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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF
 CALIFORNIA,

Plaintiff,

v.

J.C. PENNEY CORPORATION, INC., a
 Delaware Corporation, 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).**

The People of the State of California (“People”) allege the following against Defendant J.C. Penney Corporation, Inc. (“J.C. Penney”):

I. INTRODUCTION

1. The People bring this civil law enforcement action against J.C. Penney to address the unlawful, unfair, and fraudulent business practice commonly referred to as “false reference pricing.”¹ “False reference pricing” is the act of misrepresenting the original or regular price of some good that is purportedly offered at a “sale price,” a business practice that J.C. Penney engages in to increase sales. To illustrate, J.C. Penney may advertise a handbag for \$125, representing that this constitutes a 50% discount off of its “regular” price of \$250, even though J.C. Penney did not previously sell the handbag at this purported “regular” price.

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

3. J.C. Penney has engaged in false reference pricing as a frequent business practice, thereby misleading consumers. In fact, the People’s investigation has uncovered that J.C. Penney’s use of false reference prices applies to thousands of products. Further, J.C. Penney continues to engage in such deceptive (and illegal) acts, despite representing to a federal district court (in November 2015) that it would no longer do so: “JCPenney agrees that any former price

1 In addition to the instant action, the People are contemporaneously filing similar actions
against Kohl's Department Stores, Inc., Macy's, Inc., and Sears Holdings Management
Corporation 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 to which JCPenney refers in its price comparison advertising will be the actual, bona fide price at
2 which the item was openly and actively offered for sale, for a reasonably substantial period of
3 time, in the recent, regular course of business, honestly and in good faith.”² In that same private
4 class action, J.C. Penney later further represented to the district court that it had, in fact,
5 “implemented a new price-comparison advertising policy” as of November 2015.³

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

12 **II. THE PARTIES**

13 5. The People bring this civil law enforcement action by and through Michael
14 N. Feuer, the Los Angeles City Attorney, pursuant to statutory authority provided under
15 California Business and Professions Code sections 17200, *et seq.* (“Unfair Competition Law”) and
16 17500, *et seq.* (“False Advertising Law”).⁴

17 6. J.C. Penney Corporation, Inc. is the principal operating subsidiary of J.C.
18 Penney Company, Inc. J.C. Penney Company, Inc., a holding company, is a publicly-traded
19 Delaware corporation (NYSE: JCP), with its principal executive offices in Plano, Texas.
20 According to J.C. Penney Company, Inc.’s 2015 Annual Report (for the fiscal year ending
21 January 30, 2016) filed with the U.S. Securities & Exchange Commission, J.C. Penney sells
22 family apparel and footwear, accessories, fine and fashion jewelry, beauty products, and home
23 furnishings. J.C. Penney sells national brands, as well as private and exclusive branded products
24 that it promotes as being available “only at” J.C. Penney.

25
26 ² See Settlement Agreement (Dkt. 246-3) at pp. 14-15, *Spann v. J.C. Penney Corp., Inc.*,
No. 8:12-cv-00215-FMO-KES (C.D. Cal., Nov. 10, 2015).

27 ³ See J.C. Penney Response to Objection to Class Settlement (Dkt. 267) at p. 2 (July 28,
2016).

28 ⁴ All further references are to California codes, unless otherwise noted.

1 7. The true names and capacities of Defendants sued herein as Does 1 through
2 10, inclusive, are unknown to the People. The People therefore sue these Defendants by such
3 fictitious names. When the true names and capacities of these Defendants have been ascertained,
4 the People will seek leave of this Court to amend this Complaint to insert in lieu of such fictitious
5 names the true names and capacities of the fictitiously-named Defendants. The People are
6 informed and believe, and thereon allege, that these Defendants participated in, and in some part
7 are responsible for, the illegal acts alleged herein. Each reference in this Complaint to J.C.
8 Penney is also a reference to all Defendants sued as Does.

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

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

17 **III. JURISDICTION AND VENUE**

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

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

IV. J.C. PENNEY – COMPANY PROFILE

12. J.C. Penney, one of the largest retailers in the United States, directly markets its merchandise to consumers in the City of Los Angeles, across the State of California, and throughout the nation via its e-commerce website (www.jcpenney.com) and other mediums.

13. In 2015 alone, J.C. Penney invested over \$792 million on direct advertising.

14. J.C. Penney's marketing strategies have proven to be successful. In 2015, J.C. Penney grossed over \$12.62 billion in total net sales. In addition, J.C. Penney's website now has hundreds of thousands of visitors daily. However, J.C. Penney's success has, in significant part, been the product of unlawful, unfair, and fraudulent marketing and advertising practices.

15. J.C. Penney's misleading and deceptive false price advertising scheme has played a major role in J.C. Penney's overall marketing and business strategy, and J.C. Penney 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

1 but deceptive because consumers are deprived of a full and fair opportunity to accurately evaluate
2 the specific sales offer in its relevant market.

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

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

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

25 22. As a result of its effectiveness as a marketing practice, the use of false
26 reference prices has proliferated recently, in both frequency and in degree. *See, e.g.,* David A.
27 Friedman, *Reconsidering Fictitious Pricing*, 100 Min. L. Rev. 921, 923 (2016).
28

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

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

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

9 **VII. J.C. PENNEY CONTINUES TO ENGAGE IN DECEPTIVE ADVERTISING**

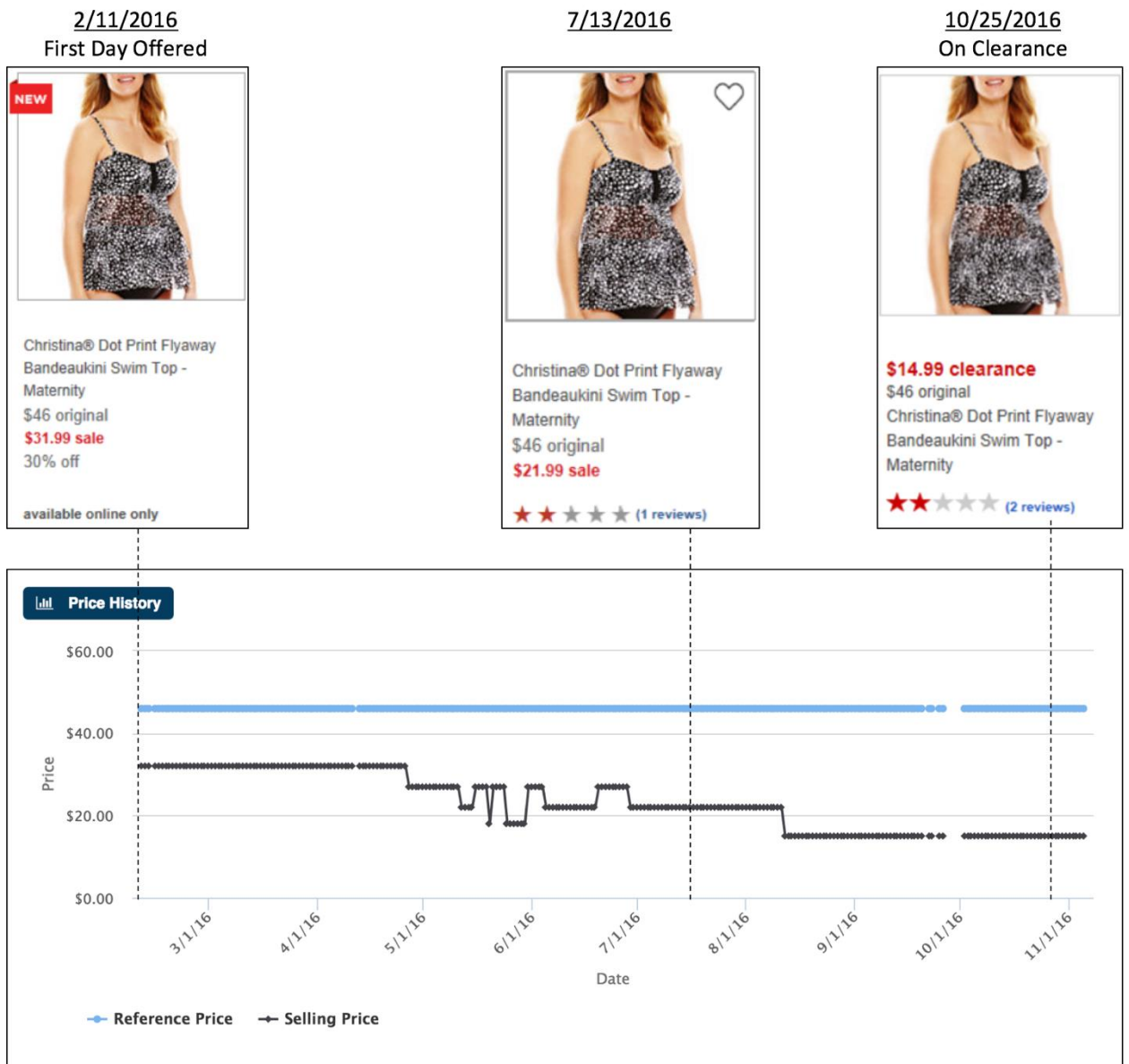
10 **A. J.C. Penney’s Deceptive “False Reference Pricing”**

11 25. J.C. Penney creates an illusion of savings by engaging in false reference
12 pricing.

13 26. J.C. Penney intends that customers will perceive that its reference prices
14 actually stand for former prices regularly charged by J.C. Penney.

15 27. J.C. Penney deliberately and artificially sets the false reference prices high
16 so that customers feel that they are getting a bargain when purchasing products. J.C. Penney also
17 prominently advertises that its false discounts are being offered for only a limited time in order to
18 create a false sense of urgency and to mislead customers that they will miss out on the purported
19 markdowns if they do not buy the products immediately.

20 28. For example, on February 11, 2016, J.C. Penney first offered for sale
21 online a “Christina® Dot Print Flyaway Bandeaukini Swim Top – Maternity,” a J.C. Penney
22 exclusive in-house product, as shown in the screenshot below:

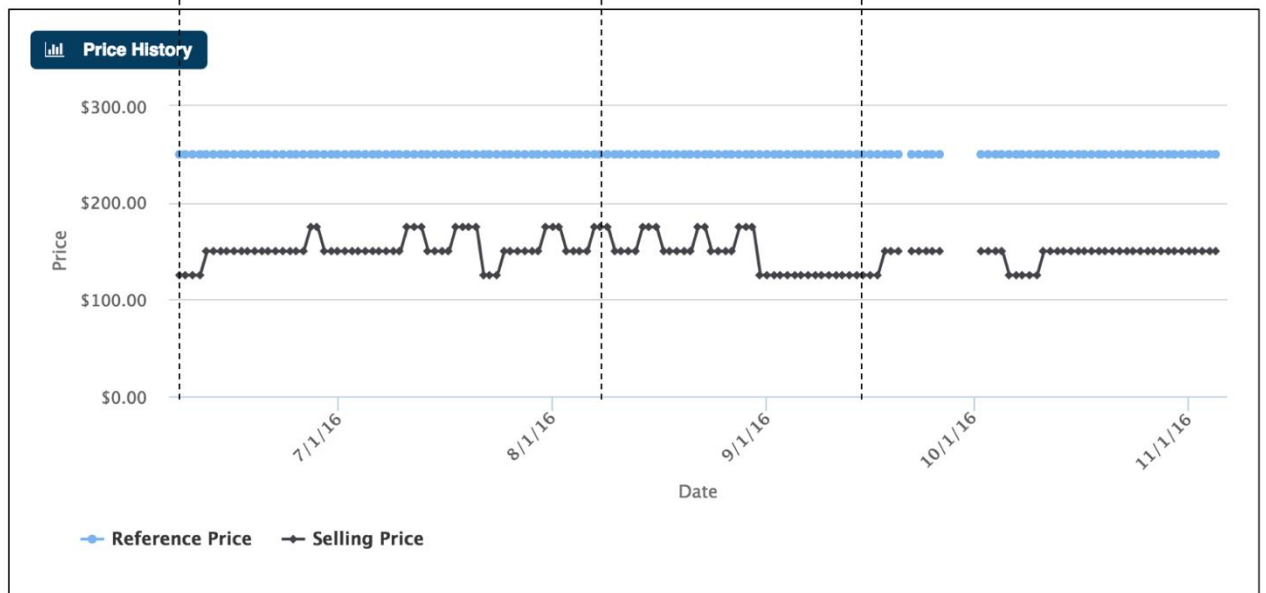
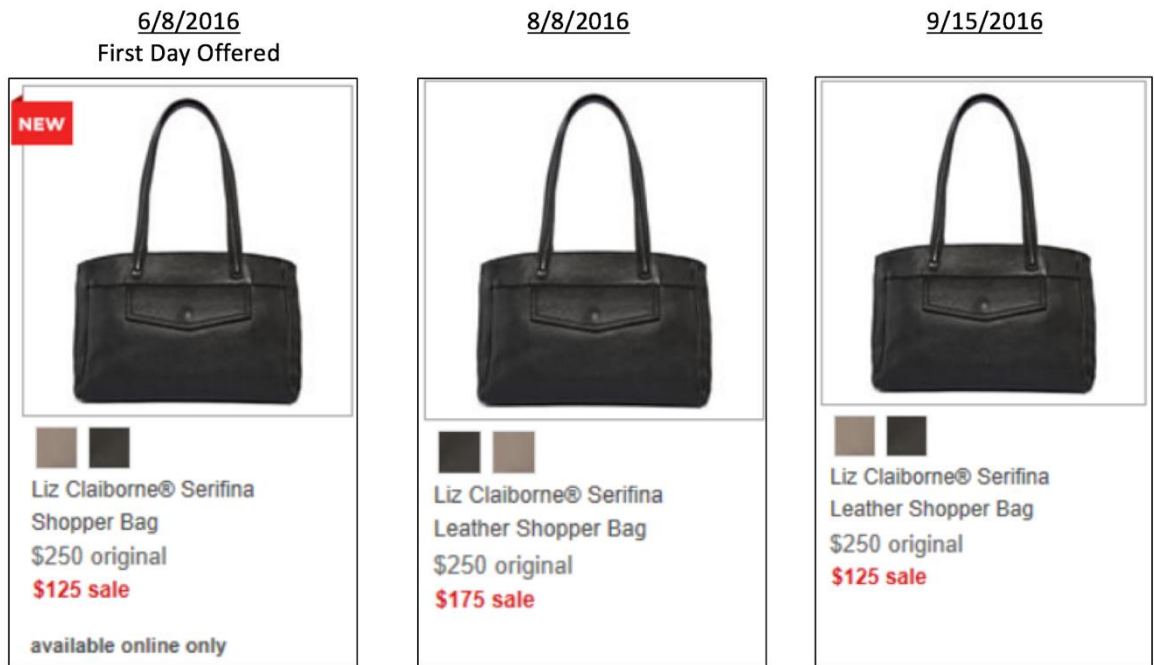


29. On the first day J.C. Penney offered this item for sale on its website, it was advertised with an “original” price of \$46 and a “sale” price of \$31.99, which J.C. Penney touted as a 30% discount.

30. However, the purported “original” price of \$46 was a false reference price. As reflected in the screenshot and price history chart above, J.C. Penney did not offer the item for sale online for any more than \$31.99. In fact, as time went on, the price of the item actually decreased through additional false discounts. On July 13, 2016, for example, J.C. Penney offered the item at a “sale” price of \$21.99, falsely advertising a discount from the \$46 false reference

price. Later, on October 25, 2016, J.C. Penney offered the item at a “clearance” price of \$14.99, falsely advertising an even larger discount from the \$46 false reference price.

31. Another example is a “Liz Claiborne® Serifina Shopper Bag,” another J.C. Penney exclusive in-house product, which J.C. Penney first offered for sale online on June 8, 2016, as shown in the screenshot below:



1 32. On the first day J.C. Penney offered this item for sale on its website, it was
2 advertised with an “original” price of \$250 and a “sale” price of \$125.

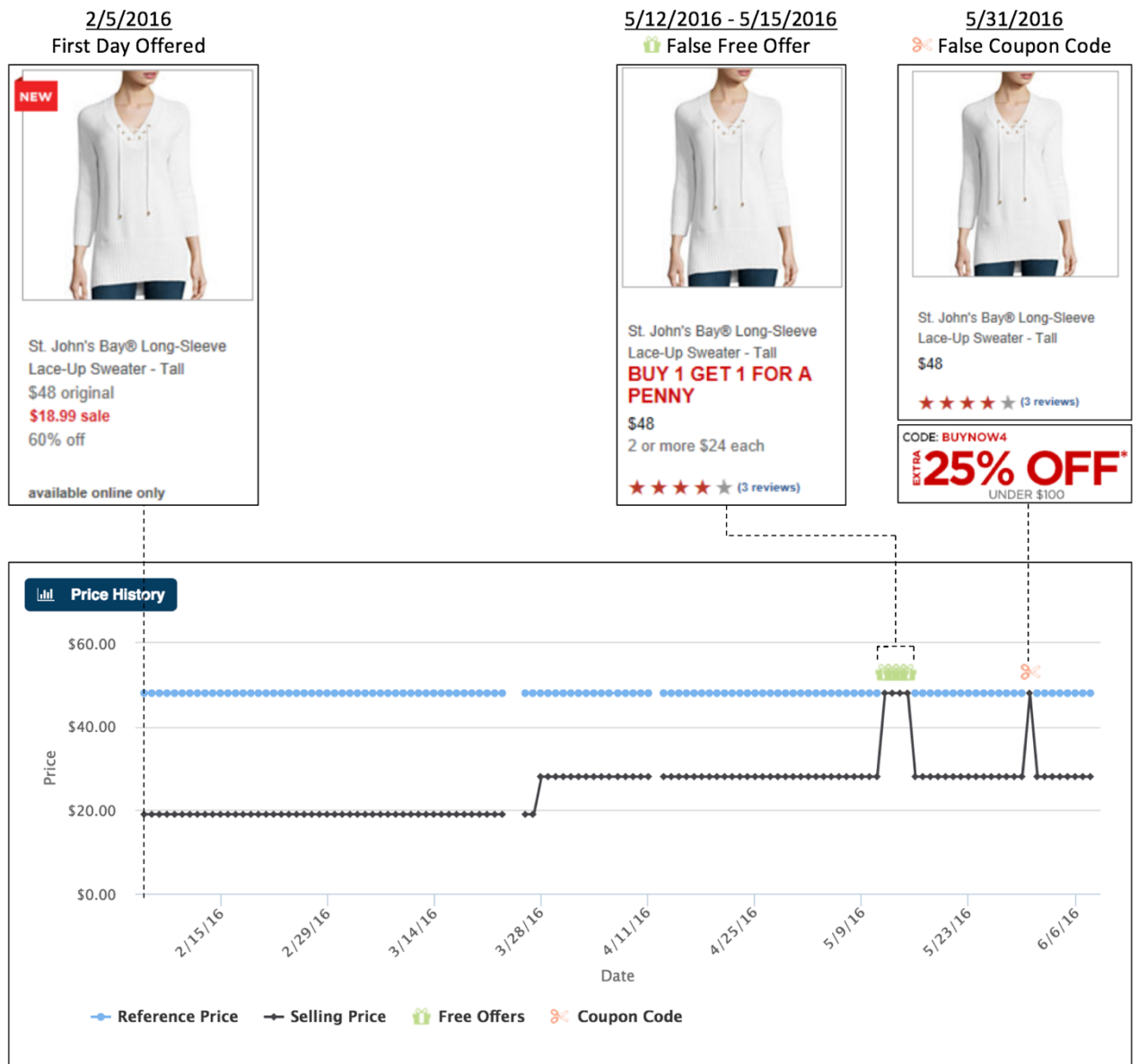
3 33. However, the purported “original” price of \$250 was a false reference
4 price. As the screenshot and price history chart above shows, J.C. Penney did not offer the item
5 for sale online for more than \$175, even though J.C. Penney consistently advertised a purported
6 “original” price of \$250 for the item.

7 **B. J.C. Penney’s Deceptive False Discount Scheme of “False Free Offers”**

8 34. J.C. Penney also implements its false reference price scheme by advertising
9 products as having “free” offers. These related representations are likewise misleading to
10 California consumers, as they are illusory and result in purchasers being misled as to their
11 perceived bargained-for exchange.

12 35. A “false free offer” commonly occurs when a product is advertised for sale
13 as “Buy 1 Get 1 Free” or “Buy 1 Get 1 For A Penny,” when in truth that product is never actually
14 offered (as a single item) at the false and inflated reference price. Similarly, an offer that states
15 “2 or more for \$x each,” where the total amount of money for the two items is half of the listed
16 price, constitutes a false free offer because the product is likewise never offered (as a single item)
17 at the listed reference price.

18 36. An example of J.C. Penney using a “false free offer” in combination with
19 false reference pricing is J.C. Penney’s “St. John’s Bay® Long-Sleeve Lace-Up Sweater – Tall,”
20 another exclusive in-house product, which J.C. Penney first offered for sale online on February 5,
21 2016, as shown in the screenshot below:



37. On the first day J.C. Penney offered this item for sale on its website, it was advertised with an “original” price of \$48 and a “sale” price of \$18.99, which J.C. Penney touted as a 60% discount.

38. However, the \$48 “original” price was a false reference price. As the screenshot and price history chart above shows, J.C. Penney only offered the product for \$48 online when combined with a “false free offer.” Between May 12-15, 2016, J.C. Penney listed the item for sale at \$48, but with a “Buy 1 Get 1 For A Penny” offer. Later, on May 31, 2016, J.C. Penney listed the item for sale at \$48, but with an “Extra 25% Off” coupon.

**VIII. J.C. PENNEY'S ONGOING USE OF FALSE REFERENCE PRICING
DIRECTLY CONTRADICTS ITS REPRESENTATIONS TO A FEDERAL COURT
THAT IT HAD STOPPED SUCH ILLEGAL PRACTICES**

39. J.C. Penney's false advertising and pricing practices directly contradict its representations to a federal district court in a private class action. In the Settlement Agreement in the matter styled *Spann v. J.C. Penney Corp., Inc.*, Case No. 8:12-cv-00215-FMO-KES (C.D. Cal.) filed on November 10, 2015, J.C. Penney specifically represented that it would not engage in illegal false reference pricing practices:

6.1.7 Injunctive Relief. As a direct result of this Litigation, J.C. Penney agrees that its advertising and pricing practices as of the date of this Settlement Agreement, and continuing forward, will not violate Federal or California law, including California's specific price-comparison advertising statutes. Specifically, J.C. Penney agrees that any former price to which J.C. Penney refers in its price comparison advertising will be the actual, bona fide price at which the item was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of business, honestly and in good faith. As a further direct result of this Litigation, J.C. Penney shall implement a compliance program, which will consist of periodic (no less than once a year) monitoring, training and auditing to ensure compliance with California's price comparison laws.⁷

40. The district court preliminarily approved the proposed class settlement, relying in part on specific representations by J.C. Penney that it had stopped the illegal false advertising and pricing practices. According to the district court, a factor favoring preliminary approval was that the settlement "promotes consumer protection in that J.C. Penney has agreed that its advertising and pricing practices as of the date of the settlement agreement and continuing forward 'will not violate Federal or California law, including California's specific price-comparison advertising statutes.'"⁸

41. J.C. Penney subsequently reiterated, in another court filing, that it had stopped its illegal pricing and advertising practices. In fact, J.C. Penney insisted: "J.C. Penney... can represent that it has implemented a new price-comparison advertising policy in direct

⁷ See Settlement Agreement (Dkt. 246-3) at pp. 14-15, *Spann v. J.C. Penney Corp., Inc.*, No. 8:12-cv-00215-FMO-KES (C.D. Cal., Nov. 10, 2015).

⁸ See Order Preliminarily Approving Class Action Settlement (Dkt. 257) at p. 20 (Jan. 25, 2016).

1 response to this litigation. This policy has remained in effect at all times since it was enacted,
2 including since the date of the Settlement Agreement.”⁹

3 42. As to J.C. Penney’s representations that it had stopped using false price
4 comparisons, the “Settlement Agreement provides such promises from JCPenney, and JCPenney
5 alone[.]”¹⁰ However, in this private class action, J.C. Penney did not provide, and the parties
6 failed to negotiate, a means to monitor J.C. Penney’s compliance with the terms of the settlement.
7 As class counsel readily acknowledged: “Plaintiff and her counsel have no meaningful way to
8 monitor or enforce J.C. Penney’s pricing practices on a daily basis, let alone in
9 perpetuity....While Plaintiff doubts that J.C. Penney would knowingly return to the same pricing
10 strategies that led to this lawsuit, there is simply no way that she or her counsel could undertake
11 to monitor its pricing policies on a daily basis or otherwise ensure that J.C. Penney will comply
12 with the law going forward.”¹¹ In short, the class representative, class counsel, and the district
13 court relied on the purported truth of J.C. Penney’s representation that since November 2015, it
14 had stopped the illegal practices.

15 43. The district court ultimately granted final approval of the class settlement.
16 However, as alleged herein, J.C. Penney continues to engage in false advertising and pricing
17 practices, contrary to its representations made to the district court and in direct violation of
18 California law.

19 44. The People do not allege the falsity of J.C. Penney’s representations to the
20 district court in the private class action to establish an additional basis for liability, but to illustrate
21 why it is necessary for the People to pursue this civil law enforcement action.
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26 ⁹ See J.C. Penney Response to Objection to Class Settlement (Dkt. 267) at p. 2 (July 28, 2016).

27 ¹⁰ See Memorandum in Support of Motion for Final Approval of Class Action Settlement
(Dkt. 268-1) at p. 19 (July 28, 2016).

28 ¹¹ *Id.* at pp. 20-21.

1 **IX. ENFORCEMENT AUTHORITY**

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

3 45. Business and Professions Code section 17200 defines “unfair competition”
4 as “any unlawful, unfair or fraudulent business act or practice,” and any act prohibited by Chapter
5 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions
6 Code.

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

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

14 48. Pursuant to Business and Professions Code sections 17203 and 17535, any
15 person who engages, has engaged, or proposes to engage in unfair competition or false
16 advertising may be enjoined in any court of competent jurisdiction, and the court may make such
17 orders or judgments to prevent the use of any practice which constitutes unfair competition or
18 false advertising, or as may be necessary to restore to any person in interest any money or
19 property which may have been acquired by means of such unfair competition or false advertising.

20 49. Pursuant to Business and Professions Code sections 17205 and 17534.5,
21 the remedies or penalties provided for violation of the Unfair Competition Law and False
22 Advertising Law are cumulative to each other and to the remedies or penalties available under all
23 other laws of the state.

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

5 **SECOND CAUSE OF ACTION**

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

7 **AGAINST ALL DEFENDANTS**

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

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

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

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

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

20 **PRAYER FOR RELIEF**

21 Wherefore, the People pray that:

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

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

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

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

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

10 Respectfully submitted,

11 Dated: December 7, 2016

OFFICE OF THE LOS ANGELES CITY ATTORNEY

12
13 By: 

MICHAEL N. FEUER

Attorneys for Plaintiff,

THE PEOPLE OF THE STATE OF CALIFORNIA

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