

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

SAEID AZIMPOUR, on behalf of
himself and all others similarly
situated,

Plaintiff,

vs.

SELECT COMFORT
CORPORATION, a Minnesota
corporation,

Defendant.

Case No. 15-cv-4296

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Saeid Azimpour brings this action on behalf of himself and all others similarly situated against Defendant Select Comfort Corporation (“Select Comfort” or “Defendant”), and states:

I. NATURE OF ACTION

1. This class action seeks to remedy Defendant’s false and misleading advertisement of “original” or “regular” prices, purported “sale” prices and corresponding phantom markdowns on merchandise sold in its retail stores and Internet website. During the Class Period (defined below), Defendant advertised, marketed and sold merchandise which falsely represented former “original” or “regular” prices and

with corresponding false price discounts for such merchandise sold throughout its retail stores.

2. During the Class Period, Defendant continually misled consumers by advertising merchandise at purportedly discounted, “original” and “regular” prices. Defendant would compare purported “sale” prices to its false former retail prices, which were misrepresented as “original” or “regular” retail prices. The advertised discounts overstated and did not represent a bona fide price at which Defendant formerly sold the merchandise and were nothing more than mere phantom markdowns because the represented former prices were artificially inflated and were not the original or regular prices for merchandise sold at Defendant’s retail stores and on its Internet website. In addition, the represented “original” or “regular” prices were not the prevailing marketing retail prices within three months next immediately preceding the publication of the advertised former prices, in violation of Minnesota and California law.

3. Defendant conveys its deceptive pricing scheme to consumers through the use of various media platforms including, but not limited to, its website and online promotional materials, in-store displays, and print advertisements.

4. For example, Select Comfort advertises its products in its stand-alone retail stores through the use of individual price signs. When Select Comfort places an item on sale, the pricing sign is designated by a different colored tag, representing the discounted percentage (i.e., “50% off”) of the item on sale. The Sleep Number Down Alternative Pillow purchased by Plaintiff was consistently discounted prior to his purchase and is still listed for sale now, approximately 4 months after Plaintiff’s purchase, at 50% off. See

<http://www.sleepnumber.com/sn/en/Bedding/Pillows/p/DownAltPillow> (last viewed, November 23, 2015). Moreover, the sales receipt lists the amount the customer is purportedly saving (identified as “Discount”) along with the regular price and the sale (identified as “Extended”) price. Select Comfort also tracks each sale by model number and associates each sale with a customer profile, which includes the customer’s personal identification information.

5. Through its false and misleading marketing, advertising, and pricing scheme, Defendant violated, and continues to violate, Minnesota, California, federal, and other state law prohibiting advertising goods for sale as discounted from former prices which are false, and prohibiting misleading statements about the existence and amount of price reductions.

6. The Federal Trade Commission (“FTC”) has described misleading discount price comparison schemes such as those used by Defendants as deceptive:

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

16 C.F.R. §233.1(a).

7. Minnesota law prohibits such deceptive pricing practices:

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

...

makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions

Minn. Stat §325D.44, subd.1(11).

8. Likewise, the California Business and Professions Code and California Civil Code forbid false price comparison schemes:

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

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

Cal. Bus & Prof Code §17501.

The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful: [. . .] Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.

Cal. Civ. Code §1770(a)(13).

9. As a result of Defendant's false and misleading labeling, advertising, and marketing of supposedly discounted retail prices based on "regular" or "original" prices, Plaintiff and members of the proposed Classes (defined below) have suffered injury in fact, including economic damages, and have lost money or property. Specifically, Plaintiff and members of the Classes have purchased Defendant's merchandise under the mistaken belief that these products were actually offered for sale at a meaningful discount

from Defendant's "regular" or "original" item prices for those items. But for Defendant's false and misleading advertising and marketing of their merchandise, Plaintiff and members of the Classes would not have purchased such merchandise or would not have paid as much for such merchandise as they did.

10. Plaintiff brings claims on behalf of himself and the proposed Classes for unjust enrichment and violations of the Minnesota Unlawful Trade Practices Act, Minn. Stat. §325D.09 *et seq.* ("MUTPA"); the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §325D.43, *et seq.* ("MUDTPA"); the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §325F.68, *et seq.* ("MPCFA"); the Minnesota False Statement in Advertisement Act, Minn. Stat. §325F.67; the California Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.* ("CLRA"); the California Unfair Competition Law, Cal. Bus. & Prof. Code §17200, *et seq.* ("UCL"); and the California False Advertising Law, Cal. Bus. & Prof. Code §17500, *et seq.* ("FAL"). Plaintiff seeks to permanently enjoin Defendants from using false and misleading claims regarding retail price comparisons in their packaging, labeling, and advertising. Further, Plaintiff seeks to obtain restitution and other appropriate relief in the amount by which Defendants were unjustly enriched as a result of their sales of merchandise offered at a false discount. Plaintiff also seeks damages as provided for pursuant to Minnesota law. Finally, Plaintiff seeks reasonable attorneys' fees pursuant to Minnesota law, and Cal. Code Civ. Proc. §1021.5 as this lawsuit seeks the enforcement of an important right affecting the public interest and satisfies the statutory requirements for an award of attorneys' fees.

II. JURISDICTION AND VENUE

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

12. This Court has personal jurisdiction over Defendant because Defendant is a Minnesota corporation, is headquartered in Minnesota, owns and operates retail stores in Minnesota, systematically and continuously conducted business in and throughout the State of Minnesota, and intentionally avails itself of the markets within Minnesota through the promotion, sale, marketing, and distribution of its products. Moreover, Plaintiff alleges upon information and belief that Defendant's acts, practices and policies pertaining to the advertising, marketing, and sale of merchandise at specific dollar or percentage discounts from "regular" or "original" retail prices were established in and emanated from Minnesota. Further, Defendant's wrongful conduct, as described herein, foreseeably affects consumers in Minnesota and throughout the United States.

13. Venue is proper in this District under 28 U.S.C. §1391(a) because Defendant is headquartered in this District and maintains sufficient contacts to subject them to personal jurisdiction if this District were a separate State. Thus, under 28 U.S.C. §§1391(c)(2) and (d), Defendant is deemed to reside in this District. As such, venue is proper in this judicial district under 28 U.S.C. §1391(b)(1) because Defendant is deemed to reside in this District and under 28 U.S.C. §1391(b)(2) because Defendant conducts

business in this District and a substantial part of the acts or omissions giving rise to the claims set forth herein occurred in this District.

III. PARTIES

Plaintiff

14. Plaintiff Saeid Azimpour resides in San Diego, California. Plaintiff, in reliance on Defendant's false and deceptive advertising, marketing and purported "discount" pricing schemes, purchased a pillow at one of Defendant's retail locations in San Diego, California for approximately \$48.59 inclusive of sales tax, at a purported advertised discount of fifty percent (50%) off a regular purchase price of \$89.99. Plaintiff believed he was saving \$45.00, and his receipt identified his discount as \$45.00. But the savings were illusory, and therefore Plaintiff was damaged.

Defendant

15. Defendant Select Comfort is headquartered and incorporated in Minnesota and maintains its principal executive offices in Minneapolis, Minnesota. Defendant distributes and sells mattresses and other sleep and bedroom related accessories to hundreds of thousands of consumers throughout the United States. Plaintiff alleges that Defendant's policies and practices concerning the false marketing, advertising and sale of merchandise at discounted, "original," and "regular" prices were prepared and issued from Minnesota and the content of the deceptive language used in the marketing, advertising and sales information was approved in Minnesota.

IV. FACTUAL BACKGROUND

A. Applicable Price Discounting Laws

16. The Federal Trade Commission Act (“FTCA”) prohibits “unfair or deceptive acts or practices in or affecting commerce.” (15 U.S.C. §45(a)(1).) The FTCA specifically makes it “unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement.” (15 U.S.C. §52(a).)

17. Under the FTCA, advertising must be truthful and non-deceptive, advertisers such as Defendants must have evidence to back up their claims, and advertisements cannot be unfair. An advertisement is deceptive, according to the Federal Trade Commission (“FTC”), if it contains a misstatement or omits information that is likely to mislead consumers acting reasonably under the circumstances, and the statement or omitted information is material – that is, important to a consumer’s decision to buy or use the product.

18. The FTC has issued regulations describing misleading discount price comparison schemes such as those used by Defendants as deceptive:

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

16 C.F.R. §233.1(a).

A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of his business, honestly and in good faith – and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based. And the advertiser should scrupulously avoid any implication that a former price is a selling, not an asking price (for example, by use of such language as, “Formerly sold at \$___”), unless substantial sales at that price were actually made.

16 C.F.R. §233.1(b).

If the former price is set forth in the advertisement, whether accompanied or not by descriptive terminology such as “Regularly,” “Usually,” “Formerly,” etc., the advertiser should make certain that the former price is not a fictitious one.

16 C.F.R. §233.1(e) (emphasis added).

Another commonly used form of bargain advertising is to offer goods at prices lower than those being charged by others for the same merchandise in the advertiser’s trade area (the area in which he does business). This may be done either on a temporary or a permanent basis, but in either case the advertised higher price must be based upon fact, and not be fictitious or misleading. Whenever an advertiser represents that he is selling below the prices being charged in his area for a particular article, he should be reasonably certain that the higher price he advertises does not appreciably exceed the price at which substantial sales of the article are being made in the area – that is, a sufficient number of sales so that a consumer would consider a reduction from the price to represent a genuine bargain or saving.

16 C.F.R. §233.2(a).

The practices covered in the provisions set forth above represent the most frequently employed forms of bargain advertising. However, there are many variations which appear from time to time and which are, in the main, controlled by the same general principles. For example, retailers should not advertise a retail price as a “wholesale” price. They should not represent that they are selling at “factory” prices when they are not selling at the prices paid by those purchasing directly from the manufacturer. They should not offer seconds or imperfect or irregular merchandise at a reduced price without disclosing that the higher comparative price refers to the price of the merchandise if perfect. They should not offer an advance sale under circumstances where they do not in good faith expect to increase the price at a later date, or make a “limited” offer which, in fact, is not limited. In all of these situations, as well as in others too numerous to

mention, advertisers should make certain that the bargain offer is genuine and truthful. Doing so will serve their own interest as well as that of the public.

16 C.F.R. §233.5.

19. Likewise, Minnesota law prohibits untrue, deceptive, and misleading pricing practices:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby

Minn. Stat. §325F.69.

No person shall, in connection with the sale of merchandise at retail, or in, or in connection with the use of, samples, catalogs, or other forms of advertising listing merchandise for sale at retail, display price tags or price quotations in any form showing prices which are fictitiously in excess of the actual prices at which such merchandise is regularly and customarily sold at retail by such person or by the person issuing such samples, catalogs, or other forms of advertising.

Minn. Stat. §325D.12(3).

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person: [...] makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.

Minn. Stat §325D.44, subd.1(11).

Any person, firm, corporation, or association who, with intent to sell or in anywise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation, or association, directly or indirectly, to the public, for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, label, price tag, circular, pamphlet, program, or letter, or over any radio or television station, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, for use, consumption, purchase, or sale, which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is declared to be a public nuisance and may be enjoined as such.

Minn. Stat §325F.67.

20. Similarly, California law specifically forbids false or misleading price comparison schemes:

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

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

Cal. Bus & Prof Code §17501.

The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful: [. . .] Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.

Cal. Civ. Code §1770(a)(13).

B. Plaintiff's Purchases of Purported Sales Items

21. On or around July 19, 2015, Plaintiff began searching for upgraded pillows and dressings for his bed. Plaintiff sought out a high-quality pillow as well as a lesser-quality pillow in order to “comparison shop” the difference. In search of a higher-quality pillow, Plaintiff entered Defendant’s store. Believing he was able to pay significantly less than what the Firm Support, Down Alternative Pillow was worth and typically sells for in the retail marketplace, Plaintiff was induced to purchase the Sleep Number Firm Support, Down Alternative Pillow listed by Defendant as on sale for 50% off the regular purchase price of \$89.99. The purchase price as advertised was 50% off the “regular” price of \$89.99. Plaintiff purchased the pillow and paid \$48.59 after the purported discount.

22. Relying upon Defendant's misrepresentations and false and deceptive advertising, Plaintiff purchased the Sleep Number Firm Support Pillow, Down Alternative, standard size. The discount tag stated in bold, colorful writing, "50% off." However, the price which Plaintiff was induced to pay for the pillow had been offered by Select Comfort for a time period in excess of the 90 days preceding Plaintiff's purchase. The purported "regular" price and corresponding sale discount was false and misleading, as Defendant's prevailing retail price for the pillow during the three months immediately prior to Plaintiff's purchase was not the \$89.99 "regular" price advertised. Plaintiff would not have purchased the pillow without the misrepresentations made by Defendant, or would not have paid as much for it as he did. As a result, Plaintiff has been personally victimized by and suffered economic injury as a direct result of Defendant's unlawful, unfair, and fraudulent conduct.

23. Defendant knows that its comparative price advertising is false, deceptive, misleading, and unlawful under Minnesota, California, federal, and other state law.

24. Defendant fraudulently concealed from and intentionally failed to disclose to Plaintiff and other members of the Classes the truth about its advertised price and former prices.

25. At all relevant times, Defendant has been under a duty to Plaintiff and the Classes to disclose the truth about its "regular" and former prices.

26. Plaintiff relied upon Defendant's artificially inflated "regular" prices and false discounts when purchasing merchandise from Defendant. Plaintiff would not have

made such purchases but for Defendant's representations of fabricated "original" prices and false discounts.

27. Plaintiff and the Classes reasonably and justifiably acted and relied on the substantial price differences that Defendant advertised, and made purchases believing that they were receiving a substantial discount on an item of greater value than it actually was. Plaintiff, like other class members, was lured in by, and damaged by, and relied on, these pricing schemes that Defendant carried out.

28. Defendant intentionally concealed and failed to disclose material facts regarding the truth about false former price advertising in order to provoke Plaintiff and the Classes to purchase merchandise in its retail.

V. CLASS ALLEGATIONS

29. Plaintiff brings this action on behalf of himself and all other similarly situated Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class against Defendant (the "Nationwide Class"):

All individuals residing in the United States and its territories who purchased one or more items from Defendant advertised or priced at a discount from an original retail price any time between December 1, 2011 and the present (the "Class Period").

30. Plaintiff also brings this action individually and as a Class action pursuant to Federal Rule of Civil Procedure 23 on behalf of the following subclass of persons located within the state of California (the “California Class”):

All individuals residing in the State of California who purchased one or more items from Defendant advertised or priced at a discount from an original retail price any time between December 1, 2011 and the present (the “California Class Period”).

31. Excluded from the Classes are Defendant, as well as its officers, employees, agents or affiliates, and any judge who presides over this action, as well as all its past and present employees, officers and directors.

32. Plaintiff reserves the right to expand, limit, modify, or amend this class definition, including the addition of one or more subclasses, in connection with his motion for class certification, or at any other time, based upon, *inter alia*, changing circumstances or new facts obtained during discovery.

33. This action is brought and may properly be maintained as a Class action pursuant to Federal Rule of Civil Procedure 23. This action satisfies the numerosity, typicality, adequacy, predominance, and superiority requirements of those provisions.

34. **Numerosity:** The class members are so numerous that joinder of all members is impracticable. Plaintiff is informed and believes that the proposed Classes contain hundreds of thousands of individuals who have been damaged by Defendant’s conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

35. ***Existence and Predominance of Common Questions of Law and Fact:*** This action involves common questions of law and fact, which predominate over any

questions affecting individual Class members. These common legal and factual questions include, but are not limited to, the following:

- a. Whether, during the Class Period, Defendant used false “regular” or “original” price labels and falsely advertised price discounts on merchandise it sold in its retail stores;
- b. Whether, during the Class Period, the “original” prices advertised by Defendant were the prevailing market prices for the respective merchandise during the three-month period preceding the dissemination or publication of the advertised former prices;
- c. Whether Defendant’s alleged conduct constitutes violations of the laws asserted;
- d. Whether Defendant engaged in unfair, unlawful, or fraudulent business practices under the laws asserted;
- e. Whether Defendant engaged in false or misleading advertising;
- f. Whether Plaintiff and the Classes are entitled to damages or restitution and the proper measure of that loss; and
- g. Whether an injunction is necessary to prevent Defendant from continuing to use false, misleading, or illegal price comparison.

36. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the Classes because, *inter alia*, all Class members have been deceived (or were likely to be deceived) by Defendant’s false and deceptive price advertising scheme, as alleged

herein. Plaintiff is advancing the same claims and legal theories on behalf of himself and all members of the Classes.

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

38. ***Superiority***: The nature of this action and the nature of laws available to Plaintiff and the Classes make the use of the class-action format a particularly efficient and appropriate procedure to afford relief to him and the class for the wrongs alleged. The damages or other financial detriment suffered by individual Class members is relatively modest compared to the burden and expense that would be entailed by individual litigation of their claims against Defendant. It would thus be virtually impossible for Plaintiff and Class members, on an individual basis, to obtain effective redress for the wrongs done to them. Absent the class action, Class members and the general public would not likely recover, or would not likely have the chance to recover, damages or restitution, and Defendant would be permitted to retain the proceeds of its fraudulent and deceptive misdeeds.

39. All Class members, including Plaintiff, were exposed to one or more of Defendant's misrepresentations or omissions of material fact claiming that former "original" or "regular" advertised prices were in existence. Due to the scope and extent of Defendant's consistent false "discount" price advertising scheme, disseminated in a years-long campaign to consumers via a number of different platforms – in-store

displays, print advertisements, etc. – it can be reasonably inferred that such misrepresentations or omissions of material fact were uniformly made to all members of the Classes. In addition, it can be reasonably presumed that all Class members, including Plaintiff, affirmatively acted in response to the representations contained in Defendant's false advertising scheme when purchasing merchandise from Defendant.

40. Defendant keeps extensive computerized records of its customers through, *inter alia*, customer loyalty programs, co-branded credit cards, and general marketing programs. Defendant has one or more databases through which a significant majority of Class members may be identified and ascertained, and it maintains contact information, including email and home addresses, through which notice of this action could be disseminated in accordance with due process requirements.

FIRST CAUSE OF ACTION
Violation of Minnesota Prevention of Consumer Fraud Act
Minn. Stat §325F.68 *et seq.*
On Behalf of the Nationwide Class

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

42. Plaintiff brings this claim individually and on behalf of members of the Nationwide Class under Minnesota law.

43. Plaintiff purchased Select Comfort merchandise for his own personal use.

44. The acts and practices of Defendants as described above deceived Plaintiff and members of the Nationwide Class as described herein, and have resulted, and will result in, damages to Plaintiff and members of the Nationwide Class.

45. The MPCFA makes illegal “[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise.” Minn. Stat. §325F.69.

46. The MPCFA does not require a showing of damage, and provides for liability “whether or not any person has in fact been misled, deceived, or damaged.”

47. By committing the acts alleged above, Defendant has violated the MPCFA.

48. Plaintiff and Nationwide Class members suffered injuries caused by Defendant’s misrepresentations because: (a) they were induced to purchase a product they would not have otherwise purchased if they had known that Select Comfort merchandise was not, among other things, being offered at a significant discount; and (b) they paid a price premium due to the false and misleading pricing, advertising, and marketing of Select Comfort merchandise.

49. In accordance with Minn. Stat. §325F.70, and as authorized by Minn. Stat. §8.31, subd. 3a, Plaintiff seeks an order: (1) enjoining Defendant from continuing to conduct business through its fraudulent conduct; (2) requiring Defendant to conduct a corrective advertising campaign; and (3) awarding Plaintiff and the Nationwide Class damages and costs, including reasonable attorney’s fees.

SECOND CAUSE OF ACTION

Violation of Minnesota Unlawful Trade Practices Act

Minn. Stat §325D.09 *et seq.*

On Behalf of the Nationwide Class

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

51. Plaintiff brings this claim individually and on behalf of members of the Nationwide Class under Minnesota law.

52. Plaintiff purchased Select Comfort merchandise for his own personal use.

53. The acts and practices of Defendants as described above deceived Plaintiff and members of the Nationwide Class as described herein, and have resulted, and will result in, damages to Plaintiff and members of the Nationwide Class.

54. The MUTPA provides that “[n]o person shall, in connection with the sale of merchandise at retail, or in, or in connection with the use of, samples, catalogs, or other forms of advertising listing merchandise for sale at retail, display price tags or price quotations in any form showing prices which are fictitiously in excess of the actual prices at which such merchandise is regularly and customarily sold at retail by such person or by the person issuing such samples, catalogs, or other forms of advertising.” Minn. Stat. §325D.12(3).

55. The Minnesota legislature has found that such practices “mislead consumers into believing that they are buying merchandise at prices substantially below regular retail prices, when in fact they are not” and “that they constitute unfair and

fraudulent competition and unsound and uneconomic methods of distribution.” Minn. Stat. §325D.09.

56. By committing the acts alleged above, Defendant has violated the MUTPA.

57. Plaintiff and Nationwide Class members suffered injuries caused by Defendant’s misrepresentations because: (a) they were induced to purchase a product they would not have otherwise purchased if they had known that Select Comfort merchandise was not, among other things, being offered at a significant discount; and (b) they paid a price premium due to the false and misleading pricing, advertising, and marketing of Select Comfort merchandise.

58. In accordance with Minn. Stat. §325D.15, and as authorized by Minn. Stat. §8.31, subd. 3a, Plaintiff seeks an order: (1) enjoining Defendant from continuing to conduct business through its fraudulent conduct; (2) requiring Defendant to conduct a corrective advertising campaign; and (3) awarding Plaintiff and the Nationwide Class damages and costs, including reasonable attorney’s fees.

THIRD CAUSE OF ACTION

Violation of Minnesota Uniform Deceptive Trade Practices Act

Minn. Stat §325D.43 *et seq.*

On Behalf of the Nationwide Class

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

60. Plaintiff brings this claim individually and on behalf of members of the Nationwide Class under Minnesota law.

61. Plaintiff purchased Select Comfort merchandise for his own personal use.

62. The acts and practices of Defendants as described above deceived Plaintiff and members of the Nationwide Class as described herein, and have resulted, and will result in, damages to Plaintiff and members of the Nationwide Class.

63. The MUDTPA provides that “[a] person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person: [...] makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.” Minn. Stat §325D.44, subd.1(11).

64. By committing the acts alleged above, Defendant has violated the MUDTPA.

65. Plaintiff and Nationwide Class members suffered injuries caused by Defendant’s misrepresentations because: (a) they were induced to purchase a product they would not have otherwise purchased if they had known that Select Comfort merchandise was not, among other things, being offered at a significant discount; and (b) they paid a price premium due to the false and misleading pricing, advertising, and marketing of Select Comfort merchandise.

66. In accordance with Minn. Stat. §325D.45, Plaintiff seeks an order: (1) enjoining Defendant from continuing to conduct business through its fraudulent conduct; (2) requiring Defendant to conduct a corrective advertising campaign; and (3) awarding Plaintiff and the Nationwide Class costs, including reasonable attorney’s fees.

FOURTH CAUSE OF ACTION

Violation of Minnesota False Statement in Advertising Act

Minn. Stat §325F.67

On Behalf of the Nationwide Class

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

68. Plaintiff brings this claim individually and on behalf of members of the Nationwide Class under Minnesota law.

69. Plaintiff purchased Select Comfort merchandise for his own personal use.

70. The acts and practices of Defendants as described above deceived Plaintiff and members of the Nationwide Class as described herein, and have resulted, and will result in, damages to Plaintiff and members of the Nationwide Class.

71. The MFSAA makes it unlawful to “publish[], disseminate[], circulate[], or place[] before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, label, price tag, circular, pamphlet, program, or letter, or over any radio or television station, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, for use, consumption, purchase, or sale, which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading.” Minn. Stat §325F.67.

72. By committing the acts alleged above, Defendant has violated the MFSAA.

73. Plaintiff and Nationwide Class members suffered injuries caused by Defendant’s misrepresentations because: (a) they were induced to purchase a product

they would not have otherwise purchased if they had known that Select Comfort merchandise was not, among other things, being offered at a significant discount; and (b) they paid a price premium due to the false and misleading pricing, advertising, and marketing of Select Comfort merchandise.

74. In accordance with Minn. Stat. §325F.67, and as authorized by Minn. Stat. §8.31, subd. 3a, Plaintiff seeks an order: (1) enjoining Defendant from continuing to conduct business through its fraudulent conduct; (2) requiring Defendant to conduct a corrective advertising campaign; and (3) awarding Plaintiff and the Nationwide Class damages and costs, including reasonable attorney's fees.

FIFTH CAUSE OF ACTION

Unjust Enrichment on Behalf of the Nationwide Class, or in the Alternative, on Behalf of the California Class

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

76. Plaintiff brings this claim individually, as well as on behalf of members of the Nationwide Class, under Minnesota law. Although there are numerous permutations of the elements of the unjust enrichment cause of action in the various states, there are few real differences. In all states, the focus of an unjust enrichment claim is whether the defendant was unjustly enriched. At the core of each state's law are two fundamental elements – (1) the defendant received a benefit from the plaintiff and (2) it would be inequitable for the defendant to retain that benefit without compensating the plaintiff. The focus of the inquiry is the same in each state. Since there is no material conflict relating to the elements of unjust enrichment between the different jurisdictions from

which Class members will be drawn, Minnesota law applies to the claims of the Nationwide Class.

77. In the alternative, Plaintiff brings this claim individually as well as on behalf of the California Class under California law.

78. At all times relevant hereto, Defendant deceptively priced, marketed, advertised, and sold merchandise to Plaintiff and the Classes.

79. Plaintiff and members of the Classes conferred upon Defendant non-gratuitous payments for merchandise that they would not have if not for Defendant's deceptive pricing, advertising, and marketing. Defendant accepted or retained the non-gratuitous benefits conferred by Plaintiff and members of the Classes, with full knowledge and awareness that, as a result of Defendant's deception, Plaintiff and members of the Classes were not receiving a product of the quality, nature, fitness, or value that had been represented by Defendant and reasonable consumers would have expected.

80. Defendant has been unjustly enriched in retaining the revenues derived from purchases of merchandise by Plaintiff and members of the Classes, which retention under these circumstances is unjust and inequitable because Defendant misrepresented, among other things, that its merchandise was being offered at a significant discount, which caused injuries to Plaintiff and members of the Classes because they paid for, and paid a price premium due to the misleading pricing and advertising.

81. Retaining the non-gratuitous benefits conferred upon Defendant by Plaintiff and members of the Classes under these circumstances made Defendant's retention of the

non-gratuitous benefits unjust and inequitable. Thus, Defendant must pay restitution to Plaintiff and members of the Classes for unjust enrichment, as ordered by the Court.

SIXTH CAUSE OF ACTION

**Violation of Unfair Competition Law – Fraudulent Acts
Business and Professions Code §17200 *et seq.*
On Behalf of the California Class**

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

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

84. The UCL imposes strict liability. Plaintiff need not prove that Defendant intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices, only that such practices occurred.

85. The harm to Plaintiff and California Class members outweighs the utility of Defendant’s practices. There were reasonably available alternatives to further Defendant’s legitimate business interests, other than the misleading and deceptive conduct described herein.

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

87. Defendant’s acts and practices alleged above have deceived Plaintiff and are highly likely to deceive members of the consuming public. Plaintiff relied on Defendant’s fraudulent and deceptive representations regarding its “regular” and

“discount” prices. These misrepresentations played a substantial role in Plaintiff’s decision to purchase those products, and Plaintiff would not have purchased those products without Defendant’s misrepresentations.

88. Defendant’s violation of the UCL through its fraudulent business practices are ongoing and present a continuing threat that members of the public will be deceived into purchasing products based on price comparisons of arbitrary and inflated “regular” prices to “discount prices” that created merely phantom markdowns and led to financial damage for consumers, including Plaintiff and the California Class.

89. In accordance with California Business & Professions Code §17203, Plaintiff seeks an order: (1) enjoining Defendant from continuing to conduct business through its fraudulent conduct; and (2) requiring Defendant to conduct a corrective advertising campaign.

90. As a result of Defendant’s conduct, Plaintiff seeks injunctive and restitutionary relief under California Business & Professions Code §17203.

SEVENTH CAUSE OF ACTION

Violation of Unfair Competition Law – Unlawful Acts Business and Professions Code §17200 *et seq.* On Behalf of the California Class

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

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

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

94. Defendants have violated §17200’s prohibition against engaging in unlawful acts and practices by, inter alia, making the representations and omissions of material facts, as set forth more fully herein, and violating California Civil Code §§1572, 1573, 1709, 1710, 1711, 1770, California Business & Professions Code §17200 *et seq.*, the FTCA, 15 U.S.C. §45(a)(1) and 52(a), California Business and Professions Code §17500, and by violating the common law.

95. By violating these laws, Defendants have engaged in unlawful business acts and practices which constitute unfair competition within the meaning of Business & Professions Code §17200.

96. Defendant’s practices, as set forth herein, have misled Plaintiff, the California Class, and the general public in the past and will continue to mislead in the future. Consequently, Defendant’s practices constitute an unlawful business practice in within the meaning of the UCL.

97. Defendant’s violations of the UCL through its unlawful business practices are ongoing and present a continuing threat that members of the public will be deceived into purchasing products based on price comparisons of arbitrary and inflated “regular” prices to “discount prices” that created merely phantom markdowns and caused financial damage for consumers, including Plaintiff and the California Class

98. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent injunctive relief ordering Defendant to cease this unfair competition, as well as

disgorgement and restitution to Plaintiff and the California Class of all of Defendant's revenues associated with its unfair competition, or such portion of those revenues as the Court may find equitable.

EIGHTH CAUSE OF ACTION

Violation of Unfair Competition Law – Unfair Acts Business and Professions Code §17200 *et seq.* On Behalf of the California Class

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

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

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

102. Defendant's actions constitute “unfair” business acts or practices because, as alleged above, Defendant engaged in misleading and deceptive price comparison advertising that represented false “regular” prices and “discount” prices that were nothing more than fabricated “regular” prices leading to phantom markdowns. Defendant's acts and practices offended an established public policy, and engaged in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers.

103. Defendant engaged, and continues to engage, in conduct that violates the legislatively declared policies of: (1) California Civil Code §§1572, 1573, 1709, 1710, 1711 against committing fraud and deceit; (2) California Civil Code §1770 against committing acts and practices intended to deceive consumers regarding the representation of goods in certain particulars; (3) 15 U.S.C. §45(a)(1) and 52(a) against unfair or deceptive practices and false advertising; and (4) California Business & Professions Code §17500 against false advertising. Defendant gains an unfair advantage over its competitors, whose labeling, advertising, and marketing for other similar products must comply with these laws.

104. Defendant's conduct, including misrepresenting the pricing of their merchandise, is substantially injurious to consumers. Such conduct has caused, and continues to cause, substantial injury to consumers because consumers would not purchase their merchandise at all but for Defendant's false promotion of its merchandise as, among other things, being offered at a significant discount. Consumers have thus overpaid for Defendant's merchandise. Such injury is not outweighed by any countervailing benefits to consumers or competition. Indeed, no benefit to consumers or competition results from Defendant's conduct. Since consumers reasonably rely on Defendant's representations of its merchandise and injury results from ordinary use of its merchandise, consumers could not have reasonably avoided such injury. *Davis v. Ford Motor Credit Co.*, 179 Cal. App. 4th 581, 597-98 (2009); *see also Drum v. San Fernando Valley Bar Ass'n*, 182 Cal. App. 4th 247, 257 (2010) (outlining the third test based on the definition of "unfair" in Section 5 of the FTC Act).

105. By committing the acts alleged above, Defendant has engaged in unfair business acts and practices which constitute unfair competition within the meaning of Business & Professions Code §17200.

106. Plaintiff purchased Defendant's merchandise in reliance on Defendant's representations that its merchandise is, among other things, being offered at a significant discount. Plaintiff would not have purchased its merchandise at all but for Defendant's false promotion that its merchandise is, among other things, being offered at a significant discount. Plaintiff and the California Class have all paid money for Defendant's merchandise. However, Plaintiff and the California Class did not obtain the full value of the advertised product due to Defendant's misrepresentations regarding the nature of said products. Accordingly, Plaintiff and the California Class have suffered injury in fact and lost money or property as a direct result of Defendant's misrepresentations and material omissions.

107. In accordance with California Business & Professions Code §17203, Plaintiff seeks an order enjoining Defendant from continuing to conduct business through its fraudulent conduct and further seeks an order requiring Defendant to conduct a corrective advertising campaign.

108. As a result of Defendant's conduct, Plaintiff seeks injunctive and restitutionary relief under California Business & Professions Code §17203.

NINTH CAUSE OF ACTION

**Violation of the California False Advertising Law,
California Business & Professions Code §17500, *et seq.*
On Behalf of the California Class**

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

110. Cal. Bus. & Prof. Code §17500 provides that “[i]t is unlawful for any...corporation...with intent...to dispose of...personal property...to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated...from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement...which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...” [Emphasis added].

111. The “intent” required by Cal. Bus. & Prof. Code §17500 is the intent to dispose of property, and not the intent to mislead the public in the disposition of such property.

112. Similarly, this section provides, “no price shall be advertised as a former price of any advertised thing, unless the alleged former prices was the prevailing market price...within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly, and conspicuously stated in the advertisement.” Cal Bus. & Prof. Code §17501.

113. Defendant's routine of advertising "regular" sales prices associated with its merchandise, which were never the true prevailing prices of those products and were materially greater than the true prevailing prices, was an unfair, untrue and misleading practice. This deceptive marketing practice gave consumers the false impression that the products were regularly sold on the market for a substantially higher price than they actually were, thereby leading to the false impression that the merchandise was worth more than it actually was.

114. Defendant misled consumers by making untrue and misleading statements and failing to disclose what is required as stated in the Civil Code, as alleged above.

115. As a direct and proximate result of Defendant's misleading and false advertisements, Plaintiff and California Class members have suffered injury in fact and have lost money. As such, Plaintiff requests that this Court order Defendant to restore this money to Plaintiff and all California Class members, and to enjoin Defendant from continuing these unfair practices in violation of the UCL in the future. Otherwise, Plaintiff, California Class members and the broader general public will be irreparably harmed and denied an effective and complete remedy.

TENTH CAUSE OF ACTION

**Violation of the Consumers Legal Remedies Act ("CLRA"),
California Civil Code §1750, *et seq.*
On Behalf of the California Class
(for injunctive relief only)**

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

117. This cause of action is brought pursuant to the CLRA, California Civil Code §1750, *et seq.* Plaintiff and each member of the proposed class are “consumers” as defined by California Civil Code §1761(d). Defendant’s sale of merchandise to Plaintiff and the California Class were “transactions” within the meaning of California Civil Code §1761(e). The products purchased by Plaintiff and the California Class are “goods” within the meaning of California Civil Code §1761(a).

118. Defendant violated and continues to violate the CLRA by engaging in the following practices proscribed by California Civil Code §1770(a) in transactions with Plaintiff and the California Class which were intended to result in, and did result in, the sale of merchandise:

- a. Representing that its merchandise has characteristics, uses, or benefits that they do not;
- b. Advertising goods or services with intent not to sell them as advertised;
- c. Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.

119. Pursuant to §1782(a) of the CLRA, on date, Plaintiff’s counsel notified Defendant in writing by certified mail of the particular violations of §1770 of the CLRA and demanded that it rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendant’s intent to act.

120. Plaintiff and the California Class suffered injuries caused by Defendant’s misrepresentations because: (a) they were induced to purchase a product they would not

have otherwise purchased if they had known that Defendant's merchandise was not, among other things, being offered at a significant discount; and (b) they paid a price premium due to the false and misleading pricing, advertising, and marketing of Defendant's merchandise.

121. Plaintiff and the California Class are entitled to, pursuant to California Civil Code §1780, an order enjoining the above-described wrongful acts and practices of Defendant, the payment of costs and attorneys' fees, and any other relief deemed appropriate and proper by the Court under California Civil Code §1780.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and on behalf of the other members of the Classes, requests that this Court award relief against Defendant as follows:

A. Certifying the class and designating Plaintiff as the Class Representative and his counsel as Class Counsel;

B. Awarding Plaintiff and the proposed Class members damages;

C. Awarding restitution and disgorgement of all profits and unjust enrichment that Defendants obtained from Plaintiff and the Class members as a result of its unlawful, unfair, and fraudulent business practices described herein;

D. Awarding declaratory and injunctive relief as permitted by law or equity, including: enjoining Defendant from continuing the unlawful practices as set forth herein, and directing Defendant to identify, with Court supervision, victims of its misconduct and pay them all money they are required to pay;

- E. Requiring Defendant to engage in a corrective advertising campaign;
- F. Awarding attorneys' fees and costs; and
- G. Granting such other and further relief as the Court may deem necessary or appropriate.

DEMAND FOR JURY TRIAL

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

Dated: December 4, 2015

s/Karen H. Riebel

Karen Hanson Riebel (#219770)

Eric N. Linsk (#388827)

Kate M. Baxter-Kauf (#392037)

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Attorneys for Plaintiff

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Saeid Azimpour

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Karen H. Riebel, Lockridge Grindal Nauen P.L.L.P. Attorneys at Law
100 Washington Avenue South, Suite 2200, Minneapolis, MN 55401

DEFENDANTS

Select Comfort Corporation

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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

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

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

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

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §1332(d).
Brief description of cause:
Plaintiff alleges violations of state consumer laws, filing in federal court pursuant to the Class Action Fairness Act.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE SIGNATURE OF ATTORNEY OF RECORD

12/04/2015 /s/Karen H. Riebel

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.