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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JENNIFER MCCALL and JOELLEN BARRACLOUGH, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

MICHAEL KORS (USA), INC., a Delaware Corporation, and DOES 1-50, inclusive,

Defendant.

Case No.: 25CU041352N

CLASS ACTION COMPLAINT

[DEMAND FOR JURY TRIAL]

Plaintiffs Jennifer McCall and JoEllen Barraclough (collectively, "Plaintiffs") bring this action, on behalf of themselves and all others similarly situated, against Defendant Michael Kors (USA), Inc. ("Michael Kors" or "Defendant"), and state:

I. NATURE OF ACTION

1. This case arises from Defendant's illegal false price-discounting scheme implemented at its brick-and-mortar retail stores and e-commerce website, michaelkors.com/outlet/. False price-discounting occurs when a seller fabricates an inflated reference price, at which it seldom, if ever, sells a product while offering the product "on sale" at what appears to be a significantly discounted price. In reality, there is no discount or savings because the reference price significantly overstates the product's value, as the product is almost always sold at prices below the reference price and, often, below the "sale" price. "It has long been considered a deceptive

practice to state falsely that a product ordinarily sells for an inflated price but that it is being offered at a special reduced price[.]" *F.T.C. v. Colgate-Palmolive Co.*, 380 U.S. 374, 387 & n.17 (1965) (collecting cases).

2. Prices reflect both quality and value.[1] Discount retailers like Defendant, therefore, use inflated reference prices to manipulate the public's perception of their merchandise, misleading consumers into overestimating a product's quality and value and leading them to believe they are getting a bargain and higher-quality product when buying at a "sale" price. As a result, false price-discounting artificially inflates demand for a product, which, in turn, artificially inflates prices.[2] Specifically, "the higher reference price stated alongside the selling price shift[s] the demand function outward, leading to higher average prices and thus higher margins." Richard Staelin, *et al.*, *Competition and the Regulation of Fictitious Pricing*, 87 J. Mktg., 826, 835 (2023). Consequently, false price-discounting schemes enable retailers to sell more products and charge higher prices than they otherwise would without the false price-comparisons.

3. Based on their counsel's pre-suit investigation, Plaintiffs allege that Defendant seeks to capitalize on these known and proven effects of false price comparisons by advertising perpetual (or near perpetual) discounts from false reference prices to entice consumers into buying products that they would not otherwise purchase and/or to pay more than they otherwise would, absent the false discounts. At all relevant times, Defendant has continually engaged in false price-discounting for its merchandise sold throughout brick-and-mortar Michael Kors outlet stores and on its e-commerce website, michaelkors.com/outlet/. In bringing this putative class action complaint, Plaintiffs seek to remedy this deception and its attendant harm to consumers. Plaintiffs

[1] Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative or Deceptive?*, 11 J. Pub. Pol'y & Mktg. 52, 55 (1992) [hereinafter Grewal & Compeau, *Comparative Price Advertising*] ("[P]rice is materially utilized in the formation of perceptions of the product's value and influences the decision to purchase the product or to continue to search for a lower price."); Patrick J. Kaufmann et al., *Deception in Retailer High-Low Pricing: A "Rule of Reason" Approach*, 70 J. Retailing 115, 118 (1994) ("[R]eference to a retailer's normal or regular price in retail sale price advertising provides the consumer with information used to determine perceived value").

[2] Grewal & Compeau, *Comparative Price Advertising*, *supra* n.1, at 55 ("By creating an impression of savings, the presence of a higher reference price enhances subjects' perceived value and willingness to buy the product.").

seek all applicable damages, including actual, statutory, and punitive damages as well as equitable restitution from Defendant arising from its false price-discounting practices.

4. Through its false price-discounting scheme alleged herein, Defendant violated, and continues to violate, California and Oregon consumer protection statutes and federal law. Specifically, Defendant violated and continues to violate California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq*. (the "UCL"); California's False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.* (the "FAL"); California's Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* (the "CLRA"); and Oregon's Unlawful Trade Practices Act, Or. Rev. Stat. § 646.605, *et seq.* (the "UTPA").

II. PARTIES

Plaintiffs

5. Plaintiff McCall resides in San Diego, California.

6. Plaintiff Barraclough resides in Cottage Grove, Oregon.

Defendant

7. Defendant Michael Kors (USA), Inc., is a Delaware corporation with its principal executive offices in New York, New York. Plaintiffs are informed and believe that Defendant Michael Kors owns and operates Michael Kors outlet stores in California, in addition to other states across the United States, and advertises, markets, distributes, and/or sells Michael Kors-brand clothing and accessories in California and throughout the United States.

III. JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to California Code of Civil Procedure section 410.10 and Article VI, section 10 of the California Constitution. This case is a cause of action not committed by statute to another tribunal and is properly brought in a court of general jurisdiction.

9. This Court has personal jurisdiction over Defendant because Defendant Michael Kors (USA), Inc., is a Delaware corporation authorized to do business in the State of California, conducts sufficient business and has sufficient minimum contacts with California, and has

purposefully availed itself of the privileges and protections of California law through the operation of Michael Kors outlet stores within the State of California.

10. Venue is proper in this Court, because Plaintiff McCall resides in this County in San Diego, California, and was harmed in this County by Defendant's conduct.

11. The amount in controversy exceeds the jurisdictional minimum of this Court.

IV. ALLEGATIONS

A. Retailers Benefit from False Reference Pricing Schemes.

12. For nearly 50 years, the Federal Trade Commission ("FTC") invested significant resources in deterring the use of false reference pricing, so much so that in the 1950s, as much as 30% of the FTC's cease-and-desist orders in a typical year were related to false price discounting. *See* Staelin, *et al*., *supra*, at 826. Despite these efforts, in 1970, the FTC decided to cease aggressive enforcement of its published guidelines and regulations aimed at preventing the use of false reference prices. *Id.* The reason for the FTC's shift in enforcement policies was due to the need to regulate what it believed were more egregious actions, and the FTC's belief that the practice of using false reference prices would dissipate as competition increased. Decades later, with the benefit of hindsight, economists have now concluded that the FTC's prediction was incorrect, and that its lax enforcement policies have backfired, as "fictitious pricing within the United States has . . . proliferated, is prevalent, and is pervasive. . . . as 'many firms consistently ignor[e] fictitious pricing statutes with impunity.'" *Id.*

13. This does not come without consumer harm and consequences, as retailers like Defendant benefit substantially from false discounting schemes because consumers use advertised reference prices to make purchasing decisions, particularly when the information available to consumers varies among different types of products.[3] Most often, as with retail clothing,

[3] Even within a product, consumers may have imperfect information on the individual attributes. Economists describe "search goods" as those whose attributes "can be ascertained in the search process prior to purchase" (e.g., style of a shirt), "experience goods" as those whose attributes "can be discovered only after purchase as the product is used" (e.g., longevity of a shirt), and "credence goods" as those whose attributes "cannot be evaluated in normal use" (e.g., whether the shirt's cotton was produced using organic farming methods). Michael R. Darby & Edi Karni. *Free Competition and the Optimal Amount of Fraud*, 16 no. 1 J. Law & Econ. 67, 68-69 (1973).

consumers lack complete information about the products, and as a result, they often rely on information provided by sellers, including pricing information, to make purchase decisions.[4]

14. Deceptively advertised reference prices are thus incorporated into consumers' decision process. First, a product's price is an indicator of product quality;[5] as such, consumers view inflated and false reference prices as a proxy for product quality. Second, reference prices appeal to consumers' desire for bargains or deals.[6] Academic researchers note how consumers "sometimes expend more time and energy to get a discount than seems reasonable given the financial gain involved," and "often derive more satisfaction from finding a sale price than might be expected on the basis of the amount of money they actually save."[7] Under this concept, coined as "transaction utility" by Nobel Prize-winning economist Richard Thaler, consumers place value on the psychological experience of obtaining a product at a perceived bargain.[8]

15. Academic literature further reports that "there is ample evidence that consumers use reference prices in making brand choices,"[9] and publications have summarized the empirical data as follows:

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[4] "Not only do consumers lack full information about the prices of goods, but their information is probably even poorer about the quality variation of products simply because the latter information is more difficult to obtain". Phillip Nelson. *Information and Consumer Behavior*. 78 no. 2 J. Pol. Econ. 311, 311-12 (1970).

[5] Grewal & Compeau, *Comparative Price Advertising*, *supra* n.1, at 54; *see also* Richard Thaler. *Mental Accounting and Consumer Choice*, 4 no. 3 Mktg. Sci. 199, 212 (1985) [hereinafter Thaler, *Mental Accounting and Consumer Choice*] ("The [reference price] will be more successful as a reference price the less often the good is purchased. The [reference price] is most likely to serve as a proxy for quality when the consumer has trouble determining quality in other ways (such as by inspection)").

[6] Grewal & Compeau, *Comparative Price Advertising*, *supra* n.1, at 52.

[7] Peter Darke & Darren Dahl. *Fairness and Discounts: The Subjective Value of a Bargain*, 13 no. 3 J. of Consumer Psych. 328 (2003).

[8] *See* Staelin, *et al*., *supra*, at 826 ("It is now well accepted that many consumers get extra utility, beyond that associated with consuming a product from purchasing it on deal [] and that magnitude of this utility is a function of the size of the deal.") (emphasis added).

[9] Gurumurthy Kalvanaram & Russell S. Winer. *Empirical Generalizations from Reference Price Research*. 14 no. 3 Mktg. Sci. G161 (1995); *see also* Jerry B. Gotlieb & Cyndy Thomas Fitzgerald. *An Investigation into the Effects of Advertised Reference Prices on the Price Consumers are Willing to Pay for the Product*. 6 no. 1 J. of Applied Bus. Rsch. 59, 65-66 (1990) [hereinafter Gotlieb & Fitzgerald, *An Investigation*] ("The results of this research provide support for the position that [external] reference prices are important cues consumers use when making the decision concerning how much they are willing to pay for the product.").

> Inflated reference prices can have multiple effects on consumers. They can increase consumers' value perceptions (transaction value and acquisition value), reduce their search intentions for lower prices, increase their purchase intentions, and reduce their purchase intentions for competing products … Inflated and/or false advertised reference prices enhance consumers' internal reference price estimates and, ultimately, increase their perceptions of value and likelihood to purchase[.][10]

16. In the academic article *Competition and the Regulation of Fictitious Pricing*, published in 2023, authors Richard Staelin, a Duke marketing professor since 1982, Joel Urbany, a Notre Dame marketing professor since 1999, and Donald Ngwe, a senior principal economist for Microsoft and former marketing professor for Harvard, built on their prior analytic work to explain the effects of false reference pricing schemes and why their use has not dissipated as previously expected by the FTC. *See* Staelin, *et al*., *supra*, at 826-27.

17. As Staelin and his co-authors explain, the proliferation of false price-discounting can be attributed to several factors, including the absence of FTC's enforcement of its false price-discounting regulations, the modern development of consumer search behavior and options available to consumers (e.g., smartphones, online shopping), which has amplified the ease and effectiveness of false price-discounting, and the incorrect assumption that competition would naturally push deceptive pricing out of the market by motivating sellers to provide truthful information. *See id.* at 829-834. In reality, heightened competition drove firms to differentiate through "noise" (i.e., misleading information); thus, the authors conclude that competition *spread* the practice of false price-discounting, rather than extinguish it. *See id.* at 831 ("Identical firms, selling identical products, make positive profits because of their obfuscation strategy, and the likelihood of obfuscation grows as competition intensifies.").[11]

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[10] Dhruv Grewal & Larry D. Compeau, *Pricing and Public Policy: A Research Agenda and an Overview of the Special Issue*, 18 no. 1 J. Pub. Pol'y & Mktg. 3, 7 (1999).

[11] The author's proposed solution to curbing false price-discounting is the disclosure of the "true normal price." The "true normal price" refers to the price at which a product is ordinarily sold (such as a historical or modal selling price), serving as a clear and standardized benchmark which consumers can use to reliably assess what a product typically sells for and, in turn, whether a discount is *bona fide*. *See id.* at 842 ("[W]e believe the most effective metric to capture normal price is a firm's modal offering price in the most recent, relevant business period.") (citing 16 C.F.R § 233.1). Nearly all retailers internally track this metric and typically refer to it as the "Average Unit Retail" (AUR). *See Average Unit Retail (AUR): Meaning, Importance, & Formula*, 8th & Walton (Sept. 28, 2023), https://www.8thandwalton.com/blog/average-unit-retail//. ("AUR (Average Unit Retail) is the average selling price of an item within a specific period."). Retailers also track

18. Consequently, retailers like Defendant, who understand that consumers are susceptible to bargain hunting, have a substantial financial interest in making consumers think they are getting a bargain, even when they are not. Contrary to the illusory bargains in Defendant's advertisements, consumers are not paying less than the true normal price, (or AUR), and therefore are not receiving any discount. Rather, they are actually overpaying for Defendant's product as "the higher reference price stated alongside the selling price shift[s] the demand function outward, leading to higher average prices and thus higher margins." Staelin, *et al.*, *supra*, at 835. In short, "recent empirical evidence suggests that fictitious pricing can produce significant positive returns for [retailers, but also] lead[s] to consumer welfare loss." *Id.* at 827.

B. Michael Kors Engages in a Fraudulent Price Discounting Scheme.

19. Michael Kors has continually engaged in a false reference pricing scheme injurious to consumers by advertising its Michael Kors outlet bags, apparel, accessories, and other items at discounted, "sale" prices. Defendant marketed the "sale" prices as discounts from the "original" prices set forth on the products' price tags for merchandise sold at Defendant's Michael Kors outlet stores. The false reference prices listed on the price tags are, on the vast majority of outlet products, styled as either "Our Price" or "MSRP." Other items' price tags contain reference prices unadorned with any additional wording. However, in all cases, irrespective of the wording used to describe the advertised reference price, the advertised "discounts" are nothing more than phantom markdowns because (1) the represented "original" prices, *i.e.,* the prices listed on the price tags for the merchandise, are artificially inflated; (2) the products are never offered for sale at the full original price for any substantial period of time; and (3) the original prices are never the true market price for the products Defendant sells.

20. As set forth above, Defendant marks each item with a price tag that sets forth the "original" price (e.g., "Our Price" or "MSRP") at which the item was purportedly offered for sale. That original price is printed on the item's price tag. Defendant then displays large sale-discount signage throughout the outlet store advertising a discounted "__% Off" or a discounted whole-price

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and project other metrics that provide additional context regarding what products typically sell for, and what they expect to sell for in the future, such as sales and margin projections.

reduction for the item, which is substantially less than the original price listed on the price tag. The products were never sold at the "original" or "price tag" prices. Thus, the advertised reference price is false and used solely to induce consumers into believing that the merchandise was once sold at the reference price and from which the false, "discounted," corresponding sale price is derived.

21. The percentage-off and whole-price reduction discounts advertised in Defendant's Michael Kors outlet stores promise to consumers that if they purchase certain items, then they will receive a specific discount off those items, which are represented as being valued at their higher advertised "original" price. In actuality, the percentage-off and whole-price reduction discounts are not true discounts as they are applied to an advertised "original" price that was completely fabricated by Defendant and that does not represent a price at which Defendant regularly sold the item in the normal course of business. Consequently, consumers do not receive the discount they were promised by Defendant when they purchase items from Defendant at a purportedly discounted price.

22. Defendant conveys its deceptive pricing scheme to consumers through promotional materials, in-store displays, and print advertisements. For example, in Defendant's Michael Kors outlet stores, the percentage-off and whole-price reduction discount pricing scheme is prominently displayed, advertising deep discounts on various items throughout the store, as shown below:









23. Defendant's pricing scheme is intended to increase sales but has the effect of depriving consumers of the benefit of their bargain. The bags and clothing items listed at "original" prices were never offered for sale at those prices for a substantial period of time. The original or price tag price is not the price at which Defendant expects to sell its merchandise; it is merely a basis for misleading consumers into believing they are receiving a substantial discount from the false original price.

24. The products sold at Michael Kors outlet stores are made exclusively for sale at its outlet stores. They are not sold anywhere else. Thus, the reason why the original or price tag price is false and misleading is because Michael Kors either: (1) has never offered the outlet goods for sale at the "original" price or (2) has offered the goods for sale at the "original" price at some time period in the distant past—well in violation of the 90 day time period afforded it to discount merchandise under California law, for instance, and federal regulation requiring the discount to be presented from a recent, regularly offered, original price.

25. Again, Michael Kors is not offering a percentage off ("__% Off") or whole-price discount from a competitor's price for goods offered for sale in the relevant market. Defendant only sells "made for outlet" products at its Michael Kors outlet stores. There are no other retailers

that sell those goods; they are exclusively sold by Michael Kors outlets. In other words, Defendant sells its own, exclusive, branded products in its Michael Kors outlet stores that have no other market outside Michael Kors outlet stores, and thus there are no other prices for its Michael Kors outlet products than the prices set by Defendant at its outlet stores. There is no meaningful difference between Defendant's Michael Kors outlet stores in that the same products are sold at every store and online, and the same fraudulent pricing scheme is deployed uniformly.

26. Nowhere in Defendant's Michael Kors outlet stores does Defendant disclose that the reference or original prices used are not: (1) former prices; (2) recent, regularly offered former prices; or (3) prices at which identical products are sold elsewhere in the market. Nor does Defendant disclose any date at which the original prices were offered in the market. The omission of these disclosures, coupled with Defendant's use of fictitious advertised reference prices, renders Defendant's pricing inherently misleading to reasonable consumers, including Plaintiffs.

27. The advertised reference prices are false and induce consumers into believing that Michael Kors outlet merchandise was once sold at the reference price, in the near term, and will be again if the consumer does not make a purchase at the "bargain" price. Defendant engages in this practice knowing full well that the advertised products are never actually offered or sold at the advertised reference prices.

28. Furthermore, Defendant advertises the false reference prices to induce consumers into believing that Michael Kors outlet merchandise is worth the inflated, false reference price, such that the lower "sale" price represents a limited-time discount. Customers, however, do not enjoy any such advertised discount when they purchase items from Defendant's Michael Kors outlet stores.

29. Defendant advertises constant discounts in its Michael Kors outlet stores for nearly all items it offers for sale, and Defendant's employment of perpetual false discounts deprives consumers of a fair opportunity to fully evaluate the offers and to make purchase decisions based on accurate information. Consumers have no way of discerning that Defendant's pricing and discount representations throughout its Michael Kors outlet stores are false and misleading.

30. Defendant's systematic and pervasive pricing policy and conduct as described herein is in direct violation of California and Oregon law, as well as federal pricing regulations.

31. Under California law, for instance, a seller may only discount an item from its own original price for up to 90 days; or, in the alternative, it may offer a discount from the original price of an item being offered by a competitor, within the relevant market, for up to 90 days. In either scenario, a seller can only offer a "sale" from an original price for 90 days. At that point, on day 91, the seller has two options: the product must either return to its full original price, or the seller may continue to sell the product at the discounted price, as long as it discloses to the consumer the date on which the product was last offered for sale at its alleged former price. *See* Bus. & Prof. Code § 17501. Under California law, a seller cannot use an old, outdated, "original price" as the basis for a sale or discount, unless it discloses to the consumer the date on which the prior original price was offered in the market. *Id.*

32. Moreover, Defendant's advertised discounts were fictitious because the reference prices did not represent a bona fide price at which Defendant previously sold or offered to sell the products, on a regular basis, for a reasonably substantial period of time, as required by the FTC. *See* 16 C.F.R. §§ 233.1 *et seq*.

33. Defendant's perpetual discounting of its Michael Kors outlet merchandise constitutes false, fraudulent, and deceptive advertising because the "original" reference price listed is substantially higher than those prices actually offered by Defendant. The reference prices are a total fiction used exclusively as a benchmark from which the false discount and corresponding "sale" price are derived. Defendant's scheme has the effect of tricking consumers into believing they are getting a significant deal by purchasing Michael Kors outlet merchandise at a steep discount, when in reality, consumers are now overpaying for it. Defendant's deceptive pricing scheme has artificially raised the prices actually paid by consumers by creating the false impression of a bargain.

34. The process of how Defendant's false reference pricing scheme injures consumers proceeds as follows. Defendant advertised its merchandise with false reference prices, which then caused consumers to be deceived into overvaluing those products. As a result, consumers' demand

for the Michael Kors outlet merchandise has artificially increased. This artificial, illusory increase in consumers' demand further resulted in an increase in the price of Defendant's Michael Kors outlet merchandise (i.e., a "price premium"). This resultant price increase has been reflected in the "discounted sale" price at which consumers, including Plaintiffs, paid for the Michael Kors outlet merchandise. Consumers thus unknowingly purchased the Michael Kors outlet merchandise at inflated prices, all caused by Defendant's deceptive false reference pricing scheme. The Michael Kors outlet merchandise is worth less than the inflated prices at which they are offered as a "discount." Without the false reference pricing scheme, the Michael Kors outlet merchandise would not command the higher, inflated prices. Therefore, consumers like Plaintiffs overpaid for Michael Kors outlet merchandise, resulting from Defendant's deception.

35. Thus, Defendant's scheme intends to and does provide harmful misinformation to customers. This misinformation communicates to consumers, including Plaintiffs, that the products sold in Defendant's Michael Kors outlet stores have a greater value than the advertised discounted price. Defendant's misconduct therefore (1) deprived Plaintiffs and Class (defined below) members of the benefit of the bargain and (2) caused Plaintiffs and Class members to overpay (pay a price premium) for Michael Kors outlet merchandise.

C. Plaintiffs' Counsel's Pre-Suit Investigation

36. Plaintiffs' counsel has conducted a large-scale, comprehensive investigation into the Defendant's pricing practice. Plaintiffs' counsel first tracked items in Defendant's outlet stores beginning in March of 2021 and concluding in June of 2021. Every product in Defendant's outlet stores remained on sale for the duration of this tracking period, discounted against a false reference price. Plaintiffs' investigators observed Michael Kors outlet stores throughout California and Oregon. The pricing scheme on Defendant's products was uniform at every location. **Exhibit A** contains a list of exemplary products from the 2021 investigation. Plaintiffs' counsel again initiated a similar investigation beginning in February 2022 and concluding in August 2022. That investigation revealed the same results—every product, at every location, was continuously discounted against a false reference price from February to August 2022. **Exhibit B** contains a list of exemplary products from the 2022 investigation.

37. Plaintiffs' counsel's investigation revealed that the "original" or "price tag" price (e.g., "Our Price", "MSRP") of the items Plaintiffs purchased was never the true market price at Michael Kors outlet stores preceding Plaintiffs' purchases. Instead, Defendant continuously offered the items for sale at the falsely "discounted" prices, including those products purchased by Plaintiffs. Plaintiffs' counsel's investigation revealed that this was a pervasive practice at the Michael Kors outlet stores, as hundreds of items remained continuously discounted from their "original" or "price tag" price (e.g., "Our Price", "MSRP") and they were not offered for sale at their original price.[12] Defendant engages in a systematic scheme to continuously "discount" its merchandise without ever offering the merchandise for sale at their "original" or "price tag" prices.

38. As far back as March 1, 2021, all types of handbags were offered at a discount that compared a regular price ($229 or $428) to a percentage-off discount ("50% off" or "$30% off") in Defendant's Michael Kors outlet stores. *See* **Exhibit A**.

39. To reiterate, Plaintiffs' investigation of Defendant's Michael Kors outlet stores revealed that its merchandise is priced uniformly. That is, merchandise sold at Defendant's Michael Kors outlet stores bears a price tag with a false original price and a substantially discounted percentage off ("__% Off") or whole-price reduction "sale" price. Plaintiffs' counsel's investigation confirmed that the merchandise purchased by Plaintiffs was priced with a false reference price and a corresponding discounted price, which was in fact an inflated price.

40. Plaintiffs' counsel's investigators were tracking the pricing of merchandise offered for sale at Michael Kors outlet stores beginning in March 2021. The investigation revealed that items listed for sale in the Michael Kors outlet stores were never offered for sale at their full "original" price (i.e., "Our Price", "MSRP"). Plaintiffs' counsel's investigators visited Michael Kors outlet stores in California and Oregon to verify the prices being offered on the Michael Kors outlet merchandise. These stores were located in the Las Americas outlets (California) and the Woodburn outlets (Oregon), at which Plaintiffs each shopped. The pricing scheme was uniform

[12] Plaintiffs' counsel compiled many of in-store photographs during the investigation, a sample of these photographs are attached hereto as **Exhibit C**. The photographs show dozens of outlet products with false "Our Price" and "MSRP" price tag prices as well as in-store signage advertising various percentage off ("__% Off") and whole-price discounts from the purported reference prices on the price tags.

and identical across all outlet stores visited in California and Oregon. The only thing that changed was the requisite percentage off ("__% Off") on certain merchandise items. In other words, all items had price tags with either "Our Price" or "MSRP" reference prices (or, in some instances, an unadorned reference price) on the price tag that were then perpetually "discounted" by in-store signage indicating a large percentage off ("__% Off") or whole-price reduction discount.

41. Therefore, the "original" prices on the merchandise sold at Michael Kors outlet stores are either false original prices or severely outdated prices that have never been offered in the relevant market.

42. Plaintiffs are informed and believe and thereon allege that the false discounts were and continue to be also reflected on Michael Kors outlet receipts.

43. Despite Plaintiffs' counsel's best efforts at investigation, the full extent of Defendant's false and deceptive pricing scheme can only be revealed through a full examination of records exclusively in the possession of Defendant.

D. Michael Kors' False Price-Discounting Scheme Harms All Consumers.

44. A product's reference price serves as a baseline upon which consumers perceive its value.[13] Empirical studies "suggest that consumers are likely to be misled into a willingness to pay a higher price for a product simply because the product has a higher reference price."[14] Defendant's false reference prices mislead consumers into overvaluing its merchandise, which increases overall demand and allows Defendant to charge a premium for its merchandise that it could not obtain in the absence of the false price-discounting scheme.[15] *See also* Staelin, *et al*., *supra,* at 835 ("[T]he higher reference price stated alongside the selling price shift[s] the demand function outward, leading to higher average prices and thus higher margins.") Accordingly, Michael Kors' false reference-pricing scheme allows it to profit at the expense of all of its customers, because the scheme causes

[13] Thaler, *Mental Accounting and Consumer Choice*, *supra* n.5, at 212.

[14] Gotlieb & Fitzgerald, *An Investigation*, *supra* n.9, at 66. Moreover, "if a higher reference price encourages consumers to pay a higher price for a product than the consumer was willing to pay for the identical product with a lower reference price, then the practice of using high reference prices would be deceptive." *Id*. at 60.

[15] Grewal & Compeau, *Comparative Price Advertising*, *supra* n.1, at 55 ("By creating an impression of savings, the presence of a higher reference price enhances subjects' perceived value and willingness to buy the product.").

all Michael Kors' shoppers to pay more regardless of their individual beliefs or purchasing decision processes.

45. Fundamental economics concepts and principles dictate that the harm caused by Defendant's scheme is uniformly suffered by deceived and non-deceived shoppers alike. One such principle is that cost and demand conditions determine the market prices paid by all consumers.[16] The aggregate demand curve for a product represents consumers' valuation of that product. As consumers' valuation increases, the demand curve shifts outward, leading to an increase in the market price. Therefore, a specific individual's willingness to pay a certain price for a product does not negate the fact that market prices, as determined by aggregate demand, dictate what all consumers purchasing a given product will pay. Plaintiff and proposed Classes (defined below) members thus suffered a common price-premium impact from Defendant's misconduct.

E. Michael Kors' False Price-Discounting Scheme Harmed Plaintiffs.

46. Plaintiffs McCall and Barraclough each suffered an economic injury as a direct result of Defendant's illegal false price-discounting scheme.

Plaintiff McCall

47. Plaintiff Jennifer McCall resides in San Diego, California. On June 12, 2021, Plaintiff McCall went shopping at the Michael Kors outlet store located at 4051 Camino de la Plaza, San Diego, California 92173 (the "Las Americas Outlets"). In reliance on Defendant's false and deceptive advertising, marketing, and discount pricing scheme, Plaintiff McCall purchased the following item from the Las America Outlets on June 12, 2021:

No.	Item:	False Reference Price:	Purchase Price:
1	194900502082 SMBUCKETBA/BUFF/NS (Style: 35T1GU5M5C)	$348.00	$139.20

48. Plaintiff McCall examined several items at the Las Americas Outlets before deciding on what item to purchase. During her time at the Las Americas Outlets on June 12, 2021,

[16] Mankiw, N. *Essentials of Economics*, 8th Edition. Boston, MA: Cengage Learning, 66 (2015) ("[P]rice and quantity are determined by all buyers and sellers as they interact in the marketplace"); *see also* Hal R. Varian, *Microeconomics Analysis.* 3rd Edition. New York, NY: W. W. Norton & Company, at 23-38, 144-57, 233-353 & 285-312 (1992).

Plaintiff McCall noticed numerous signs within the Michael Kors outlet store advertising various "__% Off" discounts on items throughout the store.

49. After observing the item's original price—styled as either "Our Price" or "MSRP" on the price tag and the accompanying signage—Plaintiff McCall believed she was receiving a significant discount on the item she had chosen. Because she liked the item, felt that the discounted price would likely not last, and believed she was getting a significant bargain on the merchandise, she proceeded to the register and purchased the product. The discount was a material representation to Plaintiff McCall, and she relied upon it in making her purchase decision. She paid an after-tax total of $149.99 for the product she purchased at the Michael Kors outlet store. Further reinforcing her impression, her receipt stated she received a "Super-Simple Discount New Price: $139.20." However, Plaintiff McCall did not receive the benefit of her bargain. A reasonable consumer would have interpreted the falsely advertised reference price in the same manner as Plaintiff McCall—as a representation of a former price at which Defendant recently sold the item and would again soon.

50. Plaintiff McCall would not have made her purchases without the misrepresentations made by Defendant. As a result, Plaintiff McCall has suffered economic injury as a direct result of Defendant's unlawful, unfair, and fraudulent conduct. Aside from not receiving the benefit of the bargain through her reliance on Defendant's false reference pricing scheme, Plaintiff McCall was injured because she paid an inflated price (i.e., price premium) for the merchandise as a result of Defendant's misconduct, as explained herein.

Plaintiff Barraclough

51. Plaintiff JoEllen Barraclough resides in Cottage Grove, Oregon. On July 8, 2023, Plaintiff Barraclough went shopping at the Michael Kors outlet store located at 1001 N. Arney Road, Woodburn, Oregon 97071 (the "Woodburn Outlets"). In reliance on Defendant's false and deceptive advertising, marketing and discount pricing scheme, Plaintiff Barraclough purchased the following item from the Woodburn Outlets on July 8, 2023:

No.	Item:	False Reference Price:	Purchase Price:
1	194900065570 LGTRVLCONT/PWDBL/NS (Style: 35F8GTVT3B)	$298.00	$79.00

No.	Item:	False Reference Price:	Purchase Price:
2	196163430249 MDFRNTZPCH/PWDBL/NS (Style: 35F2GTTT2L)	$448.00[17]	$112.00

52. Plaintiff Barraclough examined several items at the Woodburn Outlets before deciding on what item to purchase. During her time at the Woodburn Outlets on July 8, 2023, Plaintiff Barraclough noticed numerous signs within the Michael Kors outlet store advertising various "__% Off" discounts on items throughout the store.

53. After observing the items' original prices—both styled as "Our Price" on the price tags and the accompanying signage—Plaintiff Barraclough believed she was receiving a significant discount on the items she had chosen. Because she liked the items, felt that the discounted price would likely not last, and believed she was getting a significant bargain on the merchandise, she proceeded to the register and purchased the products. The discounts were material representations to Plaintiff Barraclough and she relied upon them in making her purchase decision. She paid a total of $152.80 for the products she purchased at the Michael Kors outlet store. Further reinforcing her impression, her receipt stated under each item, respectively, "Super-Simple Discount New Price: $79.00" and "Super-Simple Discount New Price: $112.00." However, Plaintiff Barraclough did not receive the benefit of her bargain. A reasonable consumer would have interpreted the falsely advertised reference prices in the same manner as Plaintiff Barraclough—as a representation of a former price at which Defendant recently sold the items and would again soon.

54. Plaintiff Barraclough would not have made her purchases without the misrepresentations made by Defendant. As a result, Plaintiff Barraclough has suffered economic injury as a direct result of Defendant's unlawful, unfair, and fraudulent conduct. Aside from not receiving the benefit of the bargain through her reliance on Defendant's false reference pricing scheme, Plaintiff Barraclough was injured because she paid an inflated price (i.e., price premium) for the merchandise as a result of Defendant's misconduct, as explained herein.

[17] The price tag listed "Our Price" of $448.00 and the receipt's stated reference price was $447.99.

V. CLASS ALLEGATIONS

55. Plaintiffs bring this action on behalf of themselves and all other similarly situated Class members pursuant to Section 382 of the California Code of Civil Procedure and seek certification of the following Classes against Defendant:

California Class:

> All persons who, within the State of California and within the applicable statute of limitations preceding the filing of this action (the "Class Period"), purchased from a Michael Kors outlet store one or more products at discounts from an advertised reference price and who have not received a refund or credit for their purchase(s).

Oregon Class:

> All persons, within the State of Oregon, who, within the applicable statute of limitations preceding the filing of this action (the "Class Period"), purchased from a Michael Kors outlet store one or more products at discounts from an advertised reference price and who have not received a refund or credit for their purchase(s).

56. Excluded from the Classes are Defendant, as well as its officers, employees, agents, or affiliates, parent companies and/or subsidiaries, and each of their respective officers, employees, agents, or affiliates, and any judge who presides over this action.

57. ***Numerosity***: The Class members are so numerous that joinder of all members is impracticable. Plaintiffs are informed and believe that the proposed Classes contain hundreds of thousands of individuals who have been damaged by Defendant's conduct as alleged herein. The precise number of Class members is unknown to Plaintiffs.

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

i. whether, during the Class Periods, Defendant used falsely advertised reference prices on its Michael Kors outlet product labels and falsely advertised price discounts on merchandise sold in its outlet stores;

ii. whether Defendant ever offered items for sale or sold items at their advertised reference price;

iii. whether, during the Class Periods, the original price advertised by Defendant was the prevailing market price for the products in question during the three months preceding the dissemination and/or publication of the advertised former prices;

iv. whether, during the Class Periods, any of the original prices advertised by Defendant were false or misleading;

v. whether Defendant's purported sale prices advertised in its Michael Kors outlet stores reflected any actual discounts or savings;

vi. whether Defendant's purported percentage-off discounts advertised in its Michael Kors outlet stores reflected any actual discounts or savings;

vii. whether Defendant's alleged conduct constitutes violations of the laws asserted;

viii. whether Defendant's alleged conduct constitutes violations of federal and/or California pricing regulations;

ix. whether Defendant engaged in an unconscionable commercial practice, and/or employed deception or misrepresentation under the laws asserted; and

x. whether Plaintiffs and Class members are entitled to damages and the proper measure of that loss.

59. ***Typicality***: Plaintiffs' claims are typical of the claims of the Class members because, *inter alia*, all Class members have been deceived (or were likely to be deceived) by Defendant's false and deceptive price advertising scheme, as alleged herein. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all Class members.

60. ***Adequacy***: Plaintiffs will fairly and adequately protect the interests of the Class members. Plaintiffs have retained counsel experienced in complex consumer class action litigation, and Plaintiffs intend to prosecute this action vigorously. Plaintiffs have no antagonistic or adverse interests to those of the Classes.

61. ***Superiority***: The nature of this action and the nature of laws available to Plaintiffs and the Classes make the use of the class action format a particularly efficient and appropriate procedure to afford relief to them and the Classes for the wrongs alleged. The damages or other

financial detriment suffered by individual Class members are relatively modest compared to the burden and expense that would be entailed by individual litigation of their claims against Defendant. It would thus be virtually impossible for Plaintiffs and Class members, on an individual basis, to obtain effective redress for the wrongs done to them. Absent the class action, Class members and the general public would not likely recover, or would not likely have the chance to recover, damages or restitution, and Defendant will be permitted to retain the proceeds of its fraudulent and deceptive misdeeds.

62. All Class members, including Plaintiffs, were exposed to one or more of Defendant's misrepresentations or omissions of material fact, claiming that former reference prices advertised prices were legitimate. Due to the scope and extent of Defendant's consistent false sale prices, and advertising scheme, disseminated in a years-long campaign to California and Oregon consumers, it can be reasonably inferred that such misrepresentations or omissions of material fact were uniformly made to all members of the Classes. In addition, it can be reasonably presumed that all Class members, including Plaintiffs, affirmatively acted in response to the representations contained in Defendant's false advertising scheme when purchasing merchandise sold at Michael Kors outlet stores.

63. Plaintiffs are informed that Defendant keeps extensive computerized records of its Michael Kors outlet customers through, *inter alia*, customer loyalty programs, credit card programs, and general marketing programs. Defendant has one or more databases through which a significant majority of Class members may be identified and ascertained, and it maintains contact information, including email and home addresses, through which notice of this action could be disseminated in accordance with due process requirements.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of California's Unfair Competition Law ("UCL")
CAL. BUS. & PROF. CODE §§ 17200, *et seq.*
(On Behalf of Plaintiff McCall and the California Class)

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

65. Plaintiff McCall brings this claim individually and on behalf of the members of the proposed California Class against Defendant for violations of the UCL, Cal. Bus. & Prof. Code §§ 17200, *et seq*.

66. 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" advertising. Cal. Bus. Prof. Code § 17200.

67. The UCL imposes strict liability. Plaintiff McCall and members of the proposed California Class need not prove that Defendant intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such practices occurred.

"Unfair" Prong

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

69. Defendant's actions constitute "unfair" business practices because, as alleged above, Defendant engaged in misleading and deceptive price comparison advertising that represented false reference prices and corresponding deeply discounted phantom "sale" prices. Defendant's acts and practices offended an established public policy of transparency in pricing, and they constituted immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers.

70. The harm emanating from this practice to Plaintiff McCall and members of the proposed California Class outweighs any utility it provides because Defendant's practice of advertising false discounts provides no utility. There were reasonably available alternatives to further Defendant's legitimate business interests other than the misleading and deceptive conduct described herein.

"Fraudulent" Prong

71. A business act or practice is "fraudulent" under the UCL if it is likely to deceive members of the consuming public.

72. Defendant's acts and practices alleged above constitute fraudulent business acts or practices as Defendant has deceived Plaintiff McCall and members of the proposed California Class and is highly likely to deceive members of the consuming public. Plaintiff McCall and members of the proposed California Class relied on Defendant's fraudulent and deceptive representations regarding its false ticket original prices for products sold by Defendant at its Michael Kors outlet stores. These misrepresentations played a substantial role in Plaintiff McCall's and members of the proposed California Class's decisions to purchase products at a purportedly steep discount, and Plaintiff McCall and members of the proposed California Class would not have purchased products without Defendant's misrepresentations.

"Unlawful" Prong

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

74. Defendant's acts and practices alleged above constitute unlawful business acts or practices as Defendant has violated state and federal law in connection with its deceptive pricing scheme. The FTCA prohibits "unfair or deceptive acts or practices in or affecting commerce" (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false advertisements. 15 U.S.C. § 52(a). Under the FTC, false former pricing schemes, like Defendant's, are described as deceptive practices that would violate the FTCA:

> (a) One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious - ***for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction - the "bargain" being advertised is a false one***; the purchaser is not receiving the unusual value he expects. In such a case, the "reduced" price is, in reality, probably just the seller's regular price
>
> (b) A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of his business, honestly and in good faith - and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based. And the advertiser should scrupulously avoid any implication that a former price is a selling, not an asking price (for example, by use of such

> language as, "Formerly sold at $_____"), unless substantial sales at that price were actually made.

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

75. In addition, Defendant's acts and practices violate California law, which expressly prohibits false former pricing schemes. The FAL, Cal. Bus. & Prof. Code § 17501, entitled "*Worth or value; statements as to former price*," states:

> For the purpose of this article the worth or value of any thing advertised is the prevailing market price, wholesale if the offer is at wholesale, retail if the offer is at retail, at the time of publication of such advertisement in the locality wherein the advertisement is published.
>
> ***No price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding the publication of the advertisement*** or unless the date when the alleged former price did prevail is clearly, exactly and conspicuously stated in the advertisement.

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

76. Defendant violates section 17501 because it advertises items, including the items that Plaintiff McCall purchased and are described herein, with a former price that greatly exceeds the prevailing market price of those items. For the most part, Defendant advertises on its price tags a reference price that is unadorned by any qualifying language (e.g., "Compare At"), which could arguably put consumers on notice to review prices outside of the Michael Kors outlet store.

77. In so doing, Defendant reasonably conveys to consumers that these reference prices represent its own former price for that same merchandise.[18] Accordingly, the "prevailing" market price of those items can be measured exclusively by reference to Defendant's own historical sales data. Thus, Defendant's internal sales data need only be reviewed to ascertain the "prevailing" market prices for the products at issue in this case. *See People v. Super. Ct. (J.C. Penney Corp., Inc.)*, 34 Cal. App. 5th 376, 410-13 (2019) (explaining the "prevailing market price" is the most "common," "predominant," or "most widely occurring" price at which items are sold).

[18] *See* Staelin et al., *supra* at 826 (citing *Vizcarra v. Michaels Stores, Inc.*, 710 F. Supp. 3d 718, 725 (N.D. Cal. 2024)).

78. As detailed in the Third Cause of Action below, the CLRA, Cal. Civ. Code § 1770(a)(9), prohibits a business from "[a]dvertising goods or services with intent not to sell them as advertised," and subsection (a)(13) prohibits a business from "[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions."

79. As detailed herein, and for the same reason that Defendant's acts and practices violate the FAL and CLRA, thus establishing another "unlawful" act in violation of the UCL.

80. Defendant's practices, as set forth above, misled Plaintiff McCall, members of the proposed California Class and the public in the past and will continue to mislead them in the future. Consequently, Defendant's practices constitute an unlawful, fraudulent, and unfair business practice within the meaning of the UCL.

81. Defendant's violations of the UCL, through its unlawful, unfair, and fraudulent business practices, are ongoing and present a continuing threat to Plaintiffs, members of the proposed California Class, and the public who, if Defendant's false pricing scheme is permitted to continue, will continue to be deceived into purchasing products based on illegal price comparisons of arbitrary and inflated "reference" prices and substantially discounted "sales" prices. These false price comparisons created phantom markdowns and led to artificial and increased demand, which, in turn, led to higher prices and financial harm for consumers like Plaintiff McCall and the members of the proposed California Class. Because of the surreptitious nature of Defendant's deception, these injuries cannot be reasonably avoided and will continue to be suffered by the consuming public absent a mandated change in Defendant's practice.

SECOND CAUSE OF ACTION

Violation of California's False Advertising Law ("FAL")
CAL. BUS. & PROF. CODE §§ 17500, *et seq.*
(On Behalf of Plaintiff McCall and the California Class)

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

83. Plaintiff McCall brings this claim individually and on behalf of the members of the proposed California Class against Defendant for violations of California's FAL, Cal. Bus. & Prof. Code §§ 17500, *et seq*.

84. Cal. Bus. & Prof. Code § 17500 provides:

> It is unlawful for any . . . corporation . . . with intent directly or indirectly to dispose of . . . personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that . . . personal property or those services . . . 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 . . .

(emphasis added).

85. The FAL further provides:

> [N]o price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price … within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly, and conspicuously stated in the advertisement.

Cal Bus. & Prof. Code § 17501.

86. Defendant's routine of advertising discounted prices from false ticket prices, which are not and never have been the prevailing market prices of those products and were materially greater than the true prevailing prices (i.e., Defendant's average and/or most common actual sale price), constitutes an unfair, untrue, and misleading practice in violation of the FAL. This deceptive marketing practice gave consumers the false impression that the products were regularly sold on the market for a substantially higher price than they actually were; therefore, leading to the false impression that the products sold by Defendant are worth more than they actually are.

87. As a direct and proximate result of Defendant's misleading and false advertisements, as well as Defendant's deceptive and unfair acts and practices made during the course of Defendant's business, Plaintiff McCall and members of the proposed California Class suffered economic injury.

88. Plaintiff McCall, on behalf of herself and members of the proposed California Class, requests that this Court order Defendant to restore this money to Plaintiff McCall and members of the proposed California Class.

THIRD CAUSE OF ACTION

Violation of California's Consumers Legal Remedies Act ("CLRA")
CAL. CIV. CODE § 1750, *et seq.*
(On Behalf of Plaintiff McCall and the California Class)

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

90. Plaintiff McCall brings this claim individually and on behalf of the members of the proposed California Class against Defendant for violations of the CLRA, Cal. Civ. Code § 1750, *et seq*.

91. Plaintiff McCall and each member of the proposed California Class are "consumers" as defined by Cal. Civ. Code § 1761(d). Defendant's sale of products at its Michael Kors outlet stores were "transactions" within the meaning of Cal. Civ. Code § 1761(e). The products purchased by Plaintiff McCall and members of the proposed California Class are "goods" or "services" within the meaning of Cal. Civ. Code § 1761(a)-(b).

92. Defendant violated and continues to violate the CLRA by engaging in the following practices proscribed by Cal. Civ. Code § 1770(a) in transactions with Plaintiff McCall and the members of the proposed California Class, which were intended to result in, and did result in, the sale of products sold at Defendant's Michael Kors outlet stores:

a) advertising goods or services with intent not to sell them as advertised; § 1770(a)(9); and

b) making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions; § 1770(a)(13).

93. Plaintiff McCall and members of the proposed California Class are consumers who have suffered economic injury and damages, including benefit of the bargain damages, as a result of Defendant's use and employment of the false and misleading reference pricing alleged herein. Pursuant to Cal. Civ. Code § 1780(a), Plaintiff McCall additionally seeks costs and reasonable attorneys' fees pursuant to Cal. Civ. Code § 1780(e).

94. On May 10, 2023, Plaintiffs' Counsel sent Defendant a CLRA notice demand letter, which complies in all respects with § 1782(a). The letter was sent via certified mail, return receipt

requested, and advised Defendant that it was in violation of the CLRA and demanded Defendant cease and desist from such violations and make full restitution by refunding the monies unlawfully obtained from Plaintiffs and California consumers received therefrom. The CLRA letter stated that it was sent on behalf of all other similarly situated purchasers. Upon Defendant's failure to fully rectify the wrongs described in this notice letter after 30 days following receipt, Plaintiffs seek all legal damages available under the CLRA.

FOURTH CAUSE OF ACTION

Violation of Oregon's Unlawful Trade Practices Act ("UTPA")
OR. REV. STAT § 646.605, *et seq.*
(On Behalf of Plaintiff Barraclough and the Oregon Class)

95. Plaintiff Barraclough repeats and re-alleges the allegations contained in paragraphs 1-63 as if fully set forth herein.

96. Plaintiff Barraclough brings this claim individually and on behalf of the members of the proposed Oregon Class against Defendant for violations of the UTPA, ORS § 646.605 *et seq.*

97. The UTPA is Oregon's principal consumer protection statute. As the Supreme Court of Oregon has explained:

> The civil action authorized by ORS 646.638 is designed to encourage private enforcement of the prescribed standards of trade and commerce in aid of the act's public policies as much as to provide relief to the injured party. This is apparent from the section itself. It allows recovery of actual damages or $200, whichever is greater, plus punitive damages, costs, and attorney fees. . . . The evident purpose is to encourage private actions when the financial injury is too small to justify the expense of an ordinary lawsuit . . . . the legislature was concerned as much with devising sanctions for the prescribed standards of trade and commerce as with remedying private losses, and that such losses therefore should be viewed broadly. The private loss indeed may be so small that the common law likely would reject it as grounds for relief, yet it will support an action under the statute.

Weigel v. Ron Tonkin Chevrolet Co., 298 Or. 127, 134–36, 690 P.2d 488, 493–94 (1984).

98. Defendant is a "person," as defined by ORS § 646.605(4). Defendant is engaged in "trade" and "commerce" in Oregon by offering for sale goods with reference prices and discounts that directly or indirectly affect the people of Oregon, as defined by ORS § 646.605(8). The outlet products advertised by Defendant with reference prices and discounts are "goods" that are or may be obtained primarily for personal, family or household purposes, as defined by ORS § 646.605(6).

Defendant's representations of reference prices and discounts in its outlet stores are "advertisements" as defined by ORS § 646.881(1). Defendant's use of reference prices and advertised discounts are "price comparisons" as defined by ORS § 646.881(2).

99. Plaintiff Barraclough and members of the proposed Oregon Class purchased the goods advertised by Defendant with reference prices and discounts for personal, family or household purposes.

100. The unlawful methods, acts and practices pled herein were committed in the course of Defendant's business. ORS § 646.608(1).

101. Defendant's unlawful methods, acts and practices pled herein were "willful violations" of ORS § 646.608 because Defendant knew or should have known that its conduct was a violation, as defined by ORS § 646.605(10).

102. Defendant's reference prices are representations of Defendant's own "former prices," as defined by ORS § 646.885.

103. Defendant's methods, acts and practices, including Defendant's misrepresentations, active concealment and failures to disclose, violated and continue to violate the UTPA in ways including, but not limited to, the following:

i. Defendant represented its goods had characteristics or qualities that the goods did not have (specifically, Defendant represented that the goods had a value equal to the reference price, when in fact they did not and instead had a much lower true value) (ORS § 646.608(1)(e));

ii. Defendant advertised its goods with the intent not to provide the goods as advertised (specifically, Defendant represented that the goods had a value equal to the reference price, when in fact they did not and instead had a much lower true value—even lower than the "discounted" actual sales price) (ORS § 646.608(1)(i));

iii. Defendant made false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions (ORS § 646.608(1)(j));

iv. Defendant engaged in price comparison advertising in violation of ORS § 646.883(2) by failing to comply with ORS § 646.608(1)(j) and ORS § 646.608(4) (ORS § 646.608(ee));

v. Defendant engaged in price comparison advertising in violation of ORS § 646.885(2) by using terms such as "___ percent discount," "$___ discount," "___ percent off" and/or "$___ off" where the reference price was not in fact Defendant's own former price (ORS § 646.608(ee)); and

vi. Defendant engaged in other unfair or deceptive conduct in trade or commerce, as described herein. ORS § 646.608(1)(u) (ORS § 646.608(4)).

104. With respect to omissions, Defendant at all relevant times had a duty to disclose the information in question because, inter alia: (a) Defendant had exclusive knowledge of material information that was not known to Plaintiff Barraclough and members of the proposed Oregon Class; (b) Defendant concealed material information from Plaintiff Barraclough and members of the proposed Oregon Class; and/or (c) Defendant made partial representations which were false and misleading absent the omitted information.

105. Defendant's misrepresentations and nondisclosures deceive and have a tendency to deceive a reasonable consumer and the general public.

106. Defendant's misrepresentations and nondisclosures are material, in that a reasonable person would attach importance to the information and would be induced to act on the information in making purchase decisions.

107. Defendant engaged in the reckless or knowing use or employment of the unlawful methods, acts, or practices alleged herein, which have been declared unlawful by ORS § 646.608.

108. As a direct, substantial and/or proximate result of Defendant's conduct, Plaintiff Barraclough and members of the proposed Oregon Class suffered ascertainable losses.

109. Plaintiff Barraclough and members of the proposed Oregon Class would not have purchased the products at the prices they paid if they had known that the advertised reference prices and discounts were false.

110. Defendant's false reference pricing scheme fraudulently increased demand from consumers. This fraud artificially raised consumer demand for Defendant's outlet merchandise, thereby shifting the demand curve outward and enabling Defendant to charge higher prices than it otherwise could have charged.

111. The products that Plaintiff Barraclough and members of the proposed Oregon Class purchased were not, in fact, worth as much as Defendant represented them to be worth, or the actual sales price that Plaintiff Barraclough and members of the proposed Oregon Class paid for them.

112. Plaintiff Barraclough seeks, on behalf of herself and members of the proposed Oregon Class: (1) the greater of statutory damages of $200 or actual damages; (2) punitive damages; (3) appropriate equitable relief and/or restitution; and (4) attorneys' fees and costs. ORS § 646.638(3); ORS § 646.638(8).

113. This action was brought "within one year after the discovery of the unlawful method, act or practice." ORS § 646.6. The applicable limitations period is expansive and extends back decades based on the "discovery" rule explicitly provided for in the Oregon Unlawful Trade Practices Act at ORS § 646.638(6). Defendant's unlawful false discounting practices have been pervasive at its Oregon Outlet stores—and at the core of its marketing plan—for many years (the exact length of time will be subject to discovery and proof).

114. Plaintiff Barraclough and members of the proposed Oregon Class did not know, and could not have known, that these reference prices and discount representations were false. As the Oregon Supreme Court has explained, "[i]n general terms, a cause of action does not accrue under the discovery rule until the claim has been discovered or, in the exercise of reasonable care, should have been discovered." *FDIC v. Smith*, 328 Or. 420, 428, 980 P.2d 141 (1999); *see also Saenz v. Pittenger*, 78 Or.App. 207, 211–12, 715 P.2d 1126 (1986) (explaining UTPA statute of limitations begins running when plaintiff knows or should have known of the allegedly unlawful conduct).

115. Plaintiff Barraclough first learned of Defendant's false advertising scheme, and that she was likely a victim of the scheme, on July 19, 2023. Prior to that date, Plaintiff Barraclough

was not aware of Defendant's false discount advertising scheme and was not aware that the reference prices and discounts Defendant had previously advertised to her and upon which she had relied in purchasing her products were false.

116. While Plaintiff Barraclough first learned of Defendant's false advertising scheme on July 19, 2023, almost all of the members of the proposed Oregon Class are still not aware, at the time of the filing of this Complaint, of Defendant's false discount advertising scheme.

117. By Defendant's design, the false advertising scheme by its very nature is hidden and impossible for the typical consumer to discover. Consumers who shopped at Michael Kors outlet stores would have no way of knowing the true daily price histories and past selling prices for the products they viewed and purchased. Consumers would have no way of knowing that the prices printed on the product price tags were fictitious and inflated, and that the advertised discounts were false. Consumers would have no way of knowing that Defendant's false discounting practices extended across all of Defendant's outlet merchandise.

VII. PRAYER FOR RELIEF

Wherefore, Plaintiffs, on behalf of themselves and on behalf of the other members of the proposed Classes, request that this Court award relief against Defendant as follows:

A. an order certifying the Classes and designating Plaintiffs as the Class Representatives and their counsel as Class Counsel;

B. awarding Plaintiffs and members of the proposed Classes all actual, consequential, punitive, and statutory damages, as appropriate, including legal damages for Plaintiff McCall's CLRA claim;

C. awarding restitution and disgorgement of all profits and unjust enrichment that Defendant obtained from Plaintiffs and the Class members as a result of its unlawful, unfair, and fraudulent business practices described herein;

D. awarding declaratory relief as permitted by law or equity, including directing Defendant to identify, with Court supervision, victims of its misconduct and pay them all money they are required to pay;

E. awarding actual, punitive and statutory damages as permitted under the Oregon Unlawful Trade Practices Act;

F. an order that the discovery rule, pursuant to ORS § 646.638(6), applies and that the applicable limitations period—and the corresponding class period for the Oregon Class—extends back to the very first date that Defendant began engaging in the unlawful conduct alleged herein;

G. ordering Defendant to engage in a corrective advertising campaign;

H. awarding attorneys' fees and costs; and

I. for any such other further relief the Court may deem necessary or appropriate.

VIII. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial for all claims so triable.

Dated: August 6, 2025

LYNCH CARPENTER, LLP

By: */s/ Matthew J. Zevin*

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Attorneys for Plaintiffs and Proposed Class Counsel

CLRA Venue Declaration Pursuant to California Civil Code § 1780(d)

I, Matthew J. Zevin, declare under penalty of perjury the following:

1. I am an attorney duly licensed to practice before all of the courts in the State of California. I am a partner of Lynch Carpenter, LLP, and the counsel of record for the Plaintiffs in the above-entitled action.

2. On information and belief, Michael Kors (USA), Inc, ("Michael Kors" or "Defendant"), is a Delaware limited liability company with its principal executive offices in New York, New York. Plaintiffs are informed and believe that Defendant conducts sufficient business with sufficient minimum contacts in California, and/or otherwise intentionally avails itself to the California market because it advertises, markets, distributes, and/or sells Michael Kors outlet store clothing and accessories in California and throughout the United States.

3. Plaintiff McCall resides in and is a citizen of San Diego, California. On or about June 12, 2021, Plaintiff McCall purchased an item at the Michael Kors outlet store located at the Las Americas outlets in San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed August 6, 2025, in San Diego, California.

LYNCH CARPENTER, LLP

By: */s/ Matthew J. Zevin*

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mattz@lcllp.com
9171 Towne Centre Drive, Suite 180
San Diego, California 92122
Telephone: (619) 762-1910
Facsimile: (858) 313-1850

Attorneys for Plaintiffs and Proposed Class Counsel

EXHIBIT A

Michael Kors

CALIFORNIA

Item:										
										
Description:	Daria Blush Satchel Bag	Kimberly Leather Tote	Black Jacket	Regina Blush Tote	Regina Black Tote	Gold Chain Bag	Black Leather Tote	MK Tote Bag	Handbags	Luggage
Regular Price:	$398.00	$548.00	$598.00	$229	$498	$229	$289	$428	Various Prices	Various Prices
Sale Price:	50% off	$199.00	$269	50% off	50% off	$159	$149	30% off	60% off	60% off
3/1/2021	50% off	$199.00	$269	50% off	50% off	$159	$149	30% off	60% off	60% off
6/15/2021		$199.00	$269	50% off	50% off	$159	$149	30% off	60% off	60% off

EXHIBIT B

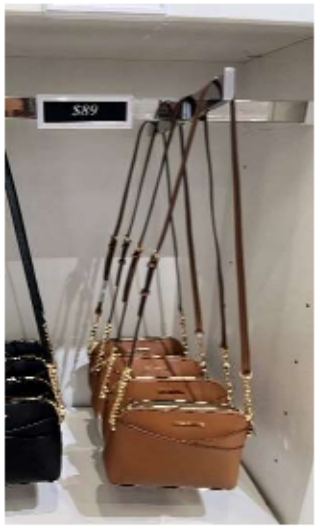
Michael Kors

Item:			
			
Description:	Jet Set - Black Tote	Sonia Snake Skin Bag	Black Basic Tee
Regular Price:	$558	$428	$78
Sale Price:	$168	$92	$49
Confirmed On Sale:			
2/7/2022	$168	$92	$49
8/25/2022	$149	$199	50% off

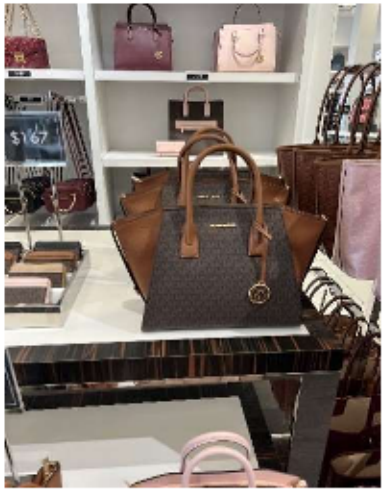
Michael Kors

Item:			
Description:	Black w Short Gold Chain	MK Crossbody Bag	Metallic MK Tee
Regular Price:	$278	$378	$78
Sale Price:	$199	$89	50% Off
Confirmed On Sale:			
2/7/2022	$199	$89	50% Off
8/25/2022	$79	$69	$29

Michael Kors

Item:			
Description:	Brown Leather Xbody	Keychain Bag	Black/GoldLeather
Regular Price:	$328	$358	$378
Sale Price:	$89	$199	$79
Confirmed On Sale:			
2/7/2022	$89	$199	$79
8/25/2022	$99	$199	$79
	$89		

Michael Kors

Item:			
Description:	Avril Satchel	MKLong Sleeve Dress	Fuzzy Logo T Shirt
Regular Price:	$398	$225	$78
Sale Price:	$167	50% off	$49
Confirmed On Sale:			
2/7/2022	$167	50% Off	$49
8/25/2022	$167	50% Off	$29

Michael Kors

Item:





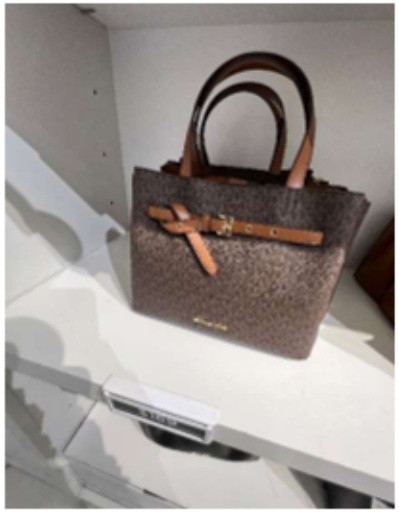
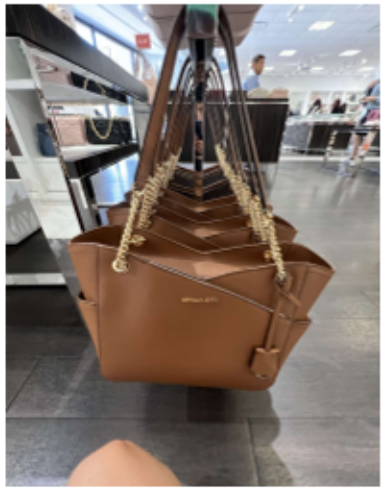


Description:	Mahattan Tote	Jet Set Travel Xbody Oval	Jet Set Travel Trifold
Regular Price:	$558	$398	$278
Sale Price:	$199	60% Off	$79
Confirmed On Sale:			
2/7/2022	$199	60% off	$79
8/25/2022	$199	$119	$79

Michael Kors

Item:			
Description:	Jet Set Travel Phone Xbody	Carmen Flap Xbody	Kenly Tote
Regular Price:	$398	$448	$498
Sale Price:	$109	$179	$149
Confirmed On Sale:			
2/7/2022	$109	$179	$149
8/25/2022	$109	$215	Off

Michael Kors

Item:			
			
Description:	Emilia Satchel	Charlotte Tote	Brown Tote w Key Tag
Regular Price:	$558	$558	$558
Sale Price:	$169	$134	$149
Confirmed On Sale:			
2/7/2022	$169	$134	$149
8/25/2022	Off	70% off	$139
		$119	$139

Michael Kors

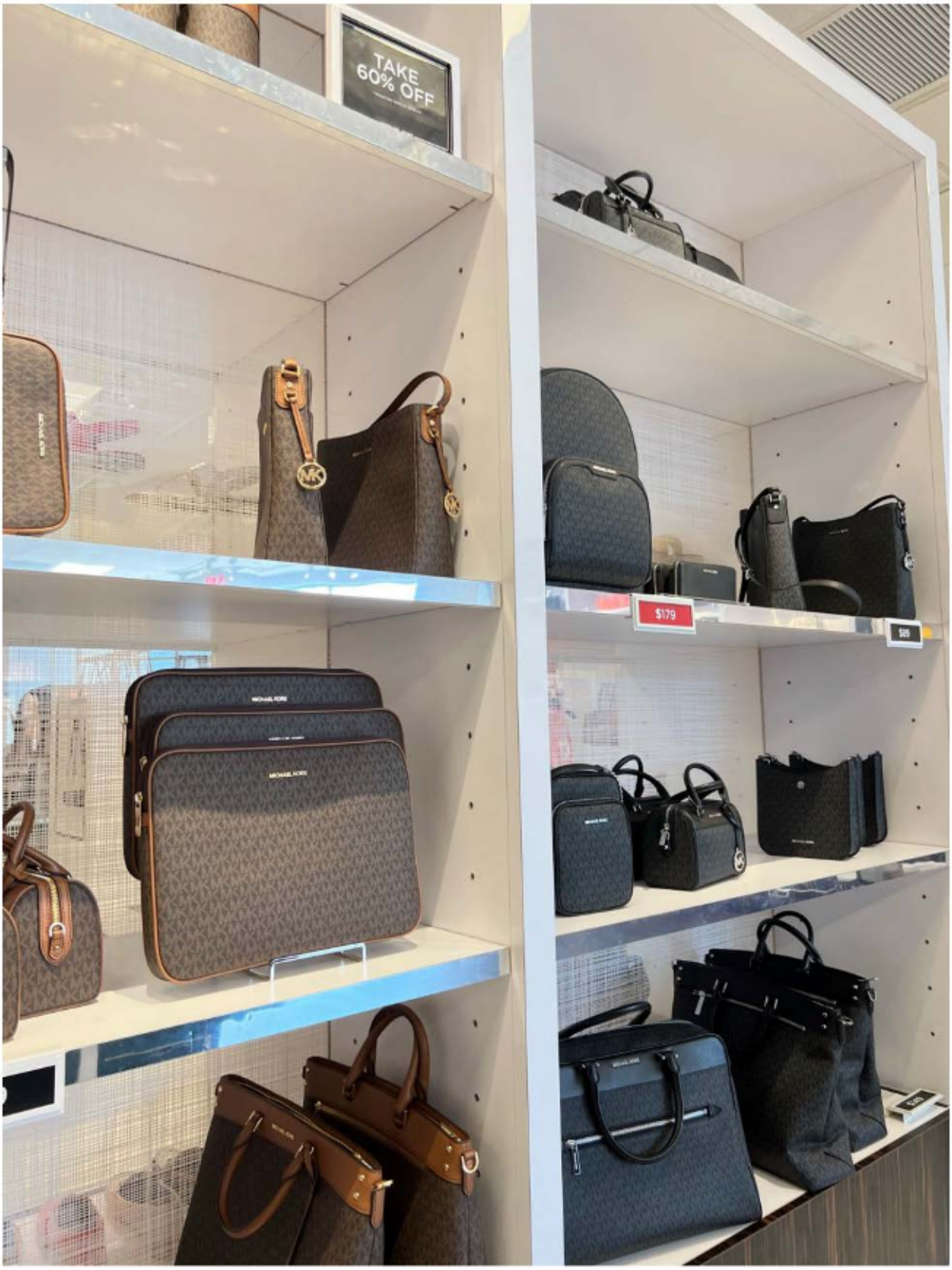
Item:			
Description:	Triple Gusset Leather Bag	Large Leather Satchel	MK Short Sleeve Dress
Regular Price:	$628	$558	$195
Sale Price:	75% off	$129	$99
Confirmed On Sale:			
2/7/2022	75% off	$129	$99
8/25/2022	$159	$129	30% off

Michael Kors

Item:			
			
Description:	Avril Small Satchel	Small Brown Handbag	Zip Chain Crossbody
Regular Price:	$498	$448	$398
Sale Price:	$99	$119	$89
Confirmed On Sale:			
2/7/2022	$99	$119	$89
8/25/2022	$99	$99	$89
		$99	

EXHIBIT C


MICH
ENJOY
UP TO
70% OFF
THE ENTIRE
STORE'


TAKE
60% OFF
$179


TAKE
40% OFF
MICHAEL KORS
TAKE
50% OFF
MICHAEL KORS


$99


MICHAEL KORS
AVRIL
35F1G4VM2L
SM TZ SATCHEL
LEATHER
NS
OUR PRICE
$498.00
MICHAEL KORS
MK


$99
$179


TAKE
60% OFF
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$99
$179


$199


TAKE
60% OFF
MICHAEL KORS


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MICHAEL
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LG TOTE
LEATHER
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MSRP $558.00
FSC FSC® C012345
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Public court record.

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Court: Superior Court of California, County of San Diego
Case number: 25CU041352N
Filed: 2025-08-06

Chimo hosts public court records for readers' reference; documents are
unaltered copies from the court docket or the court-approved settlement website.