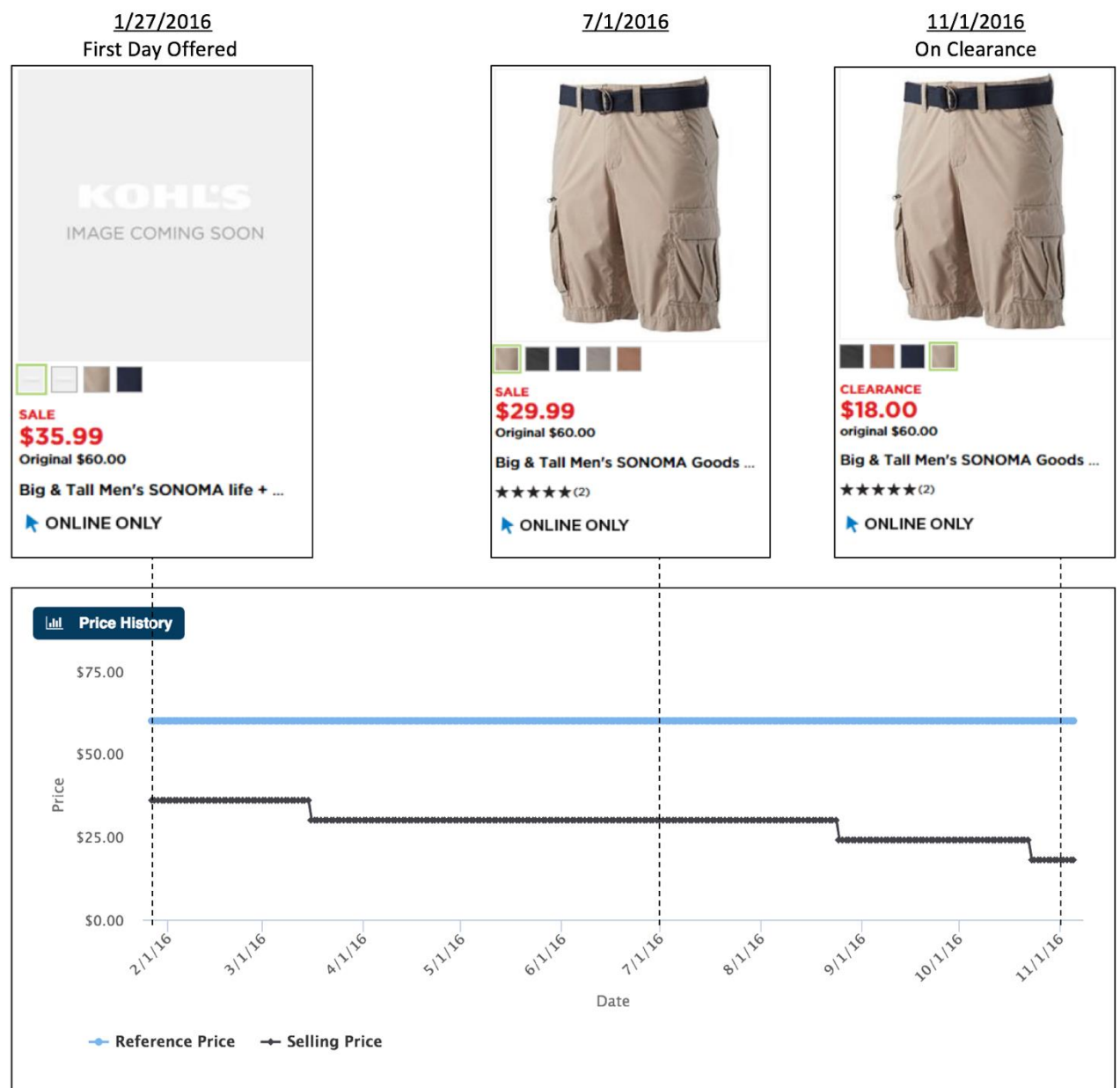
30. However, the purported "original" price of \$50 was a false reference price. As reflected in the screenshot and price history chart above, Kohl's did not offer the item for sale online for more than \$35, even though the website consistently showed a purported "original" price of \$50 for the item. In fact, as time went on, the price of the item actually decreased through additional false discounts. On July 22, 2015, for example, Kohl's offered the item at a

“sale” price of \$30, falsely advertising a discount from the \$50 false reference price. Later, on December 21, 2015, Kohl’s offered the item at a “clearance” price of \$15, falsely advertising an even larger discount from the \$50 false reference price.

31. Another example is a “Big & Tall Men’s SONOMA Goods for Life™ Belted Cargo Shorts,” another Kohl’s exclusive in-house product, which Kohl’s first offered for sale online on January 27, 2016, as shown in the screenshot below:

Big & Tall Men's SONOMA Goods for Life™ Belted Cargo Shorts

Product ID: 2320092



1 32. On the first day Kohl’s offered this item for sale online, the website
2 showed an “original” price of \$60 and a “sale” price of \$35.99.

3 33. However, the purported “original” price of \$60 was a false reference price.
4 As the screenshot and price history chart above shows, Kohl’s did not offer the item for sale
5 online for more than \$35.99, even though the website consistently showed a purported “original”
6 price of \$60 for the item. In fact, as time went on, the price of the item actually decreased
7 through additional false discounts. On July 1, 2016, for example, Kohl’s offered the item at a
8 “sale” price of \$29.99, falsely advertising a discount from the \$60 false reference price. Later, on
9 November 1, 2016, Kohl’s offered the item at a “clearance” price of \$18, falsely advertising an
10 even larger discount from the \$60 false reference price.

11 34. A third example is a “Plus Size Jennifer Lopez Zebra Chiffon Caftan Maxi
12 Dress,” another Kohl’s exclusive in-house product, which Kohl’s first offered for sale online on
13 July 7, 2016, as shown in the screenshot below:
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Plus Size Jennifer Lopez Zebra Chiffon Caftan Maxi Dress
Product ID: 2507058



35. On the first day Kohl's offered this item for sale online, the website showed an "original" price of \$100 and a "sale" price of \$75.

36. However, the purported "original" price of \$100 was a false reference price. As the screenshot and price history chart above shows, Kohl's did not offer the item for sale online for more than \$75, even though the website consistently showed a purported "original" price of \$100 for the item. In fact, as time went on, the price of the item actually

1 decreased through additional false discounts. On September 30, 2016, for example, Kohl's
2 offered the item at a "sale" price of \$60, falsely advertising a discount from the \$100 false
3 reference price. Later, on November 2, 2016, Kohl's offered the item at a "sale" price of \$40,
4 falsely advertising an even larger discount from the \$100 false reference price.

5 **VIII. KOHL'S ONGOING USE OF FALSE REFERENCE PRICING**
6 **DIRECTLY CONTRADICTS ITS REPRESENTATIONS TO A FEDERAL COURT**
7 **THAT IT HAD STOPPED SUCH ILLEGAL PRACTICES**

8 37. Kohl's false advertising and pricing practices directly contradict its
9 representations to a federal district court in a private class action. In the Amended Settlement
10 Agreement in the matter styled *Russell v. Kohl's Department Stores, Inc.*, Case No. 5:15-cv-
11 01143-RGK-SP (C.D. Cal.) filed on April 20, 2016, Kohl's specifically represented that it would
12 not engage in illegal false reference pricing practices:

13 3.4 Injunctive Relief. As a direct result of this Litigation, Kohl's agrees that its
14 comparative advertising and pricing practices, as of the date of this Amended
15 Settlement Agreement, and continuing forward, will not violate Federal or
16 California law, including California's specific price-comparison advertising
17 statutes. As a direct result of this Litigation, Kohl's shall continue to enhance and
18 expand programs intended to promote pricing compliance with legal requirements,
19 including those requirements set forth in the Federal Trade Commission's
20 guidelines for the use of price comparisons in advertising (16 C.F.R. 233.1) and the
21 relevant comparative advertising provisions within California's Business and
22 Professions Code (Section 17501) and California Civil Code Section 1770 (a)(13).
23 More specifically, commencing within six (6) months, Kohl's compliance program
24 enhancements shall include the development and roll-out of enhanced pricing
25 compliance computer systems. In addition, commencing within six (6) months and
26 continuing for a period of at least four (4) years from the date of this Amended
27 Settlement Agreement Kohl's will also implement pricing compliance training
28 targeted at relevant buying office personnel, which shall be offered on a regular
basis, no less than annually, to ensure that new hires are also appropriately trained
on price-comparison advertising requirements.⁶

⁶ See Amended Settlement Agreement (Dkt. 73-1) at p. 12, *Russell v. Kohl's Department Stores, Inc.*, No. 5:15-cv-01143-RGK-SP (C.D. Cal., Apr. 20, 2016).

1 38. In support of preliminary approval of the proposed class settlement, Kohl's
2 also filed a declaration stating:

3 With respect to injunctive relief, the settlement class also is receiving a material
4 benefit. Kohl's has committed that its comparative advertising and pricing practices
5 will comply with the law and that it will continue to enhance and expand programs
6 intended to promote pricing compliance with those legal requirements. These
7 programs will include the development and roll-out of enhanced pricing
compliance computer systems, as well as implementing pricing compliance training
targeted at relevant buying office personnel. This training will be offered on a
regular basis to ensure that new hires are also appropriately trained. This is a
substantial benefit both for the settlement class and consumers going forward.⁷

8
9 39. While the district court ultimately granted final approval of the proposed
10 class settlement, there was no meaningful way to adequately monitor Kohl's pricing practices.
11 Rather, the class representative, class counsel, and the district court relied on the purported truth
12 of Kohl's representation that it had stopped the illegal practices as of April 2016, and would not
13 continue to engage in them.

14 40. However, as alleged herein, Kohl's continues to engage in false advertising
15 and pricing practices, contrary to its representations made to the district court and in direct
16 violation of California law.

17 41. The People do not allege the falsity of Kohl's representations to the district
18 court in the private class action to establish an additional basis for liability, but instead to
19 illustrate why it is necessary for the People to pursue this civil law enforcement action.

20 **IX. ENFORCEMENT AUTHORITY**

21 (Business & Professions Code §§ 17200, *et seq.* and 17500, *et seq.*)

22 42. Business and Professions Code section 17200 defines "unfair competition"
23 as "any unlawful, unfair or fraudulent business act or practice," and any act prohibited by Chapter
24 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions
25 Code.

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27
28 ⁷ See Declaration of James F. Speyer in Support of Preliminary Approval of Class Action
Settlement (Dkt. No. 63-8) at ¶ 29 (Mar. 14, 2016).

1 43. Pursuant to Business and Professions Code section 17206 and 17536, any
2 person who engages, has engaged, or proposes to engage in unfair competition or false
3 advertising shall be liable for a civil penalty not to exceed \$2,500 for each violation.

4 44. Pursuant to Business and Professions Code section 17206.1, in addition to
5 any liability for a civil penalty pursuant to section 17206, any person who engages, has engaged,
6 or proposes to engage in unfair competition against senior citizens or disabled persons may be
7 liable for a civil penalty not to exceed \$2,500 for each violation.

8 45. Pursuant to Business and Professions Code sections 17203 and 17535, any
9 person who engages, has engaged, or proposes to engage in unfair competition or false
10 advertising may be enjoined in any court of competent jurisdiction, and the court may make such
11 orders or judgments to prevent the use of any practice which constitutes unfair competition or
12 false advertising, or as may be necessary to restore to any person in interest any money or
13 property which may have been acquired by means of such unfair competition or false advertising.

14 46. Pursuant to Business and Professions Code sections 17205 and 17534.5,
15 the remedies or penalties provided for violation of the Unfair Competition Law and False
16 Advertising Law are cumulative to each other and to the remedies or penalties available under all
17 other laws of the state.

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1 practices: using misrepresentations, deception, and/or concealment of material information in
2 connection with the reference prices of merchandise that Kohl's sold (and continues to sell), such
3 that California consumers and other members of the public in California are likely to be deceived.

4 **SECOND CAUSE OF ACTION**

5 **VIOLATION OF FALSE ADVERTISING LAW ("FAL")**

6 **AGAINST ALL DEFENDANTS**

7 (Business & Professions Code §§ 17500, *et seq.*)

8 51. The People incorporate by reference all preceding allegations as though
9 fully set forth herein.

10 52. The FAL prohibits unfair, deceptive, untrue, and misleading advertising in
11 connection with the disposal of personal property (among other things), including, but not limited
12 to, false statements as to worth, value, and former price.

13 53. Defendants Kohl's and Does 1 through 10, and each of them, have
14 committed acts of untrue and misleading advertising by engaging in false price referencing as to
15 the merchandise that Kohl's sold (and continues to sell). In addition, these Defendants made such
16 untrue or misleading advertisements with the intent to dispose of said merchandise.

17 54. The false reference pricing that is the subject of this Complaint was (and
18 continues to be) likely to deceive members of the public.

19 **PRAYER FOR RELIEF**

20 Wherefore, the People pray that:

21 1. Pursuant to Business and Professions Code sections 17203, 17204, and
22 17535, in addition to the equitable powers of this Court, Defendant Kohl's and Does 1 through
23 10, inclusive, together with their officers, directors, employees, servants, agents, representatives,
24 contractors, partners, and associates, and all persons acting on behalf or in concert with them, be
25 enjoined from engaging in the unlawful, unfair, and fraudulent business acts and practices, and
26 false advertising, as described in this Complaint in violation of the UCL and the FAL;

27 2. Pursuant to Business and Professions Code sections 17206 and 17536, all
28 Defendants be assessed a civil penalty in the amount of \$2,500 for each violation of the UCL and

1 the FAL;

2 3. Pursuant to Business and Professions Code section 17206.1, all Defendants
3 be assessed an additional civil penalty in the amount of \$2,500 for each violation of the UCL
4 against senior citizens or disabled persons;

5 4. The People recover the costs of this action; and

6 5. The People be granted such other and further relief as the Court may deem
7 to be just and proper.

8 Respectfully submitted,

9 Dated: December 7, 2016

OFFICE OF THE LOS ANGELES CITY ATTORNEY

10
11 By: 

MICHAEL N. FEUER

Attorneys for Plaintiff,

THE PEOPLE OF THE STATE OF CALIFORNIA

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