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

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

Plaintiff,

vs.

EDDIE BAUER, LLC, a Delaware
limited liability company, and DOES 1-
50, inclusive,

Defendant.

Case No. '19CV857 BEN WVG

CLASS ACTION

COMPLAINT

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

DEMAND FOR JURY TRIAL

1 Plaintiff JACKIE FISHER brings this action on behalf of himself and all others
2 similarly situated against Defendant EDDIE BAUER, LLC (“Defendant” or “Eddie
3 Bauer”), and states:

4 **I. NATURE OF ACTION**

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

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

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

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

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

3 4. However, the “reference” price is total fiction. The “direct to outlet”
4 merchandise sold at Eddie Bauer outlet stores is created specifically for Eddie Bauer outlet
5 stores². Thus, the only market price for the Eddie Bauer “direct to outlet” store merchandise
6 is the price at which the merchandise is sold in the Eddie Bauer outlet stores.

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

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

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

27 _____
28 ² Eddie Bauer sells *some* merchandise that was originally offered for sale in its full line stores; that
merchandise is not the subject of this action.

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

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

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

20 **II. JURISDICTION AND VENUE**

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

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

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

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

6 **III. PARTIES**

7 **Plaintiff**

8 13. Jackie Fisher resides in San Diego, California. Plaintiff, in reliance on Eddie
9 Bauer's false and deceptive advertising, marketing and discounting pricing schemes,
10 purchased a "direct to outlet" Radiator Fleece ¼-zip and a Thermal ¼ zip at the Eddie Bauer
11 outlet store located at 5001 Willows Road, Space J101, Alpine, CA 91901, on or about
12 December 22, 2018. Mr. Fisher examined several fleece and thermal items within the store.
13 As he shopped, he noticed the accompanying in-store signage represented that the item he
14 preferred was being offered for "50% Off." He examined the item and evaluated the price
15 tag and the accompanying in-store signage. The Radiator Fleece ¼-zip was advertised on
16 the price tag as having a reference price of \$24.99. The in-store signage represented that the
17 fleece was "50% Off" the reference price. The second item, the thermal ¼-zip, was
18 advertised on the price tag as having a reference price of \$27.50. The in-store signage
19 represented that the thermal was "50% Off" the reference price.

20 14. After observing the price tag on the item and the accompanying signage, Mr.
21 Fisher believed that he was receiving a significant discount on the items he had chosen.
22 Because he liked the items and felt that the discounted price would likely not last, and that
23 he was getting a significant bargain on the merchandise, he proceeded to the register and
24 purchased the fleece and thermal. Mr. Fisher believed that he was purchasing authentic
25 Eddie Bauer merchandise that was previously available at the Eddie Bauer retail store or
26 other department stores and that it had been sold at the reference prices. He paid a total of
27 \$56.56.

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

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

8 **Defendant**

9 16. Plaintiff is informed and believes, and upon such information and belief
10 alleges, Defendant Eddie Bauer is a Delaware limited liability company with its principal
11 executive offices located at 10401 NE 8th Street, Suite 500, Bellevue, WA 98004. Eddie
12 Bauer maintains the Eddie Bauer brand, a line of men and women's clothing, athletic shoes,
13 home décor, bags & gear, accessories, and more. Eddie Bauer operates Eddie Bauer retail
14 and outlet stores and the Eddiebauer.com website, and advertises, markets, and sells its
15 merchandise in California and throughout the United States.

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

23 **IV. FACTUAL BACKGROUND**

24 **The Fraudulent Sale Discounting Scheme**

25 18. Eddie Bauer is a clothing store chain originally established as an outdoorsman
26 store. Eddie Bauer specializes in the sale of outdoor/athletic clothing, shoes, home décor,
27 bags & gear, accessories, and more. Eddie Bauer has approximately 370 stores nationwide.
28 Eddie Bauer distributes and distributes its products to the United States, Canada, Japan, and

1 Germany. Eddie Bauer directly markets its merchandise to consumers in the State of
2 California and throughout the United States via its in-store advertisements and its e-
3 commerce website (www.Eddiebauer.com). Eddie Bauer sells its own branded merchandise
4 at its retail stores, outlet stores, and through its e-commerce website. This case involves
5 only the Eddie Bauer branded merchandise sold “direct to outlet” at Eddie Bauer outlet
6 stores.

7 19. The Eddie Bauer “direct to outlet” merchandise sold in the Eddie Bauer outlet
8 stores is exclusively sold at the Eddie Bauer outlet stores and it is not sold anywhere else.
9 Thus, there is no other market for the Eddie Bauer outlet store merchandise other than at
10 Defendant’s Eddie Bauer outlet stores.

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

20 21. However, at no time is the Eddie Bauer “direct to outlet” store merchandise
21 ever offered for sale anywhere at the original price. The “reference” price is merely a false
22 original price, which Eddie Bauer utilizes to deceptively manufacture a deeply discounted
23 sale price referred to as the “___% Off” price on the merchandise sold at the Eddie Bauer
24 Outlet retail stores during the Class period.

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

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

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

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

23 **Plaintiff’s Investigation**

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

1 corresponding discounted price for at least the 90-day period immediately preceding
2 Plaintiff's purchase.

3 27. Plaintiff's investigation cataloged the pricing practices of Eddie Bauer's outlet
4 store located at the Viejas Outlet Center, 5001 Willows Road, Space J101, Alpine, CA
5 91901 ("Alpine"), for several months before and after Mr. Fisher's purchase. The false
6 reference price and corresponding discount price scheme was both uniform and identical
7 on almost all of the merchandise sold at Eddie Bauer's outlet stores. The only thing that
8 changed was the requisite % Off on certain merchandise items.

9 28. The fraudulent pricing scheme applies to all Eddie Bauer outlet store
10 merchandise offered on sale at the Eddie Bauer outlet store, including the Radiator Fleece
11 and Thermal purchased by Plaintiff.

12 **Plaintiff and the Class are Injured by Eddie Bauer's Deceptive Pricing Scheme**

13 29. The reference prices listed and advertised on Eddie Bauer's direct to outlet
14 store products are fake reference prices, utilized only to perpetuate Eddie Bauer's fake
15 discount scheme.

16 30. Eddie Bauer knows that its comparative price advertising is false, deceptive,
17 misleading, and unlawful under California and federal law.

18 31. Eddie Bauer fraudulently concealed from and intentionally failed to disclose
19 to Plaintiff and other members of the Class the truth about its advertised discount prices and
20 former reference prices.

21 32. At all relevant times, Eddie Bauer has been under a duty to Plaintiff and the
22 Class to disclose the truth about its false discounts.

23 33. Plaintiff relied upon Eddie Bauer's artificially inflated "reference" price and
24 false discounts when purchasing the Radiator Fleece and Thermal from Eddie Bauer.
25 Plaintiff would not have made such purchase but for Eddie Bauer's representations
26 regarding the false "reference" price and the fictitious sales price of the merchandise.
27 Plaintiff may in the future shop at Eddie Bauer's outlet stores.

28 34. Plaintiff and the Class reasonably and justifiably acted and relied on the

1 substantial price differences that Eddie Bauer advertised, and made purchases believing that
2 they were receiving a substantial discount on an item of greater value than it actually was.
3 Plaintiff, like other Class members, was lured in, relied on, and was damaged by the
4 deceptive pricing scheme that Eddie Bauer carried out.

5 35. Eddie Bauer intentionally concealed and failed to disclose material facts
6 regarding the truth about false former price advertising in order to provoke Plaintiff and the
7 Class to purchase merchandise in its Eddie Bauer outlet stores.

8 **V. CLASS ALLEGATIONS**

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

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

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

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

27 38. **Existence and Predominance of Common Questions of Law and Fact:** This
28

1 action involves common questions of law and fact, which predominate over any questions
2 affecting individual Class members. These common legal and factual questions include,
3 but are not limited to, the following:

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

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

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

28 41. **Superiority:** The nature of this action and the nature of laws available to

1 Plaintiff and the Class make the use of the class action format a particularly efficient and
2 appropriate procedure to afford relief to him and the Class for the wrongs alleged. The
3 damages or other financial detriment suffered by individual Class members is relatively
4 modest compared to the burden and expense that would be entailed by individual litigation
5 of their claims against Eddie Bauer. It would thus be virtually impossible for Plaintiff and
6 Class members, on an individual basis, to obtain effective redress for the wrongs done to
7 them. Absent the class action, Class members and the general public would not likely
8 recover, or would not likely have the chance to recover, damages or restitution, and Eddie
9 Bauer will be permitted to retain the proceeds of its fraudulent and deceptive misdeeds.

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

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

25 VI. CAUSES OF ACTION

26 FIRST CAUSE OF ACTION 27 **Violation of California's Unfair Competition Law ("UCL")** 28 **California Business and Professions Code § 17200, *et seq.***

44. Plaintiff repeats and re-alleges the allegations contained in every preceding

1 paragraph as if fully set forth herein.

2 45. The UCL defines “unfair business competition” to include any “unlawful,
3 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading”
4 advertising. Cal. Bus. Prof. Code § 17200.

5 46. The UCL imposes strict liability. Plaintiff need not prove that Eddie Bauer
6 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices –
7 but only that such practices occurred.

8 ***“Unfair” Prong***

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

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

20 49. The harm to Plaintiff and Class members outweighs the utility of Eddie
21 Bauer’s practices. There were reasonably available alternatives to further Eddie Bauer’s
22 legitimate business interests other than the misleading and deceptive conduct described
23 herein.

24 ***“Fraudulent” Prong***

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

27 51. Eddie Bauer’s acts and practices alleged above constitute fraudulent business
28 acts or practices as they have deceived Plaintiff and are highly likely to deceive members

1 of the consuming public. Plaintiff relied on Eddie Bauer’s fraudulent and deceptive
2 representations regarding its “reference” prices for the direct to outlet products which Eddie
3 Bauer sells exclusively at its Eddie Bauer outlet stores. These misrepresentations played a
4 substantial role in Plaintiff’s decision to purchase those products at steep discounts, and
5 Plaintiff would not have purchased those products without Eddie Bauer’s
6 misrepresentations.

7 52. A business act or practice is “unlawful” under the UCL if it violates any other
8 law or regulation.

9 **“Unlawful” Prong**

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

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

28 (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 her business, honestly and in good faith – and, of

1 course, not for the purpose of establishing a fictitious higher price on which a
2 deceptive comparison might be based.

3 16 C.F.R. § 233.1(a) and (b) (emphasis added).

4 54. In addition to federal law, California law also expressly prohibits false former
5 pricing schemes. California’s False Advertising Law, Bus. & Prof. Code §17501, (“FAL”),
6 entitled “*Worth or value; statements as to former price,*” states:

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

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

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

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

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

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

26 58. Eddie Bauer’s practices, as set forth above, have misled Plaintiff, the proposed
27 Class, and the public in the past and will continue to mislead in the future. Consequently,
28 Eddie Bauer’s practices constitute an unlawful, fraudulent, and unfair business practice

1 within the meaning of the UCL.

2 59. Eddie Bauer’s violation of the UCL, through its unlawful, unfair, and
3 fraudulent business practices, are ongoing and present a continuing threat that Class
4 members and the public will be deceived into purchasing products based on price
5 comparisons of arbitrary and inflated “reference” prices and substantially discounted sale
6 prices. These false comparisons created phantom markdowns and lead to financial damage
7 for consumers like Plaintiff and the Class.

8 60. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent
9 injunctive relief and order Eddie Bauer to cease this unfair competition, as well as
10 disgorgement and restitution to Plaintiff and the Class of all Eddie Bauer’s revenues
11 associated with its unfair competition, or such portion of those revenues as the Court may
12 find equitable.

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

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

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

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

24 (Emphasis added).

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

27 64. Similarly, this section provides, “no price shall be advertised as a former price
28

1 of any advertised thing, unless the alleged former prices was the prevailing market
2 price...within three months next immediately preceding the publication of the
3 advertisement or unless the date when the alleged former price did prevail is clearly,
4 exactly, and conspicuously stated in the advertisement.” Cal Bus. & Prof. Code § 17501.

5 65. Eddie Bauer’s routine of advertising discounted prices on the “direct to outlet”
6 merchandise from false “reference” prices, which were never the prevailing market prices
7 of those products and were materially greater than the true prevailing prices, was an unfair,
8 untrue, and misleading practice. This deceptive marketing practice gave consumers the
9 false impression that the products were regularly sold on the market for a substantially
10 higher price than they actually were; therefore, leading to the false impression that the
11 products sold on at the Eddie Bauer’s outlet store were worth more than they actually were.

12 66. Eddie Bauer misled consumers by making untrue and misleading statements
13 and failing to disclose what is required as stated in the Code alleged above.

14 67. As a direct and proximate result of Eddie Bauer’s misleading and false
15 advertisements, Plaintiff and Class members have suffered injury in fact and have lost
16 money. As such, Plaintiff requests that this Court order Eddie Bauer to restore this money
17 to Plaintiff and all Class members, and to enjoin Eddie Bauer from continuing these unfair
18 practices in violation of the UCL in the future. Otherwise, Plaintiff, Class members, and
19 the broader general public, will be irreparably harmed and/or denied an effective and
20 complete remedy.

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

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

26 69. This cause of action is brought pursuant to the CLRA, Cal. Civ. Code § 1750,
27 *et seq.* Plaintiff and each member of the proposed Class are “consumers” as defined by Cal.
28 Civ. Code § 1761(d). Eddie Bauer’s sale of its direct to outlet merchandise in its retail outlet
store to Plaintiff and the Class were “transactions” within the meaning of Cal. Civ. Code §

1 1761(e). The products purchased by Plaintiff and the Class are “goods” within the meaning
2 of Cal. Civ. Code § 1761(a).

3 70. Eddie Bauer violated and continues to violate the CLRA by engaging in the
4 following practices proscribed by Cal. Civ. Code § 1770(a) in transactions with Plaintiff
5 and the Class which were intended to result in, and did result in, the sale of its merchandise:

6 a. Advertising goods or services with intent not to sell them as advertised;
7 (a)(9);

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

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

20 **VII. PRAYER FOR RELIEF**

21 72. Wherefore, Plaintiff, on behalf of himself and on behalf of the other members
22 of the Class, requests that this Court award relief against Eddie Bauer as follows:

23 a. An order certifying the class and designating Jackie Fisher as the Class
24 Representative and his counsel as Class Counsel;

25 b. Awarding Plaintiff and the proposed Class members damages;

26 c. Awarding restitution and disgorgement of all profits and unjust
27 enrichment that Eddie Bauer obtained from Plaintiff and the Class
28 members as a result of its unlawful, unfair, and fraudulent business

1 practices described herein;

- 2 **d.** Awarding declaratory and injunctive relief as permitted by law or
3 equity, including: enjoining Eddie Bauer from continuing the unlawful
4 practices as set forth herein, and directing Eddie Bauer to identify,
5 with Court supervision, victims of its misconduct and pay them all
6 money they are required to pay;
- 7 **e.** Order Eddie Bauer to engage in a corrective advertising campaign;
- 8 **f.** Awarding attorneys' fees and costs; and
- 9 **g.** For such other and further relief as the Court may deem necessary or
10 appropriate.

11 **VIII. DEMAND FOR JURY TRIAL**

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

13
14 Dated: May 7, 2019

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15
16 /s/ Todd D. Carpenter

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