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11 *and Marcia Williams*

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 Case No.: 2:16-cv-2216

15 **NEDA KADKHODA and MARCIA**
16 **WILLIAMS, individually and on behalf of**
17 **all others similarly situated,**

18 **CLASS ACTION COMPLAINT**

19 Plaintiffs,

20 **1. Violation of California Civil**
21 **Code §1770, et seq.**

22 v.

23 **2. Violation of California**
24 **Business and Professions**
25 **Code § 17200, et seq.**

26 **MY PILLOW, INC.,**

27 **3. Violation of California**
28 **Business and Professions**
Code § 17500, et seq.

Defendant.

4. Violation of Florida Deceptive
and Unfair Trade Practices
Act § 501.201, et seq.

5. Breach of Express Warranty

6. Fraud in Inducement

JURY TRIAL DEMANDED

1 Plaintiffs Neda Kadkhoda and Marcia Williams (“Plaintiffs”) by and through
2 their counsel, bring this Class Action Complaint against Defendant My Pillow, Inc.,
3 and any parent or subsidiary entity (“My Pillow” or “Company” or “Defendant”), on
4 behalf of themselves and all others similarly situated, and allege upon personal
5 knowledge as to their own actions and their counsel’s investigations, and upon
6 information and belief as to all other matters, as follows:

7 **NATURE OF THE ACTION**

8 1. Plaintiffs bring this consumer protection and false advertising class
9 action lawsuit against Defendant, based on Defendant’s false and misleading
10 representations on its website, infomercials, and other advertising platforms.

11 2. In an effort to sell its pillow and bedding products (“My Pillow
12 Products”), Defendant has deceptively and fraudulently used the logos of prominent
13 third party news reporting entities on its website. Defendant has also falsely and
14 deceptively represented to consumers that My Pillow CEO and inventor Michael J.
15 Lindell (“Lindell”) is a “sleep expert.”

16 3. Consumers, including Plaintiffs, have relied on Defendant’s false and
17 misleading advertisements when purchasing My Pillow Products. Had consumers
18 known that Defendant’s advertisements were false and misleading they would not
19 have purchased My Pillow Products, or would have paid significantly less for the
20 products. Therefore, consumers have suffered injury in fact as a result of Defendant’s
21 false and misleading advertising.

22 4. Plaintiffs bring this class action lawsuit on behalf of themselves and all
23 others similarly situated, seeking damages, restitution, declaratory and injunctive
24 relief, and all other remedies the court deems appropriate.

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1 **JURISDICTION AND VENUE**

2 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
3 1332(d)(2)(A) because this case is a class action where the aggregate claims of all
4 members of the proposed classes are in excess of \$5,000,000, exclusive of interests
5 and costs, and Plaintiffs, as well as most members of the proposed Classes, are
6 citizens of states different from the state of Defendant. Defendant has sold millions of
7 My Pillow Products.

8 6. This Court has personal jurisdiction over Defendant because Defendant
9 has sufficient minimum contacts in California or otherwise intentionally did avail
10 itself of the markets within California, through its sale of My Pillow Products to
11 California consumers.

12 7. Venue is proper in this District pursuant to 28 U.S.C. 1391(a)(1) because
13 Defendant regularly conducts business throughout this District, and a substantial part
14 of the events and/or omissions giving rise to this action occurred in this District.

15 **PARTIES**

16 8. Plaintiff Neda Kadkhoda is a citizen of California, residing in Los
17 Angeles. In or around October 2014, Ms. Kadkhoda purchased a My Pillow pillow
18 from Bed, Bath, and Beyond, after watching one of Defendant’s infomercials on
19 television, and browsing Defendant’s website for purchase options. Ms. Kadkhoda
20 purchased a My Pillow pillow, relying on Defendant’s representation that Lindell is a
21 “sleep expert” and Defendant’s portrayal of various news reporting entities’ logos on
22 its website. Ms. Kadkhoda would not have purchased the My Pillow pillow, or would
23 have paid significantly less for the product, had she known that Defendant’s
24 representations were false and misleading. Ms. Kadkhoda therefore suffered injury in
25 fact and lost money as a result of Defendant’s misleading, false, unfair, and
26 fraudulent practices, as described herein.

1 9. Plaintiff Marcia Williams is a citizen of Florida, residing in Winter
2 Springs. In or around June 18, 2014, Ms. Williams purchased a My Pillow pillow
3 through QVC, after watching both the My Pillow infomercial on television, and
4 browsing the My Pillow website. Ms. Williams purchased a My Pillow pillow,
5 relying on Defendant's representation that Lindell is a "sleep expert" and Defendant's
6 portrayal of various news reporting entities' logos on its website. Ms. Williams would
7 not have purchased the My Pillow pillow, or would have paid significantly less for
8 the product, had she known that Defendant's representations were false and
9 misleading. Ms. Williams therefore suffered injury in fact and lost money as a result
10 of Defendant's misleading, false, unfair, and fraudulent practices, as described herein.

11 10. Defendant My Pillow, Inc., is a Minnesota corporation with its principal
12 place of business in Chaska, Minnesota. Defendant manufactures, distributes, sells,
13 and advertises pillows and other bedding products nationwide, including in California
14 and Florida. Defendant has maintained substantial distribution, sales, and marketing
15 operations in this District.

16 11. Whenever and wherever reference is made to individuals who are not
17 named as defendants in this complaint but who were employees/agents of Defendant,
18 such individuals at all relevant times acted on behalf of Defendant within the course
19 and scope of their employment.

20 12. Plaintiffs are informed and believe and thereupon allege that, at all times
21 material herein, Defendant and each of its employees/agents knew or reasonably
22 should have known that Plaintiffs and the Classes were and are being injured by the
23 conduct of Defendant and the failure of Defendant to police its own industry by
24 adequately supervising, regulating, and instituting ways to correct, discipline and/or
25 otherwise modify the conduct of the employees of Defendant for committing actions
26 that harm consumers or failing to act in ways to protect consumers.

FACTUAL ALLEGATIONS

A. My Pillow’s inception

13. With 50-70 million U.S. adults not getting enough sleep,¹ the sleep industry has exploded into a multi-billion dollar industry.²

14. This is the lucrative market that Defendant, and My Pillow CEO and inventor Lindell sought to capitalize on since the Company’s inception in 2011.

15. In or around October 2011, Defendant launched its first infomercial (“Infomercial #1”),³ an advertisement that has been running on local and national networks since then. The roughly 28-minute infomercial features Lindell and advertises Defendant’s My Pillow Products. The infomercial encourages viewers to call in or visit Defendant’s website, www.mypillow.com, to order My Pillow Products. Infomercial #1 is also available on Defendant’s website, www.mypillow.com.⁴

16. Defendant has also launched other advertisements for its products, including a second infomercial (“Infomercial #2”).⁵ This roughly 26-minute infomercial also features Lindell and also advertises Defendant’s My Pillow Products. Furthermore, the infomercial also encourages viewers to call in or visit Defendant’s website, www.mypillow.com, to order My Pillow Products.

17. Defendant’s website, www.mypillow.com, is another advertising platform used by Defendant. While the website includes a virtual “store” where interested consumers can purchase My Pillow Products, the website also contains advertising materials such as testimonials, guarantees, and a list of medical conditions

¹ <http://www.cdc.gov/features/dssleep/> (last visited 03-30-16)

² <http://www.thefiscaltimes.com/Articles/2012/07/23/Sleepless-in-America-A-32-4-Billion-Business> (last visited 03-30-16)

³ <https://www.youtube.com/watch?v=7Nozvoxr4Ks> (last visited 03-29-16)

⁴ <http://www.mypillow.com/mypillow-infomercial.html> (last visited 03-30-16)

⁵ <https://www.youtube.com/watch?v=uwyA-xs1y2E> (last visited 03-29-16)

1 that Defendant represents My Pillow Products can help alleviate.⁶

2 18. In addition, Defendant sells My Pillow Products at major retailers such
3 as Walmart, Target, and Bed Bath and Beyond.

4 **B. Defendant’s use and placement of the logos of news reporting entities**

5 19. Since at least as early as May 17, 2014, Defendant’s website homepage
6 has conspicuously depicted the logos of prominent third party news reporting entities,
7 such as *Fox Business*, *The New York Times*, *USA Today*, and *Wall Street Journal*
8 (“News Reporting Entities”). A snapshot of Defendant’s website on July 3, 2014, can
9 be seen below:⁷



22 20. Defendant’s use and placement of such logos on the homepage of its
23 website is deceptive and misleading to consumers. Plaintiffs understood that the use
24 and placement of these logos meant that the News Reporting Entities endorsed,

25 ⁶ <https://web.archive.org/web/20160113122205/http://www.mypillow.com/reasons-to-buy.html> (last visited 03-30-16).
26 Defendant recently removed its list of medical conditions the My Pillow Products purportedly help cure from its
27 website, notably after Truthinadvertising.org (an independently funded nonprofit organization dedicated to empowering
28 consumers to protect themselves against false advertising and deceptive marketing) sent a warning letter informing
Defendant it is in violation of the Federal Trade Commission Act.

⁷ <https://web.archive.org/web/20140703075424/https://www.mypillow.com/> (last visited 03-30-16)

1 sponsored, supported, or were affiliated with Defendant.

2 21. Furthermore, the logos were placed adjacent to Defendant's "QVC 2013
3 QSTAR AWARD Product Concept of the Year!" logo ("QVC Award Logo"). The
4 strategic placement of the News Reporting Entities' logos next to the QVC Award
5 Logo reinforced Plaintiffs' beliefs that the News Reporting Entities have given My
6 Pillow an award, acknowledgement, sponsorship, or endorsement.

7 22. However, Defendant has no such sponsorship or endorsement from, or
8 affiliation with the News Reporting Entities, as Plaintiffs believed it did.

9 23. In reasonable reliance that the News Reporting Entities' logos on
10 Defendant's website implied that the News Reporting Entities in some way endorsed,
11 sponsored, or supported Defendant's business or products, Plaintiffs purchased My
12 Pillow Products.

13 24. Defendant's use and placement of the News Reporting Entities' logos on
14 its website helped Defendant sell My Pillow Products at a premium price. Plaintiffs
15 would not have purchased My Pillow Products, or would have paid significantly less
16 for the products, had they known that Defendant had no such endorsement,
17 sponsorship, or support from the News Reporting Entities. Therefore, consumers
18 purchasing My Pillow Products, such as the Plaintiffs and the class members,
19 suffered injury in fact and lost money as a result of Defendant's false, unfair, and
20 fraudulent practices, as described herein.

21 **C. Defendant's false and misleading representation of Lindell as a "sleep**
22 **expert"**

23 25. Defendant has also engaged in false, misleading and fraudulent behavior
24 by representing that Lindell is a "sleep expert" in at least two of its television
25 advertisements.

26 26. At numerous points during Infomercial #1, Lindell is depicted with the
27 title "sleep expert" under his name. An example of this representation can be seen
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1 below:⁸



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14 27. Furthermore, the voice-over in Infomercial #1 introduces Lindell as a
15 “sleep expert.”

16 28. Throughout the course of Infomercial #1, Lindell also uses phrases such
17 as “my theory of sleep,” and states that “sleep is the most important thing to your
18 health.” During the infomercial, Lindell also discusses the anatomies of the neck and
19 spine, and their impact on sleep.

20 29. Additionally, throughout Infomercial #2, Lindell is also depicted with
21 the title “sleep expert” next to his name. An example of this representation can be
22 seen below:⁹

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27 ⁸ <https://www.youtube.com/watch?v=7Nozvoxr4Ks> (last visited 03-30-16)

28 ⁹ <https://www.youtube.com/watch?v=uwyA-xs1y2E> (last visited 03-30-16)

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30. Furthermore, as in Infomercial #1, in Infomercial #2 Lindell makes claims about human anatomy and its impact on sleep.

31. Despite Defendant’s representation that Lindell is a “sleep expert,” Lindell has no expertise in sleep science or medicine. In an interview with a Truthinadvertising.org¹⁰ journalist, Lindell admitted that he has no board certification or special training in sleep medicine. The American Board of Medical Specialties has also confirmed that Lindell is not certified in sleep medicine by the organization.

32. In reasonable reliance that Lindell is a “sleep expert,” Plaintiffs purchased My Pillow Products.

33. Defendant’s false and misleading representation that Lindell is a “sleep expert” helps and continues to help Defendant sell My Pillow Products at a premium price. Plaintiffs would not have purchased My Pillow Products, or would have paid significantly less for the products, had they known that Lindell was not a sleep expert. Therefore, consumers purchasing My Pillow Products, such as the Plaintiffs and the

¹⁰ Truthinadvertising.org is an independently funded nonprofit organization dedicated to empowering consumers to protect themselves against false advertising and deceptive marketing. The organization achieves its mission by investigating instances of false advertising and deceptive marketing and sharing its findings with others (last visited 03-30-16).

1 class members, suffered injury in fact and lost money as a result of Defendant’s false,
2 unfair, and fraudulent practices, as described herein.

3 34. Defendant’s advertisements, including Infomercial #1 and Infomercial
4 #2, continue to make the unlawful, false, fraudulent and misleading representation
5 that Lindell is a “sleep expert.”

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7 **CLASS ACTION ALLEGATIONS**

8 35. Plaintiffs bring this case as a class action and may be properly
9 maintained under Federal Rule of Civil Procedure 23 and/or California Civil Code
10 section 1781 on behalf of themselves and all persons in the United States, who within
11 the relevant statute of limitations periods, purchased My Pillow Products
12 (“Nationwide Class”).

13 36. Plaintiff Kadkhoda also seeks to represent a subclass defined as all
14 California residents, who within the relevant statute of limitations periods, purchased
15 My Pillow Products (“California Subclass”).

16 37. Plaintiff Kadkhoda also seeks to represent a subclass defined as all
17 California subclass members, who within the relevant statute of limitations periods,
18 purchased My Pillow Products for personal, family, or household purposes
19 (“California Consumer Subclass”).

20 38. Plaintiff Williams also seeks to represent a subclass defined as all
21 Florida residents, who within the relevant statute of limitations periods, purchased
22 My Pillow Products (“Florida Subclass”).

23 39. Excluded from the Classes are Defendant, the officers and directors of
24 the Defendant at all relevant times, members of their immediate families and their
25 legal representatives, heirs, successors or assigns and any entity in which Defendant
26 has or had a controlling interest. Any judge and/or magistrate judge to whom this
27 action is assigned and any members of such judges’ staffs and immediate families are
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1 also excluded from the Classes. Also excluded from the Classes are persons or
2 entities that purchased My Pillow Products for purposes of resale.

3 40. Plaintiffs hereby reserve the right to amend or modify the class
4 definitions with greater specificity or division after having had an opportunity to
5 conduct discovery.

6 41. Plaintiff Neda Kadkhoda is a member of the Nationwide Class, the
7 California Subclass, and the California Consumer Subclass.

8 42. Plaintiff Marcia Williams is a member of the Nationwide Class and
9 Florida Subclass.

10 43. Numerosity: Defendant has sold millions of My Pillow Products.
11 Defendant's My Pillow Products are available for sale both through the Defendant's
12 website and at third party retailers and vendors, such as Walmart, Target, and Bed
13 Bath and Beyond. Accordingly, members of the Classes are so numerous that their
14 individual joinder herein is impractical. While the precise number of Class members
15 and their identities are unknown to Plaintiffs at this time, the number may be
16 determined through discovery. Class members may be notified of the pendency of
17 this action by mail and/or publication through the distribution records of Defendant,
18 third party retailers, and vendors.

19 44. Common Questions Predominate: Common questions of law and fact
20 exist as to all Class members and predominate over questions affecting only
21 individual Class members. Common legal and factual questions include, but are not
22 limited to, the following: i) whether the use and placement of the News Reporting
23 Entities' logos was false, misleading and fraudulent; and ii) whether the
24 representation that Lindell is a "sleep expert" is false, misleading, and fraudulent.

25 45. Typicality: Plaintiffs' claims are typical of the claims of the Classes
26 they seek to represent in that Plaintiffs were exposed to Defendant's false and
27 misleading advertising, purchased My Pillow Products after being exposed to the
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1 foregoing fraud, and suffered losses as a result of such purchases.

2 46. Adequacy: Plaintiffs are adequate representatives of the Classes because
3 their interests do not conflict with the interests of the members of the Classes they
4 seek to represent, they have retained competent counsel experienced in prosecuting
5 class actions, and they intend to prosecute this action vigorously. The interests of the
6 members of the Classes will be fairly and adequately protected by Plaintiffs and their
7 counsel.

8 47. Superiority: A class action is superior to other available means for the
9 fair and efficient adjudication of the claims of the members of the Classes. Each
10 individual Class member may lack the resources to undergo the burden and expense
11 of individual prosecution of the complex and extensive litigation necessary to
12 establish Defendant's liability. Individualized litigation increases the delay and
13 expense to all parties and multiplies the burden on the judicial system presented by
14 the complex legal and factual issues of this case. Individualized litigation also
15 presents a potential for inconsistent or contradictory judgments.

16 48. This lawsuit is maintainable as a class action under Federal Rule of Civil
17 Procedure 23(b)(2) because Defendant has acted or refused to act on grounds that are
18 generally applicable to the class members, thereby making final injunctive relief
19 appropriate with respect to the Nationwide Class and each Subclass as a whole.

20 49. This lawsuit is maintainable as a class action under Federal Rule of Civil
21 Procedure 23(b)(3) because the questions of law and fact common to the class
22 members predominate over any questions that affect only individual members, and
23 because the class action mechanism is superior to other available methods for the fair
24 and efficient adjudication of the controversy.

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1 and/or business are sponsored or approved, through the use and placement of the News
2 Reporting Entities' logos, Defendant has violated section 1770(a)(5) of the CLRA.
3 Furthermore, by deceptively representing that Lindell is a "sleep expert," Defendant has
4 represented that Lindell has approval, status, or connection which he does not have, and
5 therefore has violated and continues to violate section 1770(a)(5) of the CLRA.

6 56. Cal. Civ. Code § 1770(a)(16) prohibits "[r]epresenting that the subject of
7 a transaction has been supplied in accordance with a previous representation when it
8 has not." By implying that the My Pillow Products were provided for sale with
9 endorsements by the News Reporting Entities through the use and placement of the
10 News Reporting Entities' logos, Defendant has violated and continues to violate
11 CLRA section 1770(a)(16). Furthermore, by representing that the My Pillow
12 Products were provided for sale by Lindell who is a "sleep expert," Defendant has
13 misrepresented that Lindell has authority that he does not to recommend the My
14 Pillow Products to consumers, and therefore has violated and continues to violate
15 CLRA section 1770(a)(16).

16 57. Plaintiff Kadkhoda and all members of the California Consumer
17 Subclass reasonably relied on Defendant's false, misleading, and fraudulent conduct
18 when purchasing My Pillow Products. Moreover, based on the very materiality of
19 Defendant's fraudulent and misleading conduct, reliance on such conduct as a
20 material reason for the decision to purchase My Pillow Products may be presumed or
21 inferred for Plaintiff Kadkhoda and all members of California Consumer Subclass.

22 58. Defendant knew or should have known that its false, misleading, and
23 fraudulent conduct violated and continues to violate consumer protection laws, and
24 that its false, misleading, and fraudulent conduct would be relied upon by Plaintiff
25 Kadkhoda and all members of the California Consumer Subclass.

26 59. Plaintiff Kadkhoda and all members of the California Consumer
27 Subclass suffered injuries caused by Defendant because they would not have
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1 purchased My Pillow Products, or would have paid significantly less for the products,
2 had they known that Defendant’s conduct was false, misleading, and fraudulent.

3 60. Under California Civil Code § 1780(a), Plaintiff Kadkhoda and all
4 members of the California Consumer Subclass seek injunctive and equitable relief for
5 Defendant’s violations of the CLRA. Plaintiff Kadkhoda seeks to enjoin Defendant
6 from: i) depicting logos of the News Reporting Entities or other entities from or to
7 which Defendant has no sponsorship, endorsement, affiliation, or connection with, on
8 its website and any other advertising platform; and ii) representing in its advertising
9 platforms, including in its infomercials, that Lindell is a “sleep expert.” Counsel for
10 Plaintiff Kadkhoda has mailed a notice and demand letter by certified mail, with
11 return receipt requested, consistent with California Civil Code § 1782(a). If
12 Defendant fails to take corrective action within 30 days of receipt of the demand
13 letter, Plaintiff Kadkhoda will amend her complaint and this cause of action to
14 include a request for damages as permitted by Civil Code § 1782(d), *inter alia*.

15 **SECOND CLAIM FOR RELIEF**
16 **Violation of California’s Unfair Competition Law (“UCL”),**
17 **California Business & Professions Code §§ 17200, *et seq.***

18 61. Plaintiffs repeat the allegations contained in the paragraphs above as if
19 fully set forth herein.

20 62. Plaintiff Kadkhoda brings this claim individually and on behalf of the
21 members of the proposed California Subclass against Defendant.

22 63. UCL §17200 provides, in pertinent part, that “unfair competition shall
23 mean and include unlawful, unfair or fraudulent business practices and unfair,
24 deceptive, untrue or misleading advertising”

25 64. Under the UCL, a business act or practice is “unlawful” if it violates any
26 established state or federal law.

27 65. Defendant’s false and misleading advertising using the News Reporting
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1 Entities' logos and representing that Lindell is a "sleep expert" is therefore
2 "unlawful" because it violates the CLRA, California's False Advertising Law
3 ("FAL"), and other applicable laws as described herein.

4 66. As a result of Defendant's unlawful business acts and practices,
5 Defendant has obtained, and continues to unlawfully obtain, money from California
6 consumers.

7 67. Under the UCL, a business act or practice is "unfair" if the Defendant's
8 conduct is substantially injurious to consumers, offends public policy, and is
9 immoral, unethical, oppressive, and unscrupulous, as the act or practice's benefits are
10 outweighed by the gravity of the harm to the alleged victims.

11 68. Defendant's conduct here is of no benefit to potential purchasers of My
12 Pillow Products, as it is untrue, misleading, unfair, and unlawful. Creating customer
13 confusion as to the nature of Defendant's potential endorsements, sponsorships, or
14 support is of no benefit to consumers. Furthermore, creating customer confusion as to
15 Lindell's credentials is of no benefit to consumers. Therefore, Defendant's conduct is
16 "unfair."

17 69. As a result of Defendant's unfair business acts and practices, Defendant
18 has obtained, and continues to unfairly obtain money from California consumers.

19 70. Under the UCL, a business act or practice is "fraudulent" if it actually
20 deceives or is likely to deceive members of the consuming public.

21 71. Defendant's conduct here is fraudulent because it has the effect of
22 misleading consumers into believing that My Pillow Products are more supported or
23 more effective than they actually are. Plaintiff and members of the California
24 Subclass are not sophisticated experts on sleep science or the sleep industry, and
25 therefore likely give high deference to both the opinions of news entities and the
26 opinions of those represented as "experts" in a certain field. Because Defendant
27 misled and continues to mislead customers about the foregoing, Defendant's conduct
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1 is “fraudulent.”

2 72. As a result of Defendant’s fraudulent business acts and practices,
3 Defendant has obtained, and continues to fraudulently obtain money from California
4 consumers.

5 73. Plaintiff Kadkhoda requests that this Court cause Defendant to restore
6 this unlawfully, unfairly, and fraudulently obtained money to Plaintiff and all
7 members of the California Subclass, to disgorge the profits Defendant made on these
8 transactions, and to enjoin Defendant from continuing to violate the UCL or violating
9 it in the same fashion in the future as discussed herein. Otherwise, the California
10 Subclass may be irreparably harmed and/or denied an effective and complete remedy
11 if such an order is not granted.

12 **THIRD CLAIM FOR RELIEF**
13 **Violation of California’s False Advertising Law (“FAL”),**
14 **California Business & Professions Code §§ 17500, et seq**

15 74. Plaintiffs repeat the allegations contained in the paragraphs above as if
16 fully set forth herein.

17 75. Plaintiff Kadkhoda brings this claim individually and on behalf of the
18 members of the proposed California Subclass against Defendant.

19 76. California’s FAL makes it “unlawful for any person to make or
20 disseminate or cause to be made or disseminated before the public... in any
21 advertising device ... or in any other manner or means whatever, including over the
22 Internet, any statement, concerning ... personal property or services professional or
23 otherwise, or performance or disposition thereof, which is untrue or misleading and
24 which is known, or which by the exercise of reasonable care should be known, to be
25 untrue or misleading.”

26 77. Defendant has disseminated to the public, including Plaintiff Kadkhoda
27 and California consumers, advertisements or advertising language in both its
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1 infomercials and website. Because Defendant has included false, misleading, and
2 fraudulent representations in its advertisements, and Defendant knew that these
3 representations were unauthorized, inaccurate, and misleading, Defendant has
4 violated the FAL.

5 78. Furthermore, Defendant knew or should have known through the
6 exercise of reasonable care that such representations were unauthorized, inaccurate,
7 and misleading.

8 79. As a result of Defendant's fraudulent business acts and practices,
9 Defendant has obtained, and continues to fraudulently obtain money from California
10 consumers.

11 80. Plaintiff Kadkhoda requests that this Court cause Defendant to restore
12 this money to Plaintiff and all members of the California Subclass, to disgorge the
13 profits Defendant made on these transactions, and to enjoin Defendant from
14 continuing to violate the FAL or violating it in the same fashion in the future as
15 discussed herein. Otherwise, the California Subclass may be irreparably harmed
16 and/or denied an effective and complete remedy if such an order is not granted.

17 **FOURTH CLAIM FOR RELIEF**
18 **Violation of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"),**
19 **Florida Statutes §§ 501.201, et seq.**

20 81. Plaintiffs repeat the allegations contained in the paragraphs above as if
21 fully set forth herein.

22 82. Plaintiff Williams brings this claim individually and on behalf of the
23 members of the proposed Florida Subclass against Defendant.

24 83. The FDUTPA is "a consumer protection law intended to protect the
25 consuming public and legitimate business enterprises from those who engage in
26 unfair methods of competition, or unconscionable, deceptive, or unfair acts or
27 practices in the conduct of any trade or commerce." *Tuckish v. Pompano Motor Co.*,
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1 337 F. Supp. 2d 1313, 1319 (S.D. Fla. 2004); Fla. Stat. § 501.202. In the interests of
2 consumer protection, the FDUTPA should be “liberally construed.” *Samuels v. King*
3 *Motor Co.*, 782 So. 2d 489, 499 (Fla. 4th DCA 2001).

4 84. Plaintiff Williams and members of the Florida Subclass are “consumers”
5 as defined by FDUTPA § 501.203(7). At all relevant times hereto, Defendant has
6 engaged in “trade or commerce” within the meaning of the FDUTPA § 501.203(8).
7 Furthermore, Defendant’s My Pillow Products are “goods” within the meaning of the
8 FDUTPA.

9 85. Pursuant to FDUTPA § 501.204, “[u]nfair methods of competition,
10 unconscionable acts or practices, and unfair or deceptive acts or practices in conduct
11 of any trade or commerce” are declared unlawful. “Deception occurs if there is a
12 representation, omission, or practice that is likely to mislead the consumer acting
13 reasonably in the circumstances, to the consumer’s detriment.” *PNR, Inc. v. Beacon*
14 *Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003).

15 86. Defendant’s false and misleading representations here constitute
16 deceptive acts or practices, because they are likely to mislead, or have misled,
17 reasonable consumers. Defendant has misled consumers about My Pillow’s potential
18 sponsors, endorsers, or affiliations. Furthermore, by representing that Lindell is a
19 “sleep expert,” Defendant has misled and continues to mislead consumers about the
20 efficacy and professional approval of its My Pillow Products.

21 87. Defendant’s false and misleading representations also constitute an
22 unfair practice, because they offend established public policy and are immoral,
23 unethical, oppressive, unscrupulous or substantially injurious to consumers.

24 88. As a result of Defendant’s false and misleading representations, Plaintiff
25 Williams and members of the Florida Subclass have purchased Defendant’s products.
26 Had they known Defendant’s representations were false and misleading, Plaintiff
27 Williams and Florida consumers would not have purchased Defendant’s My Pillow
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1 Products, or would have paid significantly less for the products. Therefore, Plaintiff
2 Williams and members of the Florida Subclass have suffered damages.

3 89. Plaintiff Williams requests that this Court order or grant all remedies
4 available under the FDUTPA, including, but not limited to civil penalties, injunctive
5 and declaratory relief, damages, and attorneys' fees and costs.

6 **FIFTH CLAIM FOR RELIEF**
7 **Breach of Express Warranty**

8 90. Plaintiffs repeat the allegations contained in the paragraphs above as if
9 fully set forth herein.

10 91. Plaintiffs bring this claim individually and on behalf of the members of
11 the proposed Nationwide Class against Defendant.

12 92. By using the News Reporting Entities' logos on its website, Defendant
13 has made affirmations of fact and expressly warranted that the Company and/or its
14 products are sponsored, endorsed, or affiliated with the News Reporting Entities.

15 93. The representation that the Company and/or its products are sponsored,
16 endorsed, or affiliated with the News Reporting Entities was reasonably understood
17 to constitute an affirmation of fact and/or representation that the Company and/or its
18 product were in fact sponsored, endorsed, or affiliated with the News Reporting
19 Entities.

20 94. The representation that the Company and/or its products are sponsored,
21 endorsed, or affiliated with the News Reporting Entities served part of the basis of the
22 bargain for every purchase of My Pillow Products after viewing the website.
23 Plaintiffs and members of the Nationwide Class reasonably relied upon the News
24 Reporting Entities' logos on the website and understood that the logos meant a
25 sponsorship or endorsement from, or affiliation with the News Reporting Entities.

26 95. Defendant breached this warranty because the Company and/or its
27 products were not sponsored, endorsed, or affiliated with the News Reporting
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1 Entities.

2 96. As a result of Defendant's breach, Plaintiffs and members of the
3 Nationwide Class were injured, as they would not have purchased Defendant's My
4 Pillow Products, or would have paid significantly less for the products, had they
5 known that Defendant's representations were false and misleading.

6 **SIXTH CLAIM FOR RELIEF**
7 **Fraud in Inducement**

8 97. Plaintiffs repeat the allegations contained in the paragraphs above as if
9 fully set forth herein.

10 98. Plaintiffs bring this claim individually and on behalf of the members of
11 the proposed Nationwide Class against Defendant.

12 99. As described with particularity herein, Defendant has disseminated and
13 continues to disseminate false and misleading advertising that it knows or should
14 reasonable know is false and misleading. Defendant had full access to and knowledge
15 of the Company's contracts and relationships, and therefore knew or should have
16 known the Company had no such sponsorships, endorsements, or affiliations.
17 Furthermore, Defendant had full access to the background and credentials of Lindell
18 and therefore knew or should have known that Lindell was not a "sleep expert."

19 100. The false and misleading representations were made by Defendant with
20 intent to induce reliance on such representations. Defendant knew that making such
21 representations would induce consumers to rely and act based on those
22 representations.

23 101. Plaintiffs and members of the Nationwide Class reasonably relied on the
24 false and misleading representations.

25 102. Relying on Defendant's false and misleading representations, Plaintiff
26 and members of the Nationwide Class purchased Defendant's products. Had they
27 known Defendant's representations were false and misleading, they would not have
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1 purchased Defendant's My Pillow Products, or would have paid significantly less for
2 the products. Therefore, Plaintiffs and members of the Nationwide Class have
3 suffered damages.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, individually and on behalf of all others
6 similarly situated, seek judgment against Defendant, as follows:

7 a) For an order certifying the Nationwide Class, the California Subclass,
8 the California Consumer Subclass, and the Florida Subclass under Rule 23 of the
9 Federal Rules of Civil Procedure; naming Plaintiff Kadkhoda as representative of
10 the California Subclass and California Consumer Subclass; naming Plaintiff
11 Marcia Williams as representative of the Florida Subclass; and naming Plaintiffs'
12 attorneys as Class Counsel to represent all Classes.

13 b) For an order declaring that Defendant's conduct violates the statutes
14 and laws referenced herein;

15 c) For an order finding in favor of Plaintiffs, the Nationwide Class, the
16 California Subclass, the California Consumer Subclass, and the Florida Subclass
17 on all counts asserted herein;

18 d) For compensatory and punitive damages in amounts to be determined
19 by the Court and/or jury;

20 e) For prejudgment interest on all amounts awarded;

21 f) For an order of restitution and all other forms of equitable monetary
22 relief;

23 g) For injunctive relief as pleaded or as the Court may deem proper;

24 h) For an order awarding Plaintiffs their reasonable attorneys' fees and
25 expenses and costs of suit; and

26 i) For any other such relief as the Court deems just and proper.
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DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury on all issues so triable.

Dated: March 31, 2016

FARUQI & FARUQI, LLP

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