

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

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NATIONAL CONSUMERS LEAGUE,

Plaintiff,

v.

WAL-MART STORES, INC., J.C. PENNEY  
CORPORATION, INC., and THE CHILDREN'S  
PLACE, INC.,

Defendants.  
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Case No.: 2015 CA 007731 B

Hon. Thomas J. Motley

Next Event: Scheduling Conference,  
October 12, 2016, 9 a.m.

**ANSWER TO SECOND AMENDED COMPLAINT**

Defendant J.C. Penney Corporation, Inc. ("JCP"), by counsel, hereby submits its answer and affirmative defenses to the second amended complaint filed against it by Plaintiff National Consumers League ("NCL"), and state as follows, reserving all of its rights to contest the scope and propriety of NCL's allegations in the Second Amended Complaint as to whether they comply with the Court's July 22, 2016 Order limiting NCL's theory of relief.

**INTRODUCTION**

1. JCP is without sufficient information to admit or deny the allegations in paragraph 1. To the extent any response is required, JCP denies the allegations in paragraph 1.
2. JCP admits that its internet site includes corporate social responsibility ("CSR") statements and that it uses advertising and its internet presence to promote its own sales and market share. JCP is without sufficient information to admit or deny the allegations in paragraph 2 as to Defendants Wal-Mart Stores, Inc. and The Children's Place ("Defendants") and therefore denies same. JCP denies the remaining allegations in paragraph 2.

3. JCP is without sufficient information to admit or deny the allegations in paragraph 3. To the extent any response is required, JCP denies the allegations in paragraph 3.

4. JCP admits that, in 2013, its website contained the statements quoted in paragraph 4 as they appeared in the 2013 version of the website. JCP states that the statements speak for themselves. JCP denies the other allegations in paragraph 4.

5. JCP is without sufficient information to admit or deny the allegations in paragraph 5. To the extent any response is required, JCP denies the allegations in paragraph 5.

6. JCP admits that its Supplier Principles refer to an audit process. JCP is without sufficient information to admit or deny the allegations in paragraph 6 as to the other Defendants and therefore denies same. JCP denies the remaining allegations in paragraph 6.

7. JCP is without sufficient information to admit or deny the allegations in paragraph 7. To the extent any response is required, JCP denies the allegations in paragraph 7.

8. JCP admits that, in 2013, its Supplier Principles included the statements quoted in paragraph 8 as they appeared in the 2013 version of the Supplier Principles. JCP states that the statements speak for themselves. JCP denies the other allegations in paragraph 8.

9. JCP is without sufficient information to admit or deny the allegations in paragraph 9. To the extent any response is required, JCP denies the allegations in paragraph 9.

10. JCP denies the allegations in paragraph 10 as to JCP. JCP is without sufficient information to admit or deny the allegations in paragraph 10 as to the other Defendants and therefore denies same.

11. JCP admits that Rana Plaza collapsed on April 24, 2013 in Savar, Bangladesh. JCP denies the remaining allegations in paragraph 11 as to JCP. JCP is without sufficient

information to admit or deny the allegations in paragraph 11 as to the other Defendants and therefore denies same.

12. JCP is without sufficient information to admit or deny the allegations in paragraph 12. To the extent any response is required, JCP denies the allegations in paragraph 12.

13. JCP admits that the collapse of Rana Plaza caused many deaths and injuries. JCP is without sufficient information to admit or deny the remaining allegations in paragraph 13 and therefore denies same.

14. JCP denies the allegations in the first sentence in paragraph 14 as to JCP. JCP is without sufficient information to admit or deny the allegations in the first sentence of paragraph 14 as to the other Defendants and therefore denies same. JCP is without sufficient information to admit or deny the allegations in the second sentence in paragraph 14 and, to the extent any response is required, JCP denies the allegations in the second sentence in paragraph 14. The allegations in the third sentence in paragraph 14 are legal conclusions to which no response is required. To the extent any response is required, JCP denies the allegations in the third sentence in paragraph 14.

### **JURISDICTION AND VENUE**

15. The allegations in paragraph 15 are legal conclusions to which no response is required. To the extent any response is required, JCP denies the allegations in paragraph 15.

16. The allegations in the first sentence in paragraph 16 are legal conclusions to which no response is required. To the extent any response is required, JCP denies the allegations in the first sentence in paragraph 16. JCP denies that the claims asserted in the complaint arise in the District of Columbia. JCP denies that it caused injury in Washington, D.C. JCP admits that it conducts business online in the District of Columbia. JCP is without sufficient information to

admit or deny the allegations in the third sentence of paragraph 16 and, to the extent any response is required, JCP denies the allegations in the third sentence of paragraph 16. JCP is without sufficient information to admit or deny the allegations in paragraph 16 as to the other Defendants and therefore denies same. JCP denies the remaining allegations in paragraph 16.

17. The allegations in the first sentence in paragraph 17 are legal conclusions to which no response is required. To the extent any response is required, JCP denies the allegations in the first sentence in paragraph 17. JCP admits that it markets, distributes and sells products to consumers and transacts business in the District of Columbia. JCP denies the remaining allegations in paragraph 17 as to JCP. JCP is without sufficient information to admit or deny the allegations in paragraph 17 as to the other Defendants and therefore denies same.

#### **PARTIES**

18. JCP is without sufficient information to admit or deny the allegations in paragraph 18. To the extent any response is required, JCP denies the allegations in paragraph 18.

19. JCP is without sufficient information to admit or deny the allegations in paragraph 19. To the extent any response is required, JCP denies the allegations in paragraph 19.

20. JCP is without sufficient information to admit or deny the allegations in paragraph 20. To the extent any response is required, JCP denies the allegations in paragraph 20.

21. JCP admits that it is headquartered in Texas and operates a chain of American mid-range department stores. JCP denies that it advertises heavily in the District of Columbia and that it solicits business to its retail locations in Maryland and Virginia through such advertising. JCP admits that District of Columbia consumers have transacted business with JCP through its website found at [www.jcpenney.com](http://www.jcpenney.com). JCP denies the remaining allegations in paragraph 21.

## **THE INTERESTS OF NCL & THE GENERAL PUBLIC<sup>1</sup>**

22. The allegations in paragraph 22 are legal conclusions to which no response is required. To the extent any response is required, JCP denies the allegations in paragraph 22.

23. JCP is without sufficient information to admit or deny the allegations in paragraph 23. To the extent any response is required, JCP denies the allegations in paragraph 23.

24. JCP is without sufficient information to admit or deny the allegations in paragraph 24. To the extent any response is required, JCP denies the allegations in paragraph 24.

25. JCP is without sufficient information to admit or deny the allegations in paragraph 25. To the extent any response is required, JCP denies the allegations in paragraph 25.

26. JCP admits that it markets its products online to District of Columbia residents. JCP denies the remaining allegations in paragraph 26 as to JCP. JCP is without sufficient information to admit or deny the allegations in paragraph 26 as to the other Defendants and therefore denies same.

27. JCP denies the allegations in paragraph 27 as to JCP. JCP is without sufficient information to admit or deny the allegations in paragraph 27 as to the other Defendants and therefore denies same.

## **FACTUAL BACKGROUND**

### *The Importance and Promotion of Social Responsibility*

28. JCP is without sufficient information to admit or deny the allegations in paragraph 28. To the extent any response is required, JCP denies the allegations in paragraph 28.

29. JCP is without sufficient information to admit or deny the allegations in paragraph 29. To the extent any response is required, JCP denies the allegations in paragraph 29.

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<sup>1</sup> JCP incorporates the headings in the second amended complaint solely for ease of reference. JCP denies the statements and allegations in all headings throughout the second amended complaint.

30. JCP is without sufficient information to admit or deny the allegations in paragraph 30. To the extent any response is required, JCP denies the allegations in paragraph 30.

31. JCP is without sufficient information to admit or deny the allegations in paragraph 31. To the extent any response is required, JCP denies the allegations in paragraph 31.

32. JCP is without sufficient information to admit or deny the allegations in paragraph 32. To the extent any response is required, JCP denies the allegations in paragraph 32.

33. JCP is without sufficient information to admit or deny the allegations in paragraph 33. To the extent any response is required, JCP denies the allegations in paragraph 33.

34. JCP is without sufficient information to admit or deny the allegations in paragraph 34. To the extent any response is required, JCP denies the allegations in paragraph 34.

35. JCP is without sufficient information to admit or deny the allegations in paragraph 35. To the extent any response is required, JCP denies the allegations in paragraph 35.

36. JCP is without sufficient information to admit or deny the allegations in paragraph 36. To the extent any response is required, JCP denies the allegations in paragraph 36.

37. JCP is without sufficient information to admit or deny the allegations in paragraph 37. To the extent any response is required, JCP denies the allegations in paragraph 37.

38. JCP denies that its CSR website statements make promises. JCP is without sufficient information to admit or deny the allegations in paragraph 38 as to the other Defendants and therefore denies same. JCP is without sufficient information to admit or deny the remaining allegations in paragraph 38. To the extent any response is required, JCP denies the remaining allegations in paragraph 38.

39. JCP is without sufficient information to admit or deny the allegations in paragraph 39. To the extent any response is required, JCP denies the allegations in paragraph 39.

*Walmart's CSR Representations*

40. JCP is without sufficient information to admit or deny the allegations in paragraph 40. To the extent any response is required, JCP denies the allegations in paragraph 40.

41. JCP is without sufficient information to admit or deny the allegations in paragraph 41. To the extent any response is required, JCP denies the allegations in paragraph 41.

42. JCP is without sufficient information to admit or deny the allegations in paragraph 42. To the extent any response is required, JCP denies the allegations in paragraph 42.

43. JCP is without sufficient information to admit or deny the allegations in paragraph 43. To the extent any response is required, JCP denies the allegations in paragraph 43.

44. JCP is without sufficient information to admit or deny the allegations in paragraph 44. To the extent any response is required, JCP denies the allegations in paragraph 44.

45. JCP is without sufficient information to admit or deny the allegations in paragraph 45. To the extent any response is required, JCP denies the allegations in paragraph 45.

46. JCP is without sufficient information to admit or deny the allegations in paragraph 46. To the extent any response is required, JCP denies the allegations in paragraph 46.

47. JCP is without sufficient information to admit or deny the allegations in paragraph 47. To the extent any response is required, JCP denies the allegations in paragraph 47.

48. JCP is without sufficient information to admit or deny the allegations in paragraph 48. To the extent any response is required, JCP denies the allegations in paragraph 48.

49. JCP is without sufficient information to admit or deny the allegations in paragraph 49. To the extent any response is required, JCP denies the allegations in paragraph 49.

*JCPC's CSR Representations*

50. JCP admits that, in 2013, its Supplier Principles contained the statements quoted in paragraph 50 as they appeared in the 2013 version of the Supplier Principles. JCP states that the statements speak for themselves. JCP denies the remaining allegations in paragraph 50.

51. JCP admits that, in 2013, its Supplier Principles contained the statements quoted in paragraph 51 as they appeared in the 2013 version of the Supplier Principles. JCP states that the statements speak for themselves. JCP denies the remaining allegations in paragraph 51.

52. JCP admits that, in 2013, its Supplier Principles contained the statements quoted in paragraph 52 as they appeared in the 2013 version of the Supplier Principles. JCP states that the statements speak for themselves. JCP denies the remaining allegations in paragraph 52.

*TCP's CSR Representations*

53. JCP is without sufficient information to admit or deny the allegations in paragraph 53. To the extent any response is required, JCP denies the allegations in paragraph 53.

54. JCP is without sufficient information to admit or deny the allegations in paragraph 54. To the extent any response is required, JCP denies the allegations in paragraph 54.

55. JCP is without sufficient information to admit or deny the allegations in paragraph 55. To the extent any response is required, JCP denies the allegations in paragraph 55.

56. JCP is without sufficient information to admit or deny the allegations in paragraph 56. To the extent any response is required, JCP denies the allegations in paragraph 56.

57. JCP is without sufficient information to admit or deny the allegations in paragraph 57. To the extent any response is required, JCP denies the allegations in paragraph 57.

58. JCP is without sufficient information to admit or deny the allegations in paragraph 58. To the extent any response is required, JCP denies the allegations in paragraph 58.



*The Fire at Rana Plaza*

59. JCP is without sufficient information to admit or deny the allegations in paragraph 59. To the extent any response is required, JCP denies the allegations in paragraph 59.

60. JCP is without sufficient information to admit or deny the allegations in paragraph 60. To the extent any response is required, JCP denies the allegations in paragraph 60.

61. JCP is without sufficient information to admit or deny the allegations in paragraph 61 that “[d]ue to a lack of basic standards for workplace health and safety . . . workers at garment factories in Bangladesh are subjected to a number of systemic human rights violations[,]” and therefore denies those allegations. JCP admits that its Supplier Principles refer to an audit process but denies the remaining allegations in paragraph 61 as to JCP. JCP is without sufficient information to admit or deny the allegations in paragraph 61 as to the other Defendants and therefore denies same.

62. JCP admits that Rana Plaza was a commercial building in Savar, a sub-district in the greater Dhaka Area, the Capital of Bangladesh. JCP is without sufficient information to admit or deny the remaining allegations in paragraph 62. To the extent any response is required, JCP denies the remaining allegations in paragraph 62.

63. JCP denies that the named garment factories manufactured apparel for brands carried and sold by JCP. JCP is without sufficient information to admit or deny the allegations in paragraph 63 as to the other Defendants and therefore denies same. JCP is without sufficient information to admit or deny the remaining allegations in paragraph 63. To the extent any response is required, JCP denies the remaining allegations in paragraph 63.

64. JCP admits that, after the Rana Plaza collapse, it truthfully disclaimed any involvement with the suppliers in Rana Plaza. JCP is without sufficient information to admit or deny the allegations in paragraph 64 as to the other Defendants and therefore denies same.

65. JCP denies the allegations in paragraph 65 as to JCP. JCP is without sufficient information to admit or deny the allegations in paragraph 65 as to the other Defendants and therefore denies same.

66. JCP is without sufficient information to admit or deny the allegations in paragraph 66. To the extent any response is required, JCP denies the allegations in paragraph 66.

67. JCP is without sufficient information to admit or deny the allegations in paragraph 67. To the extent any response is required, JCP denies the allegations in paragraph 67.

68. JCP admits that it featured a Joe Fresh store-within-a-store brand concept. JCP denies the remaining allegations in paragraph 68.

69. JCP admits that it sells garments in the District of Columbia through its website. JCP denies the remaining allegations in paragraph 69.

70. JCP is without sufficient information to admit or deny the allegations in paragraph 70. To the extent any response is required, JCP denies the allegations in paragraph 70.

71. JCP is without sufficient information to admit or deny the allegations in paragraph 71. To the extent any response is required, JCP denies the allegations in paragraph 71.

72. JCP is without sufficient information to admit or deny the allegations in paragraph 72. To the extent any response is required, JCP denies the allegations in paragraph 72.

73. JCP is without sufficient information to admit or deny the allegations in paragraph 73. To the extent any response is required, JCP denies the allegations in paragraph 73.

74. JCP is without sufficient information to admit or deny the allegations in paragraph 74. To the extent any response is required, JCP denies the allegations in paragraph 74.

75. JCP is without sufficient information to admit or deny the allegations in paragraph 75. To the extent any response is required, JCP denies the allegations in paragraph 75.

76. JCP admits that Rana Plaza collapsed on April 24, 2013 and that many people were killed and injured. JCP is without sufficient information to admit or deny the remaining allegations in paragraph 76. To the extent any response is required, JCP denies the allegations in paragraph 76.

77. JCP is without sufficient information to admit or deny the allegations in paragraph 77. To the extent any response is required, JCP denies the allegations in paragraph 77.

78. JCP admits that its Supplier Principles on its website refer to an audit process but denies the remaining allegations in paragraph 78 as to JCP. JCP is without sufficient information to admit or deny the allegations in paragraph 78 as to the other Defendants and therefore denies same.

79. JCP is without sufficient information to admit or deny the allegations in paragraph 79. To the extent any response is required, JCP denies the allegations in paragraph 79.

80. JCP denies the allegations in paragraph 80 as to JCP. JCP is without sufficient information to admit or deny the allegations in paragraph 80 as to the other Defendants and therefore denies same. JCP admits that garment factories in Bangladesh other than Rana Plaza have experienced fires, accidents or building collapses. JCP is without sufficient information to admit or deny the remaining allegations in paragraph 80. To the extent any response is required, JCP denies the remaining allegations in paragraph 80.

81. JCP denies the allegations in paragraph 81 as to JCP. JCP is without sufficient information to admit or deny the allegations in paragraph 81 as to the other Defendants and therefore denies same.

82. JCP denies the allegations in paragraph 82 as to JCP. JCP is without sufficient information to admit or deny the allegations in paragraph 82 as to the other Defendants and therefore denies same.

**COUNT I**  
**(Violation of the District of Columbia Consumer Protection Act)**

83. The allegations in paragraph 83 are legal conclusions to which no response is required. To the extent any response is required, JCP denies the allegations in paragraph 83.

84. The allegations in paragraph 84 are legal conclusions to which no response is required. To the extent any response is required, JCP denies the allegations in paragraph 84.

85. The allegations in paragraph 85 are legal conclusions to which no response is required. To the extent any response is required, JCP denies the allegations in paragraph 85.

86. JCP denies the allegations in paragraph 86 as to JCP. JCP is without sufficient information to admit or deny the allegations in paragraph 86 as to the other Defendants and therefore denies same.

87. The allegations in paragraph 87 are legal conclusions to which no response is required. To the extent any response is required, JCP denies the allegations in paragraph 87 and denies that NCL is entitled to any of the requested relief.

88. The allegations in paragraph 88 are legal conclusions to which no response is required. To the extent any response is required, JCP denies the allegations in paragraph 88 and denies that NCL is entitled to any of the requested relief.

89. All allegations not specifically admitted are hereby denied.

## **PRAYER FOR RELIEF**

JCP denies that NCL is entitled to any of the requested relief.

## **AFFIRMATIVE DEFENSES**

1. The complaint, as amended, fails to state a claim upon which relief can be granted.
2. NCL may not, as a matter of law, assert the claims alleged or seek relief of any form against JCP on behalf of the General Public.
3. NCL's claims are barred by the applicable statute of limitations and repose.
4. NCL's claims are barred by laches.
5. NCL's claims are barred by estoppel.
6. NCL's claims for injunctive, declaratory and equitable relief are barred by the existence of an adequate remedy at law.
7. NCL has waived any claims against JCP.
8. None of the JCP statements as alleged in the second amended complaint contains any false or misleading representations of material fact.
9. None of the JCP statements as alleged in the second amended complaint was material to any purchase of any JCP product by any consumer in the District of Columbia.
10. All of the JCP statements as alleged in the second amended complaint are aspirational and, as such, cannot form the basis of a claim under the D.C. Consumer Protection Act as a matter of law.
11. None of the JCP statements as alleged in the second amended complaint is a promise or guarantee of the behavior, knowledge or conduct of its third-party suppliers.

12. All of the JCP statements as alleged in the second amended complaint are true and, as such, cannot constitute a misrepresentation or be misleading as a matter of law, both directly and when read in context.

13. There is no causal relationship or connection between any statement by JCP alleged in the second amended complaint and any personal injury or loss to any person as a result of the Rana Plaza collapse, or to any other accident in Bangladesh or elsewhere.

14. None of the JCP statements as alleged in the second amended complaint related to audits created any duty, obligation or promise by JCP to perform audits in any specific manner, pursuant to any specific standard, or at all.

15. None of the JCP statements alleged in the second amended complaint contains any representation about the JCP product allegedly purchased by NCL.

16. Neither NCL nor the General Public has suffered any loss or harm related to any representation by JCP.

17. JCP has not been unjustly enriched as a result of any representation made or sale of consumer product in the District of Columbia related to the allegations in the second amended complaint.

18. NCL's claims against JCP are barred by the First Amendment to the United States Constitution as protected free speech.

19. NCL, either on behalf of itself or on behalf of the General Public, lacks standing to bring any claims against JCP, whether as a class action or directly.

20. NCL's claims on behalf of the General Public must be dismissed for failure to comply with the requirements of Sup. Ct. R. 23 and 23-I.

21. JCP reserves the right to amend this answer to add or raise additional affirmative defenses as they become known to it through discovery in this matter.

WHEREFORE, Defendant J.C. Penney Corporation, Inc. prays that the Court dismiss the second amended complaint in its entirety with prejudice, enter judgment on behalf of JCP on all claims therein, award JCP its costs and attorneys' fees incurred in defense of this action, and for such other and further relief as the Court deems just and proper.

Dated: September 26, 2016

Respectfully submitted,

**LeClairRyan, A Professional Corporation**

*/s/ Robert P. Fletcher*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on September 26, 2016, I served the following counsel through the

Court's electronic case filing system:

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*s/ Robert P. Fletcher*

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Robert P. Fletcher