SUPREME COURT OF THE STATE OF NEW YORK
FOR THE COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York; STATE OF NEW YORK *ex rel.* RD LITIGATION ASSOCIATES, LLC, Plaintiff, -against- B&H FOTO & ELECTRONICS CORP., Defendant.	Index No. _____ **SUMMONS**

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer in this action and serve a copy of your answer on the Plaintiff's attorney within twenty (20) days after service of this summons, exclusive of the day of service. If this summons is not personally served upon you, or if the summons is served on you outside the State of New York, then your notice of appearance must be served within thirty (30) days. In the case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated: November 14, 2019

LETITIA JAMES
Attorney General of the State of New York

By: _____
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Assistant Attorney General

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THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York;

STATE OF NEW YORK *ex rel.* RD LITIGATION ASSOCIATES, LLC,

Plaintiff,

-against-

B&H FOTO & ELECTRONICS CORP.,

Defendant.

Index No. _____

SUPERSEDING COMPLAINT

Pursuant to N.Y. State Finance Law § 190(2)(c)

JURY TRIAL DEMANDED

Plaintiff, the People of the State of New York (the "State"), through its attorney Letitia James, the Attorney General of the State of New York, alleges upon information and belief the following:

NATURE OF THE ACTION

1. In this action, the State sues to recover unpaid taxes from B&H Foto & Electronics Corp. ("B&H" or "Defendant"), which, since 2006, has intentionally underpaid sales tax on millions of dollars in receipts from its sales of cameras and other consumer electronics.

2. B&H is the largest non-chain photo and video equipment retailer in the United States, with more than $3 billion in sales in 2018. Its large retail store in New York City sells cameras and other electronics to shoppers from around the globe.

3. B&H proclaims itself to be "a proud, family owned business" that is "built on the pillars of honesty and treating people right" and which puts "principles over profits." But when it comes to collecting and paying New York state and local sales taxes, B&H has been anything but honest and principled.

4. For thirteen years, B&H has cheated on New York State sales taxes. During that time, B&H has routinely passed manufacturer (or "vendor") discounts through to its customers as part of "instant rebate" sales promotion programs offered by manufacturers. Under these arrangements, the manufacturer reimburses B&H for selling advertised products at discounts during periods of time set by the manufacturer. In violation of long-established tax law, B&H never paid tax on these reimbursements.

5. B&H knew that it should have been paying the tax. B&H has repeatedly and explicitly acknowledged—internally, to outside vendors, and to a competitor—that under New York tax law, it owed sales tax on these reimbursements. For example, one manager admitted internally to B&H executives in mid-2012 that "B&H has a NYS Sales Tax issue with products for which a vendor-sponsored rebate or discount is offered since we are required to collect NYS Sales Tax on the total product price…." At another point, B&H admitted its liability to a vendor, writing that "promotions which are sponsored by a vendor (e.g. discounts or rebates) are required to be included in the overall sales price…. We are then required to collect New York State sales tax on the entire price." B&H went so far as to attach the pertinent tax regulations to this communication, with the applicable sub-provisions highlighted in fluorescent yellow. And, even after B&H learned that the State was investigating it for failing to pay the sales taxes due on these reimbursements, B&H continued to underreport its sales taxes while simultaneously admitting to others that it knew the sales tax was, indeed, due.

6. B&H proudly claims that it puts "principles over profits." But B&H chose profits over principles when it did not pay sales tax—both to beat out competitors who were obeying the law by charging the tax, and to avoid losing sales to competitors who were also not paying the

tax. B&H submitted false tax returns and defrauded the State to gain and maintain a competitive advantage.

7. B&H likewise chose profits over principles when it decided not to pay the tax in order to avoid incurring "hundreds of man hours" of customer service that it thought would be necessary to explain the tax to its customers. While B&H could have complied with New York sales tax law at any time, by paying out of its own pocket the New York state and local sales tax owed on the amount of a manufacturer's instant rebate, B&H refused to cut into its profits to do what the law required.

8. And B&H chose profits over principles by enjoying all the benefits of doing business in New York—including the services and conveniences funded by sales tax revenues that, among other things, protect its huge New York City store—without paying its fair share of the taxes necessary to provide those benefits.

9. In making these choices, B&H not only violated its purported "pillars of honesty," but also the Tax Law and the New York False Claims Act. The State brings this action to redress these violations. It seeks treble damages, penalties and interest.

WHISTLEBLOWER ACTION

10. This action was filed on or about January 6, 2016, by whistleblower, or *qui tam* plaintiff, RD Litigation Associates, LLC ("Relator"), under the New York False Claims Act, New York State Fin. Law §§ 187 *et seq.* The New York False Claims Act permits whistleblowers with knowledge of false or fraudulent conduct victimizing the State to bring an action on behalf of the government. The State then has the opportunity to investigate the matter and decide whether to take over the action.

11. Following the filing of Relator's complaint, the Office of the Attorney General conducted an investigation of Relator's allegations. On November 13, 2019, the Attorney General notified the Court of its decision to supersede the Relator's complaint with respect to Defendant herein.

12. The People of the State of New York have thus been substituted as the plaintiff with respect to claims against B&H, and the action with respect to B&H has been converted in all respects from a *qui tam* civil suit brought by a private person into a civil enforcement action by the Attorney General.

13. This superseding Complaint arises out of the conduct, transactions and occurrences set forth or attempted to be set forth in the prior complaint by the Relator.

JURISDICTION AND PARTIES

14. Plaintiff, the People of the State of New York, through the Attorney General, brings this action in its sovereign capacity and pursuant to the New York False Claims Act, Executive Law § 63(12), and Tax Law § 1141(a). It sues to redress injury to the State, general economy and citizens, and seeks injunctive relief, damages, costs, penalties and other relief with respect to B&H's fraudulent and otherwise unlawful conduct.

15. This Court has subject matter jurisdiction over the claims asserted in this action pursuant to N.Y. State Finance Law § 190(2)(b).

16. Defendant B&H Foto & Electronics Corp. is a New York corporation.

17. This Court has personal jurisdiction over B&H because B&H can be found, resides, and/or transacts business in New York State and New York County.

18. Venue is proper in this Court pursuant to CPLR § 503.

FACTUAL ALLEGATIONS

I. Manufacturer-Funded Instant Rebates Reduce Consumer Prices, but not Taxable Retailer Receipts

19. Instant rebates (also called IR, instant savings, vendor discounts, reimbursements or third-party promotions) are an electronic version of the longstanding practice of manufacturer-funded discounts, in which the manufacturer of an item funds a discount on the sales price for a customer purchasing that item. Manufacturers (sometimes called "vendors") of consumer electronics and other products have long funded discounts to lower their product prices.

20. Manufacturers often discount product prices using manufacturer-funded coupons or rebates. With a manufacturer-funded coupon, the customer pays a discounted price and the retailer, in turn, sends proof of the sale to the manufacturer. In return, the manufacturer sends a reimbursement for the coupon amount, or a substantial portion thereof, to the retailer. With a manufacturer rebate, the customer may mail in the rebate form for reimbursement or assign it to the retailer at the time of sale. In either case, the manufacturer subsidizes the customer's purchase by discounting the purchase price without reducing the retailer's receipt.

21. The tax rules concerning these arrangements have been clear for decades: although the coupon or rebate reduces the actual cost of the item to the customer, sales tax is imposed not only on the discounted sales price. This is because the retailer has received more than just the discounted price for the item. In the case of a mail-in rebate, the retailer receives the whole amount directly from the customer, who seeks a mail-in rebate later from the manufacturer directly. In the case of a manufacturer's coupon, the retailer receives the whole amount in aggregate: partly from the customer and partly from the vendor, who reimburses the retailer for the coupon. Therefore, sales tax is not limited to the discounted price, but is due on the amount ultimately paid by the customer plus the amount ultimately paid by the manufacturer.

22. Since approximately 2006, as internet purchases became increasingly prevalent, a form of manufacturer discounting better adapted to the new means of purchase became common: the instant rebate. Instant rebates are functionally the same as traditional manufacturer discounts—they convey manufacturer discounts to the consumer but then reimburse the retailer.

23. Instant rebates avoid the inconvenience of coupon-clipping or traditional mail-in rebates by passing the manufacturer's discount through the retailer to the customer as "instant" at the point of sale. Like any manufacturer-funded discount, the instant rebate reduces the price to the customer at point of sale (to encourage sales)—but doesn't require a coupon or, in the case of mail-in rebates, submission of proof of purchase and delayed payment (which could and did limit the attractiveness of a traditional manufacturer's mail-in rebate). As with a manufacturer-funded coupon, the retailer gets paid from two sources: first, from the customer paying the discounted price and, second, from the manufacturer reimbursing the retailer to subsidize the discount.

24. As with traditional manufacturer's discounts, the manufacturer sets the instant rebate amount, as well as the reimbursement amounts, which, for instant rebates, are typically a substantial percentage of the rebate to be offered. The manufacturer also sets a promotion period in which the instant rebates will be offered and funded. Although the retailer can offer its own discounts, the retailer has no control over the manufacturer's rebate and reimbursement levels or their timing. Rather, the manufacturer presents the rebate and the reimbursement amounts to the retailer as features of a single program, participation in which is optional. Under some instant rebate programs, manufacturers require proof of sale with the rebate for reimbursement. For example, Sony offered an instant rebate program in 2017, which it described as follows: "[f]or a limited time, end users can receive an instant rebate up to $3,000 for the purchase of a [selection of Sony products]. Sony will reimburse resellers who provide the instant rebate to end user

customers." Other instant rebate programs require only proof of sale during the rebate period, but the retailer always offers customers the maximum discount (and obtains the reimbursement), in order to be able to compete with other retailers who are doing the same.

25. Retailers applying for reimbursement under most instant rebate programs must submit invoices that specify, at a minimum, (1) the promotion period in which sales were made; (2) the product eligible under the promotion; (3) the credit amount given; and (4) the number of units sold.

26. Just like traditional manufacturer-funded discount arrangements, the retailer still receives—and must collect and remit sales tax on—the total receipt for the item. But the source of that receipt is twofold—from the customer and the manufacturer—just as it has always been with coupons.

27. Under the old arrangements of mail-in rebates or manufacturer-funded coupons, the retailer collected and remitted sales tax on the full consideration the retailer received for a sale. The same is true for instant rebates. As with traditional coupons, the retailer receives its total consideration from two sources. The first source is the customer, who pays the purchase price discounted by the manufacturer's "instant" rebate, just as that customer would pay a purchase price discounted by a coupon. The second source is the manufacturer, who reimburses the retailer for having passed on its instant rebate discount, just as the manufacturer would reimburse a retailer that honored a manufacturer-funded coupon. As explained below, both receipts are subject to sales tax, because together they constitute the total receipts from the sale.

28. With many retailers, the customer may not be made aware that a manufacturer is funding the instant rebate discount. Sometimes, a retail website may offer a specific instant rebate amount on an advertised product or the original price may appear crossed out next to the

discounted price. Sometimes, the retailer applies the instant rebate only when the item is placed in the customer's electronic shopping basket; in that case the website may advertise "Discount to be applied at checkout," without disclosing that the discount is funded by a manufacturer.

29. In New York, the customers' awareness of the arrangement does not affect whether sales tax is due. However, such awareness does dictate whether the customer or the retailer must bear the burden of the tax. As explained below, customers must pay the sales tax if they are told that the discounts are manufacturer-funded. If they are not told, the retailer must bear the burden of the tax. In either case, the retailer must always remit the sales tax. That is true even if the customers are never told about the source of the discount and even if, consequently, the customers are not charged that tax.

II. Sales Tax is Due on Instant Rebates Reimbursements Paid to Retailers

30. New York State sales tax applies to receipts from every retail sale of tangible personal property, except as otherwise provided. *See* Tax Law § 1105(a).

31. The Tax Law defines "receipt" as the "amount of the sale price of any property ..., valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser." Tax Law § 1101(b)(3). The Tax Law defines a retailer's receipt as the entire amount received from a sale, whether received in money or in another form, because the sales tax is a tax on the receipt of all consideration arising from the transaction. Notably, the Tax Law does not limit "receipt" to amounts tendered by the retail customer.

32. The Sales and Use Tax Regulations state that "[t]he word *receipt* means the amount of the sale price of any property ... taxable under articles 28 and 29 of the Tax Law, valued in money, whether received in money or otherwise." N.Y. Comp. Codes R. & Regs. tit.

20, § 526.5(a) (italics in original). Section 526.5's subsections discuss "elements of a receipt" and illustrate how an amount of consideration received by retailers (to fund discounts) must be included in taxable receipts. N.Y. Comp. Codes R. & Regs. tit. 20, § 526.5.

33. The example described in the regulations is a coupon. The subsection entitled "Coupons" distinguishes between store-sponsored coupon discounts that manufacturers do not reimburse, and coupon discounts reimbursed by manufacturers. "Where a store issues a coupon entitling a purchaser to a discounted price on the item purchased, and receives no reimbursement, the tax is due from the purchaser only on the discounted price, which is the actual receipt." N.Y. Comp. Codes R. & Regs. tit. 20, § 526.5(c)(3). But when a manufacturer issues a coupon "entitling a purchaser to a credit on the item purchased, the tax is due on the full amount of the receipt," before the discount is subtracted. N.Y. Comp. Codes R. & Regs. tit. 20, § 526.5(c)(1). The reason, as the regulations explain, is that the manufacturer-funded "coupon credit reflects a payment or reimbursement by another party to the vendor." *Id.* The receipt is not limited to the discounted amount paid by the customer. Instead, the complete "receipt is composed of the amount paid *and* the amount of the coupon credit." *Id.* (emphasis added). As the regulations explain, the retailer must pay tax on the "entire receipt," and the "entire receipt [is comprised of] the amount of the [discounted] price *and* the reimbursement received from the manufacturer." N.Y. Comp. Codes R. & Regs. tit. 20, § 526.5(c)(4) (emphasis added).

34. The tax regulations further specify who must pay the tax on such discounts. If the retailer alerts the customer to the manufacturer's discount, the customer pays. Otherwise, the regulations require the retailer to pay the tax on the discount while the customer pays tax only on the discounted sales price. *See* N.Y. Comp. Codes R. & Regs. tit. 20, §§ 526.5(c)(1) and (4) ("Where a store issues a coupon involving manufacturer's reimbursement, but does not

disclose that fact to the purchaser on the coupon or in the advertisement, the [retailer] will collect from the purchaser only the tax due on the reduced price, but will be required to pay the tax on the entire receipt—the amount of the price and the reimbursement received from the manufacturer or distributor."). But in either case, the reimbursement received by the retailer is subject to sales tax, which the retailer must remit to the Tax Department. *Id.*

35. The Tax Department's longstanding policy statements in Technical Memoranda advise retailers of this plain meaning of the Tax Law. In 1978, two years after the Sales and Use Tax Regulations were issued, the Tax Department issued a Technical Memorandum on the tax treatment of coupons, discounts, and premiums, which highlighted for retailers the basic statutory principle that manufacturer or third-party coupons do not reduce taxable receipts, whereas a retailer coupon does. TSB-M-78(13)S (issued July 17, 1978). The Tax Department has advised retailers of this rule consistently in various contexts since 1978. *See, e.g.*, TSB-M-87(12)S (issued Sept. 18, 1987) (sales tax exemptions for food purchased with food stamps); TSB-M-01(02)S (issued Feb. 12, 2001) (exemption from sales tax for all articles of clothing costing under $110); TSB-M-03(4)S (issued July 28, 2003) (same); TSB-M-04(9)S (issued Dec. 15, 2004) (same).

36. The Tax Department's policy statements reiterate that the inclusion of manufacturer reimbursements in "receipt" is, of course, not limited to circumstances involving physical coupons. For example, a 2011 Technical Memorandum states, "[i]f the store is reimbursed for the amount of the discount by the manufacturer, distributor or other third party, it is a manufacturer's discount…. Generally, when a customer purchases an item subject to sales tax and receives a manufacturer's discount, the amount subject to sales tax is the full price of the

item before subtracting the discount." TSB-M-11(10)S (issued June 29, 2011) (manufacturer's discounts received using store loyalty cards).

37. The Tax Department's nontechnical guidance in Tax Bulletins, intended for the average taxpayer, advises retailers of the same rule. For example, a 2011 Tax Bulletin states: "*Manufacturer's discount* means the manufacturer of an item reimburses the store for selling the item at a discount ... When a manufacturer's discount applies, sales tax is due on the **full price** of the item, not on the discounted price." TB-ST-145 (issued Sept. 29, 2011) (customer loyalty cards) (italics and emphasis in original). The Tax Bulletin explained why: "Since the seller will receive reimbursement from the manufacturer for the amount of the discount, the actual selling price is not reduced, even though the amount paid by the purchaser is reduced." *Id.*

38. This requirement is even stated on the Tax Department's website, as part of its Business Taxpayer Answer Center. Since 2006, the website has answered the question, "When an item is purchased on sale, is sales tax due on the original price or the reduced price of the item?" The answer states: "If the reduced price is the result of a manufacturer's reimbursement, such as a manufacturer's coupon or rebate or any other third-party's reimbursement, then the sales tax is charged on the full price of the item without regard to the reimbursement to the seller."

39. The Tax Law, Sales and Use Tax Regulations, and guidance from the Tax Department explain clearly and consistently what is included in receipts under the Tax Law. If a retailer offers customers a discount funded by a manufacturer, that is a "manufacturer's discount," and the amount reimbursed by the manufacturer is included in the retailer's taxable receipt. Instant rebates are one such manufacturer discount.

III. From 2006 to the Present, B&H Participated in Instant Rebate Programs and Received Millions in Instant Rebate Reimbursements

40. As a consumer electronics retailer, B&H enters into contracts with consumer electronics manufacturers permitting B&H to sell the manufacturer's products to consumers. For example, B&H entered into an "Authorized Dealer Agreement" with the Panasonic Consumer Electronics Company in April 2004, which was in effect during the period relevant to this action. Similarly, B&H entered into a "Sony Electronics, Inc. 2012 Reseller Agreement" in March 2012, a Canon Dealer Sales Agreement in January 2012, and agreements with Nikon, Samsung, and other manufacturers.

41. In or around 2006, many manufacturers began to offer instant rebate promotions to the retailers with whom they had contracted, like B&H. To be eligible to participate in the programs, B&H and the other retailers had, among other things, to have signed agreements with the manufacturers authorizing them to serve as retail dealers for the manufacturers' products.

42. B&H began to participate in instant rebate promotions, which it also calls "Instant Savings," offered by manufacturers including Nikon and Olympus. As part of these promotions, B&H advertised instant savings on specified products featured on its website, next to the original product price. The website often did not disclose that manufacturers funded the instant savings discount. Starting in 2006, Nikon and Olympus, and later Sony and other manufacturers, reimbursed B&H for these instant savings that B&H offered on their products to B&H's customers.

43. As B&H has continued to participate in instant savings promotions, the amounts it receives in reimbursements has continued to grow. B&H has participated in such promotions every year from at least 2006 to the present. B&H did not disclose to its customers that manufacturers were reimbursing it for instant savings in any of the subsequent years to date. As

a result of this participation, B&H received at least $67 million in instant savings reimbursements between 2006 and July 2017. These reimbursements were taxable receipts under the Tax Law.

IV. B&H Is Required to Collect and Remit New York State Sales Tax and to Truthfully Report its Taxable Sales

44. Not only are the instant savings receipts taxable, but as a registered vendor with authority to collect and remit sales tax, B&H was obligated to truthfully report and remit the tax.

45. The Tax Law defines persons required to collect sales tax as every vendor of tangible personal property or services. Tax Law § 1131 (1). The Tax Law defines vendors, among other things, as persons making sales of tangible personal property subject to sales tax, or as persons maintaining a place of business in the state and making sales to persons within the state of tangible personal property. Tax Law §§ 1101 (b)(8)(i)(A) & (B). Such vendors must receive a certificate of authority to be registered to collect tax. Tax Law §§ 1134 (a)(1) & (2). Vendors are personally liable for any sales tax due on sales made, Tax Law § 1133 (a), as are customers who have failed to pay such sales tax. Tax Law § 1133 (b).

46. B&H is a vendor within the meaning of the Tax Law. B&H is a consumer electronics retailer registered as a domestic corporation in New York State in 1973. B&H has its principal place of business in Manhattan, where it operates a retail store at 420 Ninth Avenue, New York, New York. B&H makes millions of dollars in sales of consumer electronics and related tangible personal property within the State of New York. B&H has received and renewed a certificate of authority from the Tax Department to collect tax for the periods at issue in this action.

47. The Tax Law requires vendors whose taxable receipts total $300,000 or more in any of the preceding four quarters to file monthly and quarterly sales tax returns. Tax Law §

1136 (a)(2). Quarterly returns must show, among other things, the gross amount of sales of tangible personal property, the amount of gross sales that are taxable, and the tax due. N.Y. Comp. Codes R. & Regs. tit. 20, § 533.3 (b)(3). Every return must contain a full, complete and accurate disclosure of this information. N.Y. Comp. Codes R. & Regs. tit. 20, § 533.3 (a)(7). Vendors must pay the tax due at the date set for filing each return. Tax Law § 1137(a); N.Y. Comp. Codes R. & Regs. tit. 20, § 533.4 (a)(1).

V. B&H Falsely Reported Its Taxable Sales and Failed to Remit the Sales Tax That Was Due on Its Instant Savings Reimbursements

48. B&H was required to fully, completely, and accurately report all taxable sales on the instant savings reimbursements it received and to remit sales tax on those reimbursements to the State. Because B&H advertises its instant savings discounts without disclosing that manufacturers fund the discount, Sales and Use Tax regulations require B&H to "collect from the purchaser only the tax due on the reduced price." But B&H itself is "required to pay the tax on the entire receipt—the amount of the price and the reimbursement received from the manufacturer or distributor." Therefore B&H—not its customers—has been obligated to pay the sales tax on the instant savings reimbursements it has received and will receive in the future under its current arrangement.

49. Though the instant savings reimbursements B&H received were taxable, and though B&H, and not its customers, has been and remains liable for that tax, B&H has not truthfully declared those reimbursements on its sales tax returns. In the quarterly sales tax returns it filed with the Tax Department from 2006 forward, B&H failed to declare as taxable receipts the instant savings reimbursements it received. Specifically, B&H did not include the reimbursement amounts in the required calculation of sales tax due in the quarterly Form ST-

810s that it filed. Instead, it falsely understated taxable sales by declaring amounts that excluded manufacturers' reimbursements for instant savings.

50. B&H falsely understated its taxable sales on all of its quarterly returns filed with the Tax Department from June 2006 through the first three quarters of 2019. B&H's omission of the instant savings reimbursements from its quarterly sales tax returns meant that its quarterly sales tax returns filed from June 2006 through the first three quarters of 2019 falsely and materially understated its total taxable receipts for those periods.

51. As a result, the returns falsely and materially understated the total sales tax B&H was obliged to pay for the period from March 2006 through the first three quarters of 2019. The omissions were material because they directly affected the calculation of tax due by reducing the taxable receipts to which sales tax rates apply in New York State taxing jurisdictions, and thus resulted in returns that showed less sales tax due than was actually the case. The amount of tax which the omissions concealed was also material: it totaled at least an estimated $7.3 million.

52. B&H adopted an accounting methodology that effectively hid the instant savings reimbursements from State sales tax auditors. In particular, B&H accounted for the instant savings reimbursements it received as reductions in cost of goods sold. Accounting for the reimbursements this way, and failing to include them as taxable receipts, obscured the existence of the reimbursements. This approach minimized the possibility that a Tax Department audit would detect the omission of such reimbursements from B&H's taxable receipts. Had B&H included the reimbursements as taxable receipts, the Tax Department could have more easily

discovered them and, in the event of non-payment, could have taken measures such as assessment to ensure that the correct tax was paid.

53. B&H did not pay sales tax on the reimbursements omitted from its sales tax returns from 2006 through the first three quarters of 2019. Consequently, for the period 2006 through the first three quarters of 2019, B&H remitted at least an estimated $7.3 million less than it was required to pay in New York State sales tax.

VI. From 2006 to 2011, B&H Deliberately Ignores or Recklessly Disregards Its Obligation to Pay Sales Tax on Instant Savings Reimbursements

54. B&H is a major retailer. It is the largest non-chain photo and video equipment retailer in the United States. In 2006, the beginning of the period at issue in this action, B&H made an estimated $1.3 billion in national sales. This amount climbed to more than $2 billion in the years between 2012 and 2016, and in 2018 it topped $3 billion.

55. B&H has long experience with New York State sales tax. B&H has been in the consumer electronics retail sales business for more than forty-six years. B&H has been a New York State taxpayer for, at a bare minimum, the entire period at issue in this action.

56. Moreover, B&H has an in-house tax department. In 2002, B&H hired an accountant who was appointed the company's Tax Director in 2005. He was responsible for B&H's compliance with the tax laws, among other duties. In May 2009, the Tax Director assumed the responsibility for filing B&H's quarterly sales tax returns with the Tax Department and signed all but two quarterly filings in the period from 2009 to 2017, when he left the company. He remained B&H's Tax Director until that time.

57. Despite its size, long experience with New York State sales tax, and its dedicated tax professionals, when instant rebate programs first became common in 2006, B&H took no steps—not one—to ensure that it was applying appropriate sales tax treatment to the millions of

dollars of instant rebate reimbursements that it began receiving annually. B&H was not treating those instant rebates appropriately, as even a cursory inquiry would have revealed. Yet, for five years, neither the Tax Director nor anyone else at B&H made any inquiry concerning their tax treatment. They did not consult an outside accountant. They did not retain a lawyer. They did not check with others in the industry. Nor did they study the tax law themselves. Instead, B&H adopted the self-serving no-tax "business side" approach (as B&H's CFO termed it) of booking instant rebates as a reduction in the cost of goods—an approach that helped B&H avoid detection of the issue in sales tax audits.

58. From 2006 to 2011, B&H ignored New York State tax law. In particular, B&H ignored the longstanding and clear rule that manufacturer or third-party reimbursements of purchase price discounts are subject to sales tax. Retailers had been advised that manufacturer-funded discounts were taxable since at least 1978, when, two years after the Sales and Use Tax Regulations were issued, the Tax Department issued a Technical Memorandum on the tax treatment of coupons, discounts, and premiums which stated the basic principle that manufacturer or third-party coupons do not reduce taxable receipts. TSB-M-78(13)S (issued July 17, 1978). As of 2006, the Tax Department's website stated this rule in plain English. As one of B&H's competitors—a competitor that was complying with the law and remitting sales tax on instant rebate reimbursements—summed it up in 2011 when explaining the rule to B&H's Tax Director, "[t]hese rules have been around forever …."

59. From 2006 to 2011, B&H was reckless in disregarding the applicable law. Its adoption of a self-serving (and effectively audit-proof) "business side" view contradicted the Tax Law and Department regulations concerning manufacturer's discounts. These regulations stated

the bedrock principle in this area: the "entire receipt" includes both the "amount of the price" paid by the consumer, plus "the reimbursement received from the manufacturer."

60. And B&H should have known this rule applied to instant rebates. The company, which by 2006 had been in the consumer retail electronics business for thirty-three years, could not, absent reckless disregard, have been ignorant of the rule that manufacturer-funded discounts on a purchase price had to be included in calculating sales tax. B&H also knew that, when it received payment from a customer on a mail-in rebate item, it had to collect and remit sales tax on that full payment, regardless of the existence of the mail-in rebate. B&H had applied this rule to mail-in rebates for years.

61. But with instant rebates, B&H refused to collect and remit tax on the entire receipt from both of these two sources, *i.e.*, the customer and the manufacturer. B&H received total consideration greater than the rebated price when running instant rebates, just as B&H had with traditional manufacturer's mail-in rebates or coupons. Yet, with instant rebates, B&H ignored the well-established rules. Instead of remitting sales tax on the "entire receipt," it remitted sales tax on the discounted price received from the customer only.

62. At best, B&H buried its head in the sand as it received higher and higher volumes of instant rebate reimbursements from manufacturers. Despite its awareness of the well-known tax landscape in this area, B&H not only did not collect or remit tax on instant rebate reimbursements, but it also made no effort at all to determine their correct tax treatment until five years after it began receiving such reimbursements, as detailed below. B&H made no effort even though, during that five-year period, B&H received at least $6.8 million in instant rebate reimbursements. And B&H did not examine the correct tax treatment of instant rebates even though it had been in the business for over thirty-three years and had a Tax Director charged

with tax compliance. B&H acted in its economic self-interest, both to avoid paying taxes out of its own pockets and to gain and maintain a competitive advantage by not charging taxes to its customers.

63. In sum, between 2006 and 2011, B&H recklessly disregarded its obligations to pay sales tax on manufacturer-funded instant rebates. As described below, it soon confronted the fact that it owed these taxes but chose, for competitive reasons, to cheat rather than pay them.

VII. In Early 2011, B&H Concluded that Instant Rebate Reimbursements Were Taxable but Continued to Falsely Report its Sales Taxes

64. In early 2011, B&H could no longer ignore the fact that its instant rebates were subject to New York State sales tax. However, despite this knowledge, B&H continued to falsify its tax returns by underreporting and failing to remit sales taxes for instant rebates. And B&H continued to defraud the State by avoiding its tax obligations.

65. B&H's legal obligations were simple to understand. In January 2011, B&H's Tax Director reviewed tax materials concerning instant rebates, and requested "a report for all vendor discounts that we passed on to the customer on taxable orders for the past 2 years."

66. In less than a month, the Tax Director checked with industry peers and was told, unequivocally, that B&H had an obligation to remit New York State sales tax for instant rebates. In early February 2011, an industry counterpart, a tax manager for a competitor, informed him that vendor reimbursements of consumer discounts were taxable receipts in certain states (including New York). The counterpart wrote to him: "[e]xcluding the half-dozen or so states that tax a sale after application of a manufacturer-funded discount, I believe the other states would all expect tax on the pre-discounted price." The competitor explained that although his company (unlike B&H) collected tax properly, there was a competitive cost for doing so: "[t]hat's how nearly all of our discounting works, and we charge the tax to our customer. Yes,

that can lead to some customer resistance—particularly if there isn't clear disclosure that the discount is vendor-funded. Even with disclosure there is push-back."

67. B&H's Tax Director was then told that this rule had always been in effect. In particular, in the same email exchange, after being warned about the competitive cost of complying with the law, B&H's Tax Director responded that "in our industry, I believe most retailers are not collecting tax on [manufacturer rebate reimbursements], and was wondering what the reasoning might be." The competitor's tax manager theorized that, because manufacturer-funded discounting at the retail level occurred most often in tax-exempt food categories, competitors might not yet understand their applicability to instant rebates, and the issue was not being spotted by auditors as yet unfamiliar with instant rebate arrangements. The competitor tax manager observed, however, "[t]hese rules have been around forever."

68. In the same email exchange, the competitor's tax manager emphasized the business cost of following the law when other competitors were not:

> ([P]articularly in electronics and cameras), we are receiving exactly the same retail-level reimbursement as our competitors. Invariably, one of our customers will ask why we're taxing pre-discount when Competitor X is taxing after-discount for the exact same item…. I believe we get it right far more often than not, and it's possible a handful of our competitors haven't devoted an equivalent level of attention. This can be frustrating and lead to an insurmountable competitive disadvantage in some transactions.

The competitor's tax manager concluded, however, that the best course was to comply with the law: "[o]ur margins can't survive a tax hit, so we've invested in programming and procedures to apply tax correctly in discount scenarios."

69. B&H's Tax Director communicated this information to B&H's CFO by forwarding the entire email exchange to him on February 3, 2011. The CFO directed the Tax Manager to seek legal advice on the question. Although a communication with outside tax

counsel occurred in March 2011, there is no evidence that any lawyer ever approved a decision not to collect sales tax on instant rebate reimbursements, at that time or any other.

70. Rather, the evidence overwhelmingly demonstrates that B&H knowingly put competitive concerns ahead of tax compliance, ignoring the findings of their own Tax Director, as well as those of a major competitor, in the process. The CFO dismissed the competitor's approach and instead focused on the competitive cost of compliance. The CFO reasoned that if B&H followed the law, the company could lose sales to competitors who were not. In other words, B&H chose profits over principles, and decided not to collect sales tax from its customers on instant rebate discounts.

71. B&H took no further steps to revisit the question for another nine months, until the end of 2011. In December 2011, however, B&H's failure to collect the tax was an issue significant enough to bring to the attention of its Owner and its Chief Operating Officer. That month, the CFO requested an "instant rebate report" for a meeting with the Owner and Chief Operating Officer "to decide on tax compliance" because, as the CFO stated at the time, B&H was "currently at risk of undercharging tax on rebates."

72. In preparation for that meeting, the CFO discussed calculations of the tax liability at issue with two executives in B&H's purchasing department. The executives, who were familiar with the terms of the instant rebate agreements B&H had with its vendors, also understood that whatever amount was paid in reimbursement was taxable. In an email exchange in late December 2011 with the CFO, one of the purchasing executives instructed the CFO to "[o]nly calculate tax for the amount supported by the vendor (IR of $50 but vendor only gives $40 should be taxed on the $40 only)[.]" This exchange, and the math in it, showed that the

executives fully understood that instant rebates were taxable to the extent they were reimbursed by manufacturers.

73. Again, the dominant question for B&H was not whether to comply with the tax law, but whether the competition was doing so or not: in the same email, the purchasing executive recommended that B&H "purchase at some local stores, items that have a vendor supported IR to see if they are collecting sales tax from the customer."

74. In January 2012, the Tax Director informed the CFO that B&H had received $4.1 million from manufacturers during the prior year. (In fact, B&H received more than $6 million in such vendor reimbursements in 2011.)

75. In early 2012, the CFO met with B&H's Owner and Chief Operating Officer to discuss the issue of instant rebate tax compliance. But B&H did not start collecting and remitting tax after this meeting. Rather, starting in early 2012, B&H decided to manufacture a pretext that it hoped would allow it to continue avoiding the competitive cost of following the law.

VIII. Between 2012 and 2013, B&H Attempted, And Failed, to Disguise Instant Rebates as Retailer Discounts

76. Between 2012 and 2013, B&H attempted to recruit manufacturers in an effort to disguise instant rebates. But all of the manufacturers rebuffed B&H's efforts.

77. B&H did not want to pay sales tax on its rebate reimbursements as it understood it was required to do. Beginning in 2012, the company adopted a plan to disguise instant rebate programs as non-taxable retailer discounts. To do this, B&H would try to persuade its vendors to sign an "Addendum to Contract" that amended the reseller agreements it had with manufacturers. The addendum stated the following:

> Vendor-Sponsored Discounts or Rebates: Notwithstanding any Vendor program terms to the contrary, in the event a Vendor offers a discount or rebate on a product, B&H may decide, in its sole discretion, whether to convey such rebate or discount to its customers.

78. The CFO stated that this plan was set in motion after he met with the Owner and Chief Operating Officer: "[p]robably the decision to try to get the bigger vendors to clarify the contract came after that [ ] meeting." He stated that "we decided to focus on a few vendors, the top vendors, with the most instant rebate programs."

79. In June 2012, B&H was ready to begin trying to persuade its vendors to sign the addendum. On June 8, 2012, B&H's vendor liaison requested vendor contact information from a B&H executive in the purchasing department. In explaining the need for the information, the liaison admitted in the starkest possible terms that B&H had a tax problem, writing the following:

> As you probably know, B&H has a NYS Sales Tax issue with products for which a vendor-sponsored rebate or discount is offered ***since we are required to collect NYS Sales Tax on the total product price, even when the rebate or discount reduces the price our customer pays***.
>
> Per [the Tax Director], the attached contract addendum prepared will address this issue….

(Emphasis added.)

80. Contrary to what the last sentence quoted above suggested, the addendum did not turn the vendor-funded rebates—amounts set and reimbursed on terms set exclusively by the vendors—into B&H-funded discounts. B&H knew that whether or not it had the choice of offering a manufacturer's discount, when it did so and received the reimbursement, that reimbursement was a taxable receipt. The Tax Manager and B&H's senior management were well aware of this rule, as illustrated by, among other evidence, the explicit instruction by one of

B&H's purchasing executives in December 2011 to "only calculate tax for the amount supported by the vendor (IR of $50 but vendor only gives $40 should be taxed on the $40 only)[.]"

81. Moreover, contrary to the suggestion in B&H's proposed (but failed) addendum, B&H always conveyed—and always intended to convey—every vendor-sponsored instant rebate promotion to its customers, in order to compete effectively. Its internal systems were set up to receive vendor reimbursements by automatically counting units sold subject to discount promotions and to comply with manufacturers' pricing and proof of sales requirements for reimbursements.

82. Nevertheless, the company pretended to its vendors that it believed tax was due on instant rebates only because the company was "required to pass [them] on to customers." On June 19, 2012, B&H's assistant general counsel wrote to each of the top vendors that B&H had identified, that "[a]s we interpret current law, those discounts or rebates which we are required to pass on to customers must be included in the purchase price when calculating sales tax. … Attached, please find the contractual addendum we have created to address this issue…."

83. Actually, B&H did not "interpret current law" in that way at all. The company knew that taxability did not depend on whether the rebates were "required" to be passed on. Rather, tax was always due on the entire receipt, including any reimbursements actually paid by manufacturers, whether required to be passed on or not. As its internal admissions show, B&H understood that the essential element of a "vendor-sponsored rebate" was the taxable reimbursement it received from the vendor when the discount was provided to the customer.

84. And B&H freely admitted that it should have been remitting the tax. When an Adobe representative who received the communication asked, "Just so I am clear, if we are offering BandH [sic] a $50 instant rebate on a $200 item, is your customer paying tax on it at

$200 not $150?" B&H's assistant general counsel answered that the tax was due on the full amount without subtracting the vendor-funded instant rebate. As B&H's lawyer responded, "Our customer would be required to pay tax on the $200," not the discounted amount of $150.

85. Yet B&H continued its efforts to persuade vendors to sign the addendum throughout the remainder of 2012 and into 2013. These efforts met with little success. The reason was that the "required to pass on" rationale made no sense to the manufacturers—they knew the agreements were already, and clearly, voluntary. As an Adobe representative put it when discussing the proposed addendum with B&H over email on June 19, 2012, "[t]he promotional discount we provide to BandH [sic] is at your choice to pass on to customer or not [sic]. We do NOT require you to pass it on."

86. B&H's assistant counsel thereupon dropped this rationale, instead making a vague claim of legal necessity: "[w]e understand that we are not required to pass on Adobe sponsored promotion discounts/rebates to our customers, and the Addendum we sent states that. Strictly from a legal perspective, it is much more helpful if our Vendors sign the Addendum specifically agreeing to that point."

87. This was as close as B&H would get to admitting the truth—that it was seeking an explicit statement of its "discretion" so that, if its tax position was ever questioned, it could make the spurious claim that the reimbursements were not taxable receipts because the rebates were actually offered by the retailer, not the manufacturer. In other words, B&H wanted the "discretion" clause to point to if it should ever have to explain to an auditor why it was failing to collect and remit sales tax on the reimbursements.

88. Realizing it needed to provide a more substantive and convincing explanation for its requests, B&H began telling vendors what the law actually required. In September 2012,

B&H's assistant general counsel sent the applicable tax regulations to his counterpart in Nikon's legal department with a cover email stating, "[p]er our discussion, attached is a copy of the relevant provisions of the NYS Tax Code. Specifically being referenced is Subsection 526.5(c). Please let me know if there is any way you can assist us with this issue."

89. B&H's unsuccessful campaign to obtain cover for its illegal conduct was watched by senior management. On January 17, 2013, after a meeting with the Chief Operating Officer, the Tax Director emailed B&H's head buyer, one of the executives charged with communicating the requests to the vendors. With the email, the Tax Director sent a chronology of the company's repeated efforts to obtain the addendum, with the instruction "[p]er the [Chief Operating Officer] meeting, attached please find the sequence of events and the vendor e-mail contacts that were used. Please follow-up on this further."

90. But a few days later, the head buyer finally expressed the conclusion that B&H's repeated requests, based on its false formulation of the rule, were not working. On January 21, 2013, the head buyer forwarded to the CFO an email containing the assistant general counsel's fourth request to Sony that it sign the addendum. That request contained the false formulation that "required" rebates were taxable. The head buyer's comment to the CFO was succinct: "[w]e need a better explanation to send to the vendors."

91. B&H then composed a new communication. This time, the company gave its vendors a clear explanation of its strategy, again attaching the applicable tax regulations and this time emphasizing the relevant provisions in highlighted fluorescent yellow. On March 12, 2013, B&H's head buyer sent the new language to a representative at Canon. The text of the new request included yet another explicit acknowledgement that B&H owed the tax:

> As we interpret current New York State tax law (see relevant provisions attached), promotions which are sponsored by a vendor (e.g. discounts or rebates)

> are required to be included in the overall sales price. ***Even though there is a promotional discount on the product, the price must reflect the total price, before the discount. We are then required to collect New York State sales tax on the entire price***. In contrast, where a discount or rebate is sponsored by B&H, we are allowed to deduct the promotional discount from the sales price, which results in us being able to collect less New York State sales tax.

(Emphasis added.)

The request's conclusion also contained a clear explanation of B&H's pretext, *i.e.*, that discretion somehow transformed manufacturer rebates and reimbursements into B&H-sponsored discounts:

> In order for promotions to be considered as having been sponsored by B&H, B&H needs to be able to control whether they are offered to our customers. The attached addendum simply states that it is within B&H's discretion whether to offer promotions which are offered by your company to our customers. This allows us to deduct the value of these promotions from the product's sales price.

92. B&H knew this conclusion was wrong because it ignored the taxability of the reimbursements, which B&H had emphasized in yellow highlighting in the accompanying regulation:

> [w]here a store issues a coupon, entitling a purchaser to a credit on the item purchased, for which it is reimbursed by a manufacturer or distributor, the tax is due on the full amount of the receipt. The receipt is composed of the amount paid and the amount of the coupon credit.

93. Canon never signed the addendum.

94. Ultimately, only one vendor signed—Panasonic. But, emphasizing the distinction between retailer discounts and manufacturer discounts, it added a footnote below its signature: "If B&H Foto & Electronics Corp so decides it will not be entitled to reimbursement or any other payments it may have otherwise been entitled to in connection therewith." In other words, if B&H wanted to offer its own discounts, it could; but Panasonic would reimburse its instant rebate promotions only. B&H thus had no grounds, even with Panasonic, to claim that the vendor reimbursements were not part of the "entire receipt."

95. B&H's scheme to disguise instant rebates thus failed, across the board.

IX. From 2013 Onward, Having Failed to Obtain the Disguise it Sought, B&H Abandoned Its Plan and Simply Continued Not to Pay the Tax

96. In or around mid-2013, having failed to obtain the cover it wanted for its fraudulent non-payment, B&H abandoned its effort to amend the vendor contracts. Instead, despite multiple admissions that it owed the tax, B&H decided simply to continue its practice of benefitting competitively from ignoring the law.

97. Specifically, B&H never began to collect sales tax from customers on instant rebate discounts and continued to omit the manufacturer reimbursements it received when reporting its taxable receipts in New York State sales tax filings. Moreover, B&H continued to account for the vendor reimbursements as cost of goods sold and to exclude them from taxable receipts in its quarterly sales tax filings with the Tax Department; these efforts hid B&H's baseless sales tax position from auditors.

98. B&H continued its scheme even after the State began investigating its conduct. And it did so while knowing, and acknowledging to others, that it had an obligation to collect sales tax on manufacturer-reimbursed rebate amounts. For instance, during the State's investigation, B&H admitted to a competitor's accountant that the tax was due. In May or June 2016, after B&H learned of the State's investigation, the Tax Director told the accountant that although B&H owed the tax, B&H was still not paying it because doing so would be a "customer service nightmare" that would result in "hundreds of people e-mailing and calling in" and "hundreds of man hours" of customer service to handle.

99. Incredibly, also after the investigation leading to this action began, B&H again acknowledged that it owed the tax. In June 2016, the CFO and another B&H executive requested a meeting with Canon's Tax Department to discuss "Tax on Instant Savings," among other topics. At the meeting, the Canon tax professional correctly explained the Tax Law with

respect to vendor reimbursements, and B&H indicated it already knew that New York State sales tax must be paid on instant rebates and the price paid by the customer.

100. In yet another attempt to press its disguise, in August 2016, one of B&H's purchasing executives again forwarded to his contact at Sony a copy of the March 2013 letter requesting it sign the addendum, along with the relevant tax regulations again emphasized in fluorescent yellow. This request, like virtually all the others before it, was unsuccessful.

X. To This Day, B&H Continues Not to Pay the Sales Tax it Owes

101. To date, B&H continues knowingly to fail to pay tax on the instant rebate reimbursements it receives from manufacturers.

102. To date, B&H continues knowingly to falsely underreport its taxable sales on its sales tax returns.

103. By doing so, B&H maintains a competitive advantage over honest retailers who pay the New York State sales tax that is due on manufacturer-funded rebates.

104. And, by doing so, B&H defrauds the State and its taxpayers out of millions of dollars of sales tax revenue every year.

FIRST CAUSE OF ACTION
AGAINST DEFENDANT B&H

New York False Claims Act—State Fin. Law § 189(1)(g)

105. Plaintiff repeats and re-alleges the foregoing paragraphs as set forth herein.

106. Defendant B&H violated State Finance Law § 189(1)(g) in that it knowingly made, used, or caused to be made or used, false records or statements material to an obligation to pay or transmit money or property to the State.

107. B&H had an obligation to pay sales tax on all receipts from product sales, including vendor reimbursements of the instant rebate discounts its customers received. B&H made false records or statements in its quarterly New York State sales tax filings from 2006 through the present by omitting from its taxable receipts these reimbursements. The omissions were material to its obligation to pay sales tax because they reduced the taxable receipts to which sales tax rates apply. Consequently, B&H understated by an estimated $7 million or more the amount of sales tax it was required to remit to New York State.

108. B&H made the false records or statements knowingly. B&H, through its top executives, including its Owner, CFO and the Tax Director responsible for tax filings, had actual knowledge that B&H was neither collecting nor remitting sales tax on reimbursements it received, or acted in deliberate ignorance of its obligations to collect and remit sales tax on reimbursements it received, or acted with reckless disregard of its obligations to collect and remit sales tax on reimbursements it received. B&H acted knowingly, in deliberate ignorance of the truth, or with reckless disregard for the truth when it falsely underreported its taxable receipts on its periodic sales tax filings by failing to include manufacturer reimbursements for instant rebates.

109. The thresholds set forth in State Finance Law § 189(4)(a)(i) and (ii) are satisfied because Defendant B&H had net income or sales in excess of $1 million for any taxable year subject to this action, and the damages pleaded exceed $350,000 in the aggregate.

SECOND CAUSE OF ACTION
AGAINST DEFENDANT B&H

Violation of Articles 28 and 29 of the Tax Law

110. Plaintiff repeats and re-alleges the foregoing paragraphs as set forth herein.

111. B&H failed to collect and pay over sales taxes as required by, and in violation of, the Tax Law, which imposes penalties and interest for such failure.

112. The Attorney General is authorized to assert claims under the Tax Law by virtue of a request from the Tax Commissioner, by written referral pursuant to N.Y. Tax Law § 1141(a), that to whatever extent it deems appropriate, the Attorney General institute actions or proceedings to assert tax-related claims under any relevant provisions of the Tax Law and other laws to enforce the payment of requisite tax, penalties and interest by B&H and to seek any other forms of relief as may be appropriate to enforce Article 28 against B&H for the conduct alleged herein for the three-year period prior to the institution of this action.

THIRD CAUSE OF ACTION
AGAINST DEFENDANT B&H

Persistent Fraud or Illegality—Executive Law 63(12)

113. Plaintiff repeats and re-alleges the foregoing paragraphs as set forth herein.

114. The acts and practices alleged herein violated § 63(12) of the Executive Law, in that B&H engaged in repeated fraudulent or illegal acts or otherwise demonstrated persistent fraud or illegality in the carrying on, conducting or transaction of business.

115. Specifically, as described in the foregoing paragraphs, B&H repeatedly engaged in the fraudulent and illegal acts of failing to collect and remit sales tax due and owing and submitting sales tax filings to the New York Department of Taxation and Finance in violation of N.Y. State Tax Law § 1105. Accordingly, B&H is liable for the underpayment of taxes, interest thereon provided for in the New York Tax Law, and penalties provided for in the tax law, including, but not limited to, the penalties applicable where taxpayers fraudulently fail to pay taxes due.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands and prays that judgment be entered against Defendant as follows:

a. Declaring, pursuant to CPLR § 3001, that Defendant B&H Foto & Electronics Corp. has violated Tax Law § 1105, N.Y. State Fin. Law §§ 187 *et seq.*, and Executive Law § 63(12);

b. Enjoining and restraining Defendant B&H Foto & Electronics Corp. from engaging in any conduct, conspiracy, contract, or agreement, and from adopting or following any practice, plan, program, scheme, artifice or device similar to, or having a purpose and effect similar to, the conduct complained of above;

c. Directing that Defendant B&H Foto & Electronics Corp., pursuant to N.Y. State Fin. Law §§ 187 *et seq.*, pay an amount equal to three times the amount of damages sustained as a result of Defendant's violations of the New York False Claims Act;

d. Directing that Defendant B&H Foto & Electronics Corp. pay penalties as required by N.Y. State Fin. Law §§ 187 *et seq.* for each violation of N.Y. State Fin. Law § 189;

e. Directing B&H to pay all damages caused by the fraudulent and deceptive acts and practices alleged herein, including all sales taxes due and owing, plus applicable interest and penalties under the New York Tax Law, to all injured persons or entities, including those not identified at the time of the order;

f. Directing that Defendant pay Plaintiff's costs, including attorneys' fees as provided by law;

g. Directing that Defendant comply with the Tax Law and Regulations in collecting and remitting sales tax on instant rebate reimbursements;

h. Directing such other equitable relief as may be necessary to redress Defendant's violations of New York law; and

i. Granting such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of any issue of fact triable as of right by a jury.

Dated: New York, New York
November 14, 2019

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: _____

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