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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.

MACY’S, 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).

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

3 **I. INTRODUCTION**

4 1. The People bring this civil law enforcement action against Macy’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 Macy’s
8 engages in to increase sales. To illustrate, Macy’s may advertise a necklace for \$30, representing
9 that this constitutes a 75% discount off of its “regular” price of \$120, even though Macy’s did not
10 previously sell the necklace 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. Macy’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 Macy’s use of false reference prices applies to thousands of products. While the private
24 plaintiffs’ bar has actively pursued retailers, including Macy’s, for false reference pricing, it has
25 been unable to curb this industry practice. It is, therefore, incumbent on the People to take action,
26

27 ¹ In addition to the instant action, the People are contemporaneously filing similar actions
28 against J.C. Penney Corporation, Inc., Kohl’s Department Stores, 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 and the People respectfully request this Court’s assistance to protect Californians from such
2 misleading and deceptive business acts and practices.

3 **II. THE PARTIES**

4 4. The People bring this civil law enforcement action by and through Michael
5 N. Feuer, the Los Angeles City Attorney, pursuant to statutory authority provided under
6 California Business and Professions Code sections 17200, *et seq.* (“Unfair Competition Law”) and
7 17500, *et seq.* (“False Advertising Law”).²

8 5. Macy’s is a publicly-traded Delaware corporation (NYSE: M), with its
9 principal executive offices in Cincinnati, Ohio. According to its 2015 Annual Report (for the
10 fiscal year ending January 30, 2016) filed with the U.S. Securities & Exchange Commission,
11 Macy’s sells a wide range of merchandise, including apparel and accessories (men’s, women’s
12 and children’s), cosmetics, home furnishings, and other consumer goods.

13 6. The true names and capacities of Defendants sued herein as Does 1 through
14 10, inclusive, are unknown to the People. The People therefore sue these Defendants by such
15 fictitious names. When the true names and capacities of these Defendants have been ascertained,
16 the People will seek leave of this Court to amend this Complaint to insert in lieu of such fictitious
17 names the true names and capacities of the fictitiously-named Defendants. The People are
18 informed and believe, and thereon allege, that these Defendants participated in, and in some part
19 are responsible for, the illegal acts alleged herein. Each reference in this Complaint to Macy’s is
20 also a reference to all Defendants sued as Does.

21 7. Whenever reference is made in this Complaint to any act or omission of
22 Macy’s, such reference shall be deemed to mean that Macy’s officers, directors, employees,
23 agents, and/or representatives did, ratified, or authorized such act or omission while actively
24 engaged in the management, direction, or control of the affairs of Macy’s, or while acting within
25 the course and scope of their duties.

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² All further references are to California codes, unless otherwise noted.

1 8. Whenever reference is made in this Complaint to any act or omission of
2 Defendants, such reference shall be deemed to mean the act or omission of each Defendant acting
3 jointly and severally.

4 **III. JURISDICTION AND VENUE**

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

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

15 **IV. MACY'S – COMPANY PROFILE**

16 11. Macy's, one of the largest retailers in the United States, directly markets its
17 merchandise to consumers in the City of Los Angeles, across the State of California, and
18 throughout the nation via its e-commerce website (www.macys.com) and other mediums.

19 12. In 2015 alone, Macy's invested \$1.5 billion on gross advertising and
20 promotional costs.

21 13. Macy's marketing strategies have proven to be successful. In 2015,
22 Macy's and its affiliates grossed over \$27 billion in total net sales. In addition, Macy's website
23 now has an average of over one million visitors daily. However, Macy's success has, in
24 significant part, been the product of unlawful, unfair, and fraudulent marketing and advertising
25 practices.
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1 14. Macy’s misleading and deceptive false price advertising scheme has played
2 a major role in Macy’s overall marketing and business strategy, and Macy’s has leveraged its
3 marketing expertise and technology to perpetrate a false price advertising scheme of massive
4 proportions to the detriment of California consumers.

5 **V. FALSE REFERENCE PRICING – AN OVERVIEW**

6 15. A retailer’s “reference price,” the stated price presented alongside the
7 retailer’s “on sale” price, provides consumers a reference point with which to evaluate the
8 prospective purchase. The reference price is often described with terms such as “Regular Price,”
9 “Original Price,” “Former Price,” and/or “List Price.”

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

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

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

25 19. Beyond the adverse impact upon consumers’ welfare, the practice of
26 employing false reference pricing also negatively affects the integrity of competition in retail
27 markets. A retailer’s use of false reference prices constitutes an unfair method of competition,
28 injuring honest competitors that sell the same or similar products, or otherwise compete in the

1 same market, using only valid and accurate reference prices.

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

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

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

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

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

25 **VII. MACY’S ENGAGES IN DECEPTIVE ADVERTISING**

26 24. Macy’s creates an illusion of savings by engaging in false reference
27 pricing.
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25. Macy's intends that customers will perceive that its reference prices actually stand for former prices regularly charged by Macy's.

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

27. For example, on May 20, 2016, Macy's first offered for sale online a "Giani Bernini Large Cross Pendant Necklace in Sterling Silver," a Macy's exclusive in-house product, as shown in the screenshot below:

1 Giani Bernini Large Cross Pendant Necklace in Sterling Silver, Only at Macy's
2 Web ID: 2850723

3 5/20/2016
4 First Day Offered


5 

6 NEW! Giani Bernini
7 Large Cross Pendant
8 Necklace in Sterling
9 Silver, Only at Macy's

10 **Orig. \$120.00**
11 **Now \$30.00**

12 **EXTRA 15% OFF**
BONUS VALUE \$250

3 7/27/2016


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6 Giani Bernini Large Cross
7 Pendant Necklace in Sterling
8 Silver, Only at Macy's

9 **Orig. \$120.00**
10 **Now \$30.00**

11 **FREE SHIP AT \$50**
12 **BONUS VALUE \$250**

3 10/22/2016

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6 Giani Bernini Large Cross
7 Pendant Necklace in Sterling
8 Silver, Only at Macy's

9 **Orig. \$120.00**
10 **Now \$30.00**

11 **FREE SHIP AT \$25**



24 28. On the first day Macy's offered this item for sale online, it was advertised
25 with an "original" price of \$120 and a "sale" price of \$30.

26 29. However, the purported "original" price of \$120 was a false reference
27 price. As reflected in the screenshot and price history chart above, Macy's did not offer the item
28 for sale online for more than \$30, even though the item was consistently advertised with a

1 purported "original" price of \$120.

2 30. Another example is an "INC International Concepts Men's Colorblocked
3 Mix-Media V-Neck T-Shirt," another Macy's exclusive in-house product, which Macy's first
4 offered for sale online on May 4, 2016, as shown in the screenshot below:

5
6 **INC International Concepts Men's Colorblocked Mix-Media V-Neck T-Shirt, Only at Macy's**
7 **Web ID: 2800813**

8 **5/4/2016**
9 **First Day Offered**

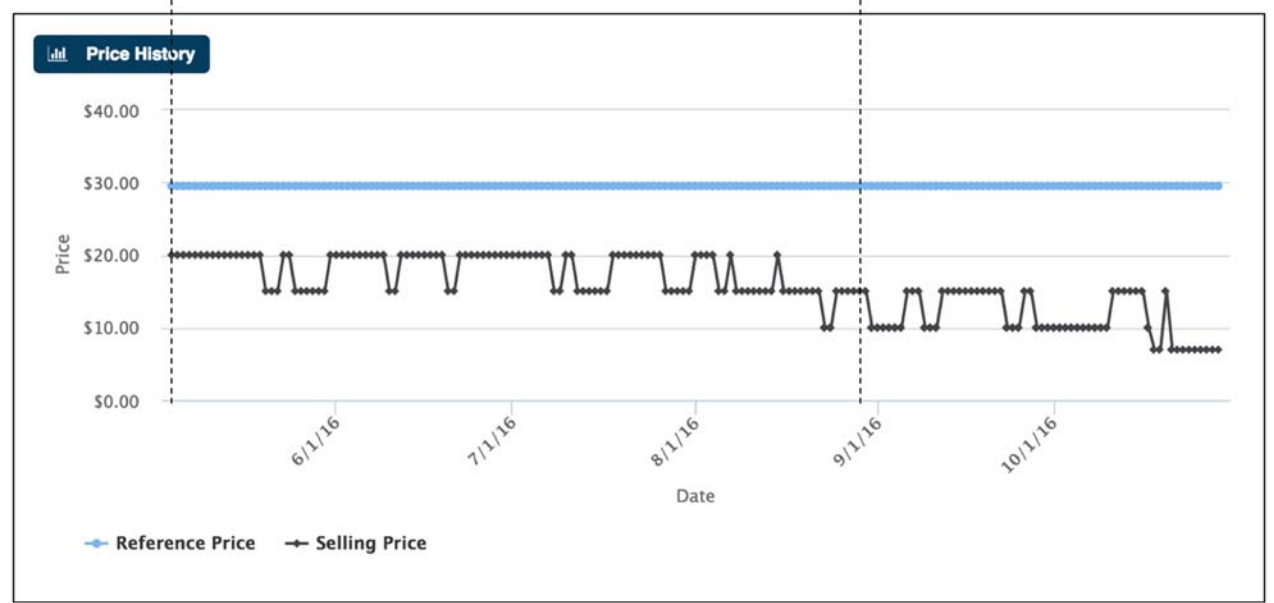


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14 **NEW! INC International**
15 **Concepts Men's**
16 **Colorblocked Mix-Media**
17 **V-Neck T-Shirt, Only at**
18 **Macy's**
19 **Limited-Time Special**
20 **Reg. \$29.50**
21 **Sale \$19.99**

22 **8/29/2016**



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26 **INC International Concepts**
27 **Men's Colorblocked Mix-**
28 **Media V-Neck T-Shirt, Only**
at Macy's
Orig. \$29.50
Now \$14.99



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31. On the first day Macy’s offered this item for sale online, it was advertised with a “regular” price of \$29.50 and a “sale” price of \$19.99, which was purportedly a “Limited-Time Special” offer.

32. However, the purported “regular” or “original” price of \$29.50 was a false reference price. As reflected in the screenshot and price history chart above, Macy’s did not offer the item for sale online for more than \$19.99. In addition, the \$19.99 “sale” price was not a “limited time” offer. In fact, as time went on, the price of the item actually decreased through additional false discounts. On August 29, 2016, for example, Macy’s offered the item at a “sale” price of \$14.99, falsely advertising an even larger discount from the \$29.50 false reference price.

33. A third example is an “Alfani Men’s Concord Plaid Long-Sleeve Shirt, Classic Fit,” another Macy’s exclusive in-house product, which Macy’s first offered for sale online on May 6, 2016, as shown in the screenshot below:

Alfani Men's Concord Plaid Long-Sleeve Shirt, Classic Fit
Web ID: 2788596

5/6/2016
First Day Offered



8/2/2016
False Coupon Codes



10/24/2016



34. On the first day Macy's offered this item for sale online, it was advertised with a "regular" price of \$55 and a "sale" price of \$29.99.

35. However, the purported "regular" or "original" price of \$55 was a false reference price. As the screenshot and price history chart above shows, the only times that Macy's offered to sell the item at the purported "regular" price of \$55 was when Macy's also offered a coupon code that provided additional discounts. On August 2, 2016, for example, Macy's offered the item for a price of \$55, but at the same time Macy's offered coupon codes for an "Extra 50% Off" plus an "Extra 20% Off," such that customers buying the item that day would

1 not pay the \$55 purported “regular” price.

2 **VIII. ENFORCEMENT AUTHORITY**

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

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

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

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

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

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

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF UNFAIR COMPETITION LAW (“UCL”)**

3 **AGAINST ALL DEFENDANTS**

4 (Business & Professions Code §§ 17200, *et seq.*)

5 41. The People incorporate by reference all preceding allegations as though
6 fully set forth herein.

7 42. Defendants Macy’s and Does 1 through 10, and each of them, have
8 violated (and continue to violate) the UCL by engaging in the following **unlawful** business acts
9 and practices:

10 a. Advertising merchandise (sold by Macy’s) with a listed former
11 price even though the purported former price was not the prevailing market price within the three-
12 month period immediately preceding the publication of those advertisements, in violation of
13 Business and Professions Code section 17501; and

14 b. Making false or misleading statements of fact concerning the
15 reasons for, existence of, or amounts of price reductions as to the merchandise sold by Macy’s, in
16 violation of Civil Code section 1770(a)(13).

17 43. Defendants Macy’s and Does 1 through 10, and each of them, have
18 violated (and continue to violate) the UCL by engaging in the following **unfair** business acts and
19 practices:

20 a. Engaging in false reference pricing in connection with the
21 merchandise that Macy’s sold (and continues to sell) such that California consumers (who could
22 not have reasonably avoided such predatory schemes) are substantially injured, something that
23 serves no benefit to consumers or competition; and

24 b. Engaging in false reference pricing in connection with the
25 merchandise that Macy’s sold (and continues to sell) such that Defendants gain an unfair
26 advantage over lawfully-competing retailers.

27 44. Defendants Macy’s and Does 1 through 10, and each of them, have
28 violated (and continue to violate) the UCL by engaging in the following **fraudulent** business acts

1 and practices: using misrepresentations, deception, and/or concealment of material information in
2 connection with the reference prices of merchandise that Macy'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 45. The People incorporate by reference all preceding allegations as though
9 fully set forth herein.

10 46. 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 47. Defendants Macy'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 Macy's sold (and continues to sell). In addition, these Defendants made
16 such untrue or misleading advertisements with the intent to dispose of said merchandise.

17 48. 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 Macy'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

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the FAL;

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


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

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

Respectfully submitted,

Dated: December 7, 2016

OFFICE OF THE LOS ANGELES CITY ATTORNEY

By: 
MICHAEL N. FEUER
Attorneys for Plaintiff,
THE PEOPLE OF THE STATE OF CALIFORNIA

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