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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JAMES WALDRON and MATTHEW
VILLANI, individually and on behalf of
all others similarly situated,

Plaintiffs,

-against-

JOS. A. BANK CLOTHIERS, INC.,

Defendant.

No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs James Waldron and Matthew Villani (“Plaintiffs”), by and through their attorneys, brings this class action complaint on their own behalf and on behalf of all others similarly situated, to obtain an injunction, damages, costs of suit, and attorneys’ fees from defendant Jos. A. Bank Clothiers, Inc. (“Jos. A. Bank” or the “Company”). Plaintiffs complain and allege upon knowledge as to themselves and their own acts, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. This is a nationwide class action against Jos. A. Bank on behalf of all persons and entities in the United States who purchased Jos. A. Bank merchandise in any state (or, in the alternative, any person or entity who purchased Jos. A. Bank merchandise in the State of New Jersey) (the “Class”) from April 5, 2006 to present (the “Class Period”).

2. Throughout the class period, Jos. A. Bank marketed its merchandise to consumers through a variety of means, including internet, email, direct mail, print, radio advertising, television advertising and in-store signage. During this time, Jos. A. Bank misrepresented their merchandise as being offered “on sale” at a discounted price, lower than the stated “regular price” when, contrary to this representation, the merchandise is perpetually “on sale,” and the “sale price” is actually the price at which Jos. A. Bank regularly offers their merchandise for sale.

3. Indeed, it appears that nearly all Jos. A. Bank merchandise was sold at a “sale price” during the Class Period and that merchandise was rarely, if ever, sold at “regular price.”

4. Each advertised sale is described as being of a limited duration, thus creating the false impression that the price of the merchandise will increase back to the “regular price” if a consumer does not make a purchase by the end of the sale. To increase a consumer’s sense of urgency about the expiration of the sale, Jos. A. Bank’s advertisements use expressions such as “Final Day!”, “2 Days Only!”, “Monday & Tuesday Only!”, “Today Only!”, “1-Day Only!”, “Final Hours!”, etc. As a result, consumers are misled into believing that the “sale” is a limited time event. However, there are no “final days” to sales offered by Jos. A. Bank, as the Company places merchandise back “on sale” immediately after a given sale ends. At the end of the sale the price does not increase back to the “regular price,” as each “sale” is followed by another

“sale,” sometimes offering the merchandise for a similar sale price, and the sale terms are just phrased differently.

5. Nonetheless, Jos. A. Bank continues to advertise, promote and sell its merchandise under the guise that it is “on sale” and will return to its “regular price” if consumers do not act quickly to purchase items at the sale prices. Jos. A. Bank uses this method of advertising knowing that consumers would rely on the misrepresentation that the Company’s merchandise is on sale, creating a false sense of urgency to purchase Jos. A. Bank’s merchandise. Accordingly, Jos. A. Bank’s advertisements and promotions to sell its merchandise are perpetually false and misleading.

6. Jos. A. Bank’s misleading, inaccurate and deceptive marketing cultivates the perception that consumer are being offered a discount from the Company’s regular prices when, in fact, they are not. Plaintiffs and the Class were intended to and did rely upon Jos. A. Bank’s representations when they purchased Jos. A. Bank merchandise. Plaintiffs and the Class would not have purchased Jos. A. Bank merchandise, or would have paid significantly less for the merchandise, if Jos. A. Bank had not represented that the merchandise had a “regular price” that was well above the “sale” price. As a result, Jos. A. Bank has handsomely profited from its misrepresentations to the detriment of Plaintiffs and the Class, which constitute a violation of the New Jersey Consumer Fraud Act, N.J.S.A. § 56:9-1 *et seq.*, among other claims as further set forth herein.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d). The aggregated claims of the individual Class members exceed the sum or value of \$5,000,000, exclusive of interests and costs, and this is a class action in which more

than two-thirds of the proposed Class, on the one hand, and Defendant Jos. A. Bank, on the other, are citizens of different states.

8. This Court has jurisdiction over Jos. A. Bank because it maintains numerous retail stores throughout New Jersey; is registered to conduct business in New Jersey; has sufficient minimum contacts in New Jersey; or otherwise intentionally avails itself of the markets within New Jersey through the promotion, sale, marketing, and distribution of Jos. A. Bank merchandise to render the exercise of jurisdiction by this Court proper and necessary. Moreover, Jos. A. Bank's wrongful conduct (as described herein) occurs in New Jersey and foreseeably affects consumers in New Jersey.

THE PARTIES

9. Plaintiff James Waldron is a citizen of the State of New Jersey. Mr. Waldron purchased Jos. A. Bank merchandise during the Class Period. At the time of his purchase, Jos. A. Bank marketed, advertised and promoted its merchandise as being "on sale." However, in contrast to the manner in which Jos. A. Bank merchandise was marketed, advertised and promoted, the merchandise purchased by Mr. Waldron was not "on sale," and the regular price was not the actual price of the merchandise, as represented. As a result of Jos. A. Bank's misleading, and/or inaccurate, and/or deceptive marketing, advertising and promotion of its merchandise, Mr. Waldron suffered an ascertainable loss. Had Jos. A. Bank informed Mr. Waldron at the time of his purchase that the merchandise he purchased was not "on sale," and that the merchandise did not have a "regular price" that was well above the "sale" price. He would not have purchased the merchandise or would have paid substantially less for the merchandise that he purchased.

10. Plaintiff Matthew Villani is a citizen of the State of New Jersey. Mr. Villani purchased Jos. A. Bank merchandise during the Class Period. At the time of his purchase, Jos. A. Bank marketed, advertised and promoted its merchandise as being “on sale.” However, in contrast to the manner in which Jos. A. Bank merchandise was marketed, advertised and promoted, the merchandise purchased by Mr. Villani was not “on sale,” and the regular price was not the actual price of the merchandise, as represented. As a result of Jos. A. Bank’s misleading, and/or inaccurate, and/or deceptive marketing, advertising and promotion of its merchandise, Mr. Villani suffered an ascertainable loss. Had Jos. A. Bank informed Mr. Villani at the time of his purchase that the merchandise he purchased was not “on sale,” and that the merchandise did not have a “regular price” that was well above the “sale” price. He would not have purchased the merchandise or would have paid substantially less for the merchandise that he purchased.

11. Jos. A. Bank is a Delaware corporation authorized to do business in New Jersey with its corporate headquarters and principal place of business located at 500 Hanover Pike, Hampstead, Maryland 21074. At all times relevant hereto, Jos. A. Bank was in the business of distributing, advertising, marketing, promoting, and/or selling its merchandise in interstate commerce and in New Jersey.

PLAINTIFFS’ CLASS ALLEGATIONS

12. Plaintiffs seek to bring this case as a nationwide class action on behalf of themselves and all others similarly situated in the United States as members of the proposed Class, defined, in the alternative, as follows:

All persons and entities in the United States who purchased Jos. A. Bank merchandise from April 5, 2006 to present;

or

All persons and entities in the United States who purchased Jos. A. Bank merchandise in the State of New Jersey from April 5, 2006 to present.

13. Excluded from the Class are all claims for wrongful death, survivorship and/or personal injury by Class members. Also excluded from the Class is Jos. A. Bank, any entity in which Jos. A. Bank has a controlling interest, and its legal representatives, heirs, and successors.

NUMEROSITY

14. The Class is so numerous that joinder of all of its members is impractical. Upon information and belief, Jos. A. Bank has sold thousands of items of merchandise throughout the United States and the State of New Jersey.

15. Although the precise number of Class members is unknown to Plaintiffs, that information is readily ascertainable from Jos. A. Bank's records.

COMMON QUESTIONS OF LAW AND FACT

16. Common questions of law and fact exist as to all Class members. These questions predominate over questions affecting only individual Class members. These common legal and factual questions include but are not limited to the following:

- a. Whether Jos. A. Bank misrepresented the regular price of its merchandise;
- b. Whether Jos. A. Bank's merchandise is perpetually "on sale";
- c. Whether the "sale price" of Jos. A. Bank merchandise is actually the "regular price" at which Jos. A. Bank offers their merchandise for sale;
- d. Whether Jos. A. Bank misrepresented that its merchandise was "on sale" for a limited duration, thus creating the false impression that the price of the merchandise would increase back to the "regular price" if a consumer did not make a purchase by the end of the sale;
- e. Whether Jos. A. Bank misrepresented material facts in connection with the marketing and sale of its merchandise;

- f. Whether Jos. A. Bank's acts, practices and misrepresentations in connection with the promotion and sale of its merchandise violate the New Jersey Consumer Fraud Act;
- g. Whether Jos. A. Bank was unjustly enriched as a result of its acts, practices and misrepresentations and Plaintiffs and the Class are entitled to restitution as a result; and
- h. Whether Plaintiffs and the Class are entitled to an injunction, declaratory judgment, damages, treble damages, and attorneys' fees.

TYPICALITY

17. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs and each member of the proposed Class purchased Jos. A. Bank merchandise during the Class Period. In connection with their respective purchases, Plaintiffs and each Class member were subject to the same misleading representations regarding the retail price, sale price, and/or duration of the "sale" for Jos. A. Bank merchandise. Similarly, Plaintiffs and all Class members sustained damages which were directly caused by Jos. A. Bank's actions as alleged herein.

ADEQUACY OF REPRESENTATION

18. Plaintiffs can and will fairly and adequately represent and protect the interests of the Class and have no interests that conflict with or are antagonistic to the interests of the Class. Plaintiffs have retained attorneys competent and experienced in class action litigation.

SUPERIORITY

19. A class action is superior to any other available method for the fair and efficient adjudication of this controversy, since, as demonstrated above, common questions of law and fact overwhelmingly predominate over any individual questions that may arise.

20. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Jos. A. Bank, or adjudication with respect to individual members of the Class which would, as a practical matter, be dispositive of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

21. Jos. A. Bank has acted or refused to act on grounds generally applicable to all Class members, thereby making appropriate any final judgment with respect to the Class as a whole.

SUBSTANTIVE ALLEGATIONS

22. Jos. A. Bank, established in 1905, is one of the nation's leading retailers of men's classically-styled tailored and casual clothing, sportswear, footwear and accessories. In 2010, it had net sales of \$858.1 million and spent \$326.5 million on sales and marketing.

23. Jos. A. Bank sells its full product line in over 500 stores in 42 states and the District of Columbia.

24. The Company maintains an e-commerce website, www.josbank.com, which allows consumers throughout the United States, including New Jersey, to view marketing, advertising and promotional information pertaining to Jos. A. Bank merchandise, as well as to purchase Jos. A. Bank merchandise. The website prominently, and consistently, displays that its merchandise is currently "on sale."

25. Jos. A. Bank also produces television and radio commercials specifically touting its sales, engages in direct mail marketing, and has a nationwide catalog for its merchandise.

26. However, Jos. A. Bank does not actually offer for sale or sell its merchandise at the advertised “regular price.” Instead, Jos. A. Bank conducts “sale” after “sale.” Because the merchandise is perpetually “on sale,” the so-called “sale price” is actually the price at which Jos. A. Bank regularly offers for sale and sells its merchandise.

27. Jos. A. Bank’s merchandise appears to have been continually on sale for years, even though each advertised sale is described as being of limited duration, thus creating the false and misleading impression that the price will increase back to the “regular price” if a consumer does not make a purchase by the end of the sale. In fact, the price does not increase back to the regular price at the conclusion of the sale, as each “sale” is followed by another one.

28. For example, since the beginning of 2012, Jos. A. Bank has continuously advertised that its merchandise was “on sale.” The following chart sets forth Jos. A. Bank’s examples of advertised sales that were promoted through email, online and direct marketing for various merchandise during the sample period of January 1, 2012 – March 4, 2012. Jos. A. Bank advertised similar “sales” continuously before and after the sample period. For example, on January 1, 2012, Jos. A. Bank emailed consumers that the Company’s merchandise was going to be “on sale” for “2 Days Only!” To increase the consumers’ sense of urgency about the expiration of the sale, on January 2, 2012, Jos. A. Bank again emailed consumers to alert that the “sale” was in its “Final Day.” However, January 2, 2012 was not a “final day” of the sale being offered by Jos. A. Bank on its merchandise, because the Company placed its merchandise back “on sale” immediately after the January 1-2, 2012 sale ended. At the end of the January 1-2, 2012 “sale,” the price of the Jos. A. Bank merchandise did not increase back to the stated “regular price” of the merchandise, as this “sale” is followed by another “sale” starting on

January 3, 2012. As depicted in the chart below, Jos. A. Bank’s merchandise is continually “on sale”:

<u>“Sale” Start Date</u>	<u>“Sale” End Date</u>	<u>“Sale” Description</u>
January 1	January 2	2 Days Only! Final Day - 70% OFF EVERY SUIT Online! 50% OFF Every Dress Shirt and more
January 3	January 5	EXTRA 25% OFF Any 2nd Sale Suit or Sportcoat! Plus 60% OFF Specials
January 6	January 8	Weekend DOORBUSTER’S! Plus EXTRA 25% Off Any 2nd Suit, Sportcoat, Outerwear Coat or Sweater Thru Sunday - 70% OFF Specials Plus EXTRA 25% Off Any 2nd Suit, Sportcoat, Outerwear or Sweater
January 9	January 13	SALE & CLEARANCE Up to 70% OFF! Today Only! Get 50-70% OFF EVERYTHING Online Plus FREE SHIPPING Final Hours - Get 50-70% OFF EVERYTHING Online Plus FREE SHIPPING Until Midnight PT
January 14	January 16	2-Days! FREE Shipping Plus Any 2nd Sale Suit Only \$97 – All Executive Suits \$177, 2nd \$97 FINAL DAY! FREE SHIPPING Plus ALL Executive Suits Only \$137 When You Buy 2
January 17	January 18	60% OFF ALL Dress Shirts & Ties with Any Suit Purchase! Plus 50-70% OFF Everything Online! Final Day! 50-70% OFF Everything Online! Final Hours - 50-70% OFF Everything Online! - Until Midnight PT
January 19	January 22	Save 60-70% OFF Plus Dress Shirts only \$29.99 Held Over: 50-70% OFF Everything Online! Today Only Weekend DOORBUSTER’S! Plus FREE Shipping & EXTRA \$50 OFF Savings - Starting at 1am Tonight! Today Only! DOORBUSTER’S Plus EXTRA \$50

		OFF Savings & FREE Shipping
January 23	January 24	Get ANY 2nd Item Online for \$1! Plus FREE Shipping - 2-Days Only Final Day! Get ANY 2nd Item Online for \$1! Plus FREE Shipping FINAL HOURS - Get ANY 2nd Item Online for \$1! Plus FREE Shipping
January 25	January 26	Get 6 Items FREE! 2 Suits, 2 Shirts, 2 Ties FREE - 2 Days Only Final Day - Get 6 Items FREE! Plus 50% Everything Else Online
January 27	January 29	Friday & Saturday Only - Get 2 Suits, 2 Shirts & 2 Ties FREE! Plus FREE Shipping Final Day - Buy ANY Suit, Get 2 Suits, 2 Shirts & 2 Ties FREE! Plus FREE Shipping Don't Miss - Buy ANY Suit, Get 2 Suits, 2 Shirts & 2 Ties FREE!...Until Midnight PT HELD OVER Today Only - Get 2 Suits, 2 Shirts & 2 Ties FREE!
January 30	February 6	Get a 3rd Suit, Pant, Shirt or Tie FREE! Buy Any 2 Suits On Sale Get a 3 rd FREE! New Clearance Markdowns - Plus Buy a \$199 Sportcoat, Get 3 Items FREE! Private Offer Thru Monday - Plus New Clearance Markdowns Thru Monday - Clearance Markdowns Plus Get 3 Items FREE with Any \$199 Sportcoat Today & Monday - Get 3 Items FREE with Any \$199 Sportcoat Plus New Clearance Markdowns Final Day! Private Offer Plus Buy Any \$199 Sportcoat Get 3 Items FREE!
February 7	February 7	1-Day Only! Get 5 Items FREE...starting at 1am tonight Today Only! Buy 1 Suit or Sportcoat, Get 1 FREE Plus 2 Shirts & 2 Ties FREE

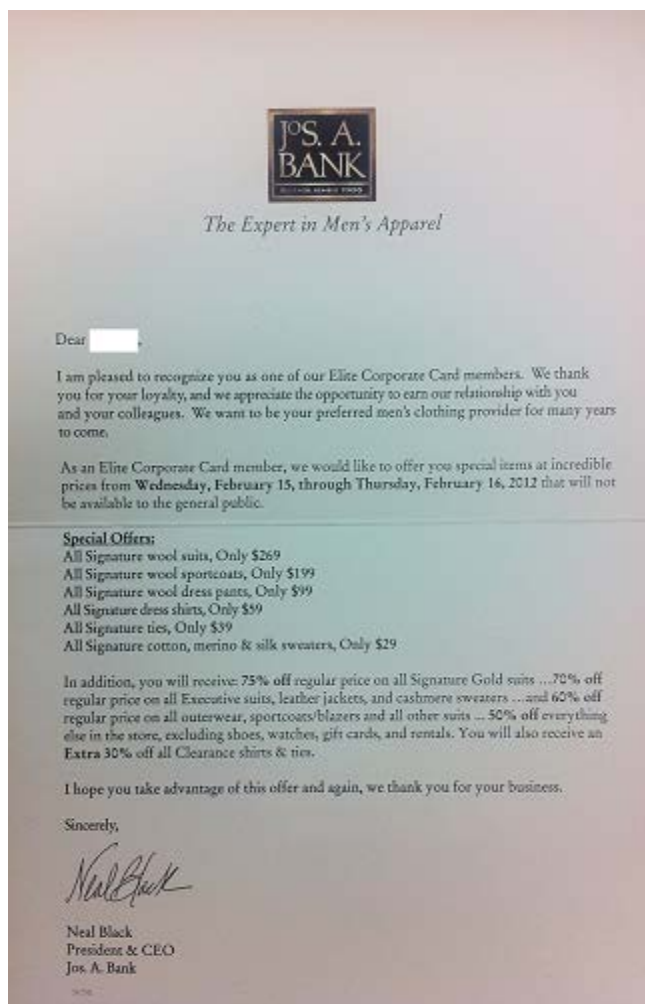
		Final Hours - Get 5 Items FREE until Midnight PT
February 8	February 12	33% OFF ALL Ties, Pants and more! Plus Get a 3rd Suit FREE Huge Selection of Suits On Sale – Buy 2 Get 3rd FREE! Get a 3rd Suit FREE Plus 33% OFF ALL Traveler Dress Shirts, Ties & more! 2 Days Only! New Suits Markdowns, Plus 33% Off All Traveler Dress Shirts, Pants & Ties Final Day! Suits Markdowns, Plus 33% Off All Traveler Dress Shirts, Pants & Ties
February 13	February 14	Monday & Tuesday Only - EXTRA \$25 OFF Every \$150 You Spend! Final Day - EXTRA \$25 OFF Every \$150 You Spend!
February 15	February 16	2-Days Only! Doorbuster's To 75% OFF Plus EXTRA 30-40% OFF Clearance! Final Day! Don't miss EXTRA 30-40% OFF Clearance plus \$29 Sweaters! FINAL HOURS! EXTRA 30-40% OFF Clearance
February 17	February 18	FREE SHIPPING Plus 50% OFF SALE - All Suits, Sportcoats, Ties and more! HELD OVER - Today Only! EXTRA 30-40% OFF Clearance Plus FREE Shipping
February 19	February 20	Get 5 Items FREE! 1 Suit, 2 Shirts & 2 Ties FREE Plus FREE SHIPPING - 2-Days Only Last Chance - Get 5 Items FREE! 1 Suit, 2 Shirts & 2 Ties FREE Plus FREE SHIPPING - Today Only
February 21	February 26	Suits Up To 70% OFF - Plus "ALL" Clearance Reduced 25% ALL Clearance "Reduced" 25%! Plus ALL Suits Up To 70% OFF Thru Sunday Only - EXTRA 25% OFF All Remaining Clearance! Final 2 Days! EXTRA 25% OFF All Remaining

		Clearance - Plus Additional Sitewide Values Final Day - EXTRA 25% OFF All Remaining Clearance... until Midnight PT
February 27	March 4	1/2 OFF EVERYTHING ONLINE...New! Spring Merchandise Now Available 1/2 OFF EVERYTHING ONLINE! Limited Time Offer... Final 2 Days - 1/2 OFF EVERYTHING ONLINE! Final Day! 1/2 OFF EVERYTHING ONLINE

29. Additionally, Jos. A. Bank further deceives consumers by sending direct mailings to consumers that have a Jos. A Bank Corporate Cards, which is a free card that Jos. A. Bank offers to consumers that offers 20% off its “regular” priced merchandise. Jos. A. Bank uses their Corporate Card program as another means to further their misleading and deceptive acts. Direct mailings to its Corporate Card consumers represent that these consumers are receiving special limited time “sale” offers which are “not available to the general public,” when in fact the same exact offers are available to the public. For example, as shown below, Jos. A. Bank advertised to the Corporate Card consumers that they were receiving “special offers” that were “not available to the general public.” However, these “special offers” for merchandise that were “on sale” were in reality being offered to the public, contrary to the representations by Jos. A. Bank. Below is an example of the February 15 and 16 direct mailing to Corporate Card members from Jos. A. Bank:



30. At the same time, Jos. A. Bank also sends direct mailings to its “Elite” Corporate Card Customers consumers representing that they too are receiving special limited time “sale” offers are “not available to the general public,” when in fact the same exact offers are available to the public. For example, as shown below, Jos. A. Bank advertised to the Elite Corporate Card consumers that they were receiving “special offers” that were “not available to the general public.” However, these “special offers” for merchandise that were “on sale” were in reality being offered to the both the public and regular Corporate Card customers, contrary to the representations by Jos. A. Bank. Below is an example of the February 15 and 16 direct mailing to Elite Corporate Card consumers from Jos. A. Bank:



31. Further compounding the deceptive acts of Jos. A. Bank is that the Company previously agreed to stop engaging in such practices when the Company entered into an Assurance of Discontinuance with the Attorney General of the State of New York. In 2004, Jos. A. Bank agreed to not engage in any deceptive acts and practices or false advertising in violation of NY GBL §§ 349 and 350, as well as, not to advertise, or offer to sell, any item at a “sale” or discount from a purported “regular” or comparably-termed price unless that price is the actual, bona fide price at which the item was openly, actively and regularly offered for sale by Jos. A. Bank, for a reasonably substantial period of time, in the recent, regular course of its business, and not for the purpose of establishing a fictitious higher price on which a deceptive comparison

might be based. However, as manifested above, Jos. A. Bank has blatantly disregarded its Assurance of Discontinuance and continues to utilize identical, misleading and deceptive promotional material and advertising campaigns.

32. The promotional material and advertising campaign utilized by Jos. A. Bank is false, misleading and deceptive. It misleads consumers to believe that they are being offered a discount from the Company's regular prices when, in fact, they are not.

33. Plaintiffs and the Class did, in fact, rely on Jos. A. Bank's representation that its merchandise was "on sale" when purchasing the merchandise, and would not have rushed purchased it, or would have paid substantially less for it, had the misrepresentations not been made.

34. As a result of Jos. A. Bank's misrepresentations, Plaintiffs and the Class have been injured and damaged, all to the financial benefit of Jos. A. Bank.

COUNT I

VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT

35. Plaintiffs reallege and incorporate by reference each and every allegation above as though fully set forth herein.

36. The New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-2, provides:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice....

37. Jos. A. Bank's business practices of marketing, advertising and promoting its merchandise in a misleading, and/or inaccurate, and/or deceptive manner by misrepresenting its

merchandise as “on sale” constitutes the use by Jos. A. Bank of unconscionable commercial practices, deception, and misrepresentation and, thus constitutes multiple, separate violations of the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.*

38. In marketing, advertising and promoting its merchandise, Jos. A. Bank made the misrepresentations set forth herein across the United States, including in New Jersey.

39. Jos. A. Bank misrepresented its merchandise as being “on sale” while failing to disclose the fact that their merchandise is not in fact being offered as a discount from the Company’s regular prices.

40. Jos. A. Bank’s conduct has the capacity to mislead or deceive consumers, including Plaintiffs and members of the Class.

41. Jos. A. Bank’s unconscionable commercial practices, false promises, misrepresentations and omissions set forth herein are material in that they relate to matters which reasonable persons, including Plaintiffs and members of the Class, would attach importance in their purchasing decisions or conduct regarding the purchase of Jos. A. Bank merchandise.

42. As a result of Jos. A. Bank’s practices as set forth herein, Plaintiffs and members of the Class have suffered an ascertainable loss and are entitled to damages.

43. As a direct and proximate result of Jos. A. Bank’s conduct, Plaintiffs and the Class are entitled to treble damages and attorneys’ fees.

COUNT II

UNJUST ENRICHMENT AND COMMON LAW RESTITUTION

44. Plaintiffs reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein.

45. As a result of Jos. A. Bank's wrongful and deceptive conduct, Plaintiffs and members of the Class have suffered a detriment while Jos. A. Bank has received a benefit.

46. Jos. A. Bank's misleading, inaccurate and deceptive marketing cultivates the perception that consumer are being offered a discount from the Company's regular prices when, in fact, they are not. Plaintiffs and the Class were intended to and did rely upon Jos. A. Bank's representations when they purchased the Jos. A. Bank merchandise. Plaintiffs and the Class would not have purchased Jos. A. Bank merchandise, or would have paid significantly less for the merchandise, if Jos. A. Bank had not represented that it was "on sale."

47. Jos. A. Bank has received a premium price benefit from Plaintiffs and members of the Class.

48. Jos. A. Bank should not be allowed to retain the premium price profits generated from the sale of products that were unlawfully marketed, advertised and promoted.

49. Allowing Jos. A. Bank to retain these unjust profits would offend traditional notions of justice and fair play and induce companies to misrepresent key characteristics of their products in order to increase sales.

50. Thus, Jos. A. Bank is in possession of funds which were wrongfully retained from consumers and which should be disgorged as illegally gotten gains.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray the Court to enter judgment against Jos. A. Bank and in favor of Plaintiffs, on behalf of themselves and the Class, and to award the following relief:

A. Certifying this action as a nationwide class action (or in the alternative as a New Jersey class action), certifying Plaintiffs as representatives of the Class and designating his counsel as counsel for the Class;

B. An injunction preventing Jos. A. Bank from using promotional material and advertising campaigns that are misleading and deceptive and that have the capacity to mislead consumers to believe that they are being offered a discount from the Company's regular prices when, in fact, they are not;

C. A declaration that Jos. A. Bank's marketing, advertising and promotion of its merchandise violates the New Jersey Consumer Fraud Act, N.J.S.A. §56:8-1 *et seq.*;

D. A declaration that Jos. A. Bank has been unjustly enriched by its unlawful practices;

E. An Order directing Jos. A. Bank to disgorge profits derived from its unlawful practices and to pay restitution to Plaintiffs and all members of the Class;

F. An Order compelling Jos. A. Bank to reimburse Plaintiffs and all members of the Class in an amount equal to their ascertainable loss as described herein;

G. Awarding the Plaintiffs and each Class member compensatory damages for the acts complained of herein;

H. Awarding the Plaintiffs and each Class member treble damages for the acts complained of herein;

I. Awarding the Plaintiffs and each Class member costs and attorneys' fees, as allowed by law, and/or awarding counsel for the Class attorneys' fees;

J. Awarding the Plaintiffs and each Class member statutory pre-judgment interest;

K. For legal and equitable relief as this Court may deem just and proper; and

L. Granting such other or further relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury as to all issues so triable.

Dated: April 5, 2012

GARDY & NOTIS, LLP

By: s/ Charles A. Germershausen

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

James Waldron and Matthew Villani, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Morris

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

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DEFENDANTS

Jos. A. Bank Clothiers, Inc.

County of Residence of First Listed Defendant Carroll (Maryland)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	IMMIGRATION
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)

Brief description of cause:
Consumer Fraud Action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S)

(See instructions): JUDGE _____ DOCKET NUMBER _____

Explanation:

DATE

SIGNATURE OF ATTORNEY OF RECORD

04/05/2012

/s/ Charles A. Germershausen

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)
Plaintiff)
v.) Civil Action No.
_____)
Defendant)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: