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8 Attorneys for Plaintiff
9 ANTHONY MORALES and the Proposed Class

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 ANTHONY MORALES, an individual, on
13 behalf of himself and all others similarly
14 situated,

15 Plaintiff

16
17 v.

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19
20 STEIN MART, INC.; and DOES 1 through
21 10, inclusive.

22
23 Defendants.
24
25

Case No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 COMES NOW PLAINTIFF, ANTHONY MORALES, WHO HEREBY
2 ALLEGES THE FOLLOWING:

3 Plaintiff, ANTHONY MORALES (“Plaintiff”) brings this action on behalf of
4 himself and all others similarly situated against Defendant, STEIN MART, INC.
5 (collectively referred to herein as “STEIN MART” or “Defendant”).

6 The allegations in this Complaint, stated on information and belief, have
7 evidentiary support or are likely to have evidentiary support after a reasonable
8 opportunity for further investigation and discovery.

9
10 **NATURE OF THE ACTION**

11 1. Plaintiff files this class action lawsuit on behalf of himself and all similarly
12 situated persons who purchased products from STEIN MART’s retail locations based on
13 STEIN MART’s false, fabricated, arbitrary, inaccurate, deceptive, misleading unlawful
14 advertised price discounts.

15 2. Plaintiff brings this against STEIN MART for violations of the California
16 Consumer Legal Remedies Act (*Cal. Civil Code* § 1750, *et seq.*), the Unfair Competition
17 Law (*Cal. Bus. and Prof. Code* § 17200, *et seq.*), and the False Advertising Law (*Cal.*
18 *Bus. and Prof. Code* § 17500, *et seq.*).

19 3. STEIN MART’S website includes written representations regarding price
20 discounts by advertising a “Our Price” (indicating STEIN MART’S Regular Price) for
21 products that was inaccurate, inflated and arbitrary together with a “Compare at” price
22 that purports to reflect steep discounts from STEIN MART’s listed “Our Price”, but
23 which were in reality not sales prices or discounts at all.

24 4. The “Our Price” (indicating STEIN MART’S Price) advertised by STEIN
25 MART for products on through all of its retail locations in California is a sham that is
26

1 intended to mislead and persuade consumers that the “Compare at” price reflects a deep
2 discount in order to stimulate consumer purchases. In reality, the “Compare at” price
3 advertised by STEIN MART did not represent a true market price, and was only provided
4 in order to falsely convince consumers that the “Our Price” reflected a substantial
5 markdown, which it did not.

6 5. Advertisements regarding prices and price reductions in relation to third
7 party pricing are material representations in that they are effective in persuading
8 consumers regarding the value of their purchases. STEIN MART’S conduct in
9 advertising inflated “Compare at” pricing has been undertaken with the intent of using
10 illusory discounts to induce consumers to purchase products from STEIN MART’S retail
11 locations thereby increasing its sales, and falsely promote itself as a discount retailer.

12 6. Plaintiff reasonably believed that any “Compare at” pricing refers to
13 prevailing verified pricing at retail stores throughout California for the same items.
14 Plaintiff asserts that all consumers of Defendant hold the same reasonable belief and that
15 any other definition asserted by Defendant is created and manufactured (and not
16 prominently and clearly displayed) by Defendant, for Defendant’s sole benefit, and with
17 the sole purpose of implementing Defendant’s overall scheme and plan to generate sales
18 and substantial profits at the expense of Plaintiff and its other consumers.

19 7. The “Compare at” advertised by STEIN MART is higher than the regular
20 price advertised by STEIN MART’S competitors for the same products and/or there is no
21 actual product for sale in order to compare STEIN MART’s “Our Price” displayed on its
22 price tag.

23 8. STEIN MART’S “Our Price” therefore does not reflect a true discount
24 and/or is higher than the prices offered by STEIN MART’S competitors, if any such
25 comparisons actually exist.

1 charged in his area for a particular article, he should be reasonably certain that the higher
2 price he advertises does not appreciably exceed the price at which the prevailing price
3 and/or substantial sales of the article are being made in the area - that is, a sufficient
4 number of sales so that a consumer would consider a reduction from the price to represent
5 a genuine bargain or saving.” (*Emphasis added*)

6 13. At all times, Plaintiff and on information and belief the Proposed Class
7 believed that the “Compare at” pricing referenced by STEIN MART to contain an
8 ordinary meaning that the pricing was similar to the prevailing market price or through a
9 substantial number of sales throughout the geographic region. The “Compare at” prices
10 on Defendant’s price tags were/are not prices at which the prevailing price and/or
11 substantial sales of those products were made in and throughout California. On
12 information and belief, Plaintiff alleges that Defendant did not ascertain or determine that
13 “Compare At” prices advertised on its price tags or otherwise displayed at its retail stores
14 or on its website, including those alleged to be manufacture suggested retail price
15 (MSRP), were in fact the prices regarded as prevailing and/or regularly charged by a
16 substantial number of principal outlets in California. The “Compare at” (including
17 MSRP) pricing set forth by Defendant is fictitious and propagated for the sole purpose of
18 enticing its customers to purchase goods based on Defendant’s “Our Price” scheme. Any
19 tactics used by Defendant to define the “Compare at” is not clear and conspicuous and is
20 intended to be concealed from Plaintiff and Class Members either in displaying through
21 its price tags or through its website. Any attempts by Defendant to define in small print
22 or qualify the “Compare at” price otherwise violates the FTC rules for clear and
23 conspicuous. On information and belief, Plaintiff herein alleges that Defendant failed to
24 verify its “Compare at” pricing in relation to the sales at other stores and outlets
25 throughout California. Defendant’s “Compare at” pricing set forth on its price tags
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1 exceeded and continues to exceed the prices at which substantial sales of those products
2 were made in California. Plaintiff alleges that he and others similarly situated were
3 deceived into believing that they each were receiving substantial savings in relation to the
4 “Compare at” pricing set forth by Defendant.

5 14. Since the mid-2015, Plaintiff alleges that he made purchases from STEIN
6 MART’S retail locations in Riverside based on the false and misleading advertisements
7 and fabricated price discounts. By way of example, Plaintiff herein alleges that among his
8 various purchases, Plaintiff purchased the brand, Southern Pines (button down shirt) for
9 \$34.99, which is STEIN MART’S “Our Price” while the “Compare at” price listed by
10 STEIN MART was \$79.50. The brand “Southern Pines” is sold exclusively at STEIN
11 MART. There are no other stores that sell the brand “Southern Pines” other than STEIN
12 MART and therefore the referenced “Compare at” price is a sham. Plaintiff purchased
13 the Southern Pines solely on the basis that he believed he was obtaining a steep discount
14 from STEIN MART.

15 15. Plaintiff believed the facts represented by STEIN MART, i.e. that he was
16 getting a steep discount off the regular price (otherwise stated by STEIN MART as the
17 “Compare at” price) of the products. In fact, Plaintiff did not receive a discount at all. On
18 information and belief, Plaintiff paid more than he would have paid if he purchased the
19 products on the same day and time from STEIN MART’S competitors or was lured into
20 believing that he was receiving a steep discount which prompted Plaintiff to make the
21 purchases, which would otherwise would not have occurred. The “Our Price” advertised
22 by STEIN MART are not based on the prevailing price or substantial sales in the
23 marketplace in California, and were intended to induce and did induce the Plaintiff and
24 the class into purchasing the products under the false understanding that he was paying
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1 substantially less than the prevailing market rate. In fact, the Plaintiff was induced to
2 make the purchase, because STEIN MART'S supposed price reduction was/is a sham.

3
4 **PARTIES**

5 16. Plaintiff, ANTHONY MORALES ("Plaintiff"), is a citizen of California,
6 who resides in the city of Riverside.

7 17. Defendants, STEIN MART, INC. (hereinafter collectively "STEIN MART")
8 is a Florida corporation, which is a retailer that sells products through its retail stores
9 through California.

10 18. The true names and capacities, whether individual, corporate, associate or
11 otherwise of each of the defendants designated herein as a DOE are unknown to Plaintiff
12 at this time, who therefore, sue said defendants by fictitious names, and will ask leave of
13 this Court for permission to amend this Complaint to show their names and capacities
14 when the same have been ascertained. Plaintiff is informed and believes and thereon
15 alleges that each of the defendants designated as a DOE is legally responsible in some
16 manner for the events and happenings herein referred to, and caused injuries and
17 damages thereby to Plaintiff as alleged herein.

18 19. On information and belief, Plaintiff alleges that at all times herein
19 mentioned, each of the defendants was acting as the agent, servant or employee of the
20 other defendants and that during the times and places of the incident in question,
21 Defendant and each of their agents, servants, and employees became liable to Plaintiff
22 and Class Members for the reasons described in the complaint herein, and thereby
23 proximately caused Plaintiff to sustain damages as set forth herein. On information and
24 belief, Plaintiff alleges that Defendants carried out a joint scheme with a common
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1 business plan and policies in all respects pertinent hereto and that all acts and omissions
2 herein complained of were performed in knowing cooperation with each other.

3 20. On information and belief, Plaintiff allege that the shareholders, executive
4 officers, managers, and supervisors of the Defendants directed, authorized, ratified and/or
5 participated in the actions, omissions and other conduct that gives rise to the claims
6 asserted herein. Plaintiff is informed and believes, and thereon alleges, that each of said
7 defendants is in some manner intentionally, negligently, or otherwise responsible for the
8 acts, omissions, occurrences, and transactions alleged herein.

9
10 **JURISDICTION AND VENUE**

11 21. This Court has subject matter jurisdiction according to 28 U.S.C. § 1332(d),
12 because this case is a class action where the aggregate claims of all members of the
13 proposed class are in excess of \$5,000,000.00, exclusive of interest and costs and most
14 members of the proposed class are citizens of states different from Defendant.

15 22. This Court has personal jurisdiction over Defendant, because Defendant
16 conducts business in California and otherwise intentionally avail themselves of the
17 markets in California to render the exercise of jurisdiction by this Court proper.
18 Defendants have marketed, promoted, distributed, and sold the products in California
19 through their retail stores.

20 23. Venue is proper in this District pursuant to 28 U.S.C. §1391(b), because a
21 substantial part of the acts and transactions set forth herein occurred in this District and
22 Defendant's conducts business within the District.

23
24 **PRIVATE ATTORNEYS GENERAL AND RELIANCE ALLEGATIONS**

25 24. In addition to asserting class claims, Plaintiff assert claims on behalf of Class
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1 Members pursuant to California Business & Professions Code § 17200, *et seq.* The
2 purpose of such claims is to obtain injunctive orders regarding the unlawful, unfair,
3 deceptive business practices and false advertising alleged herein, to require the
4 disgorgement of all profits and/or restoration of monies wrongfully obtained through
5 STEIN MART’S unfair and deceptive business practices, as alleged herein. This private
6 attorneys general action is necessary and appropriate because Defendants have engaged
7 in wrongful acts described herein as part of the regular practice of their businesses. These
8 acts and practices were unlawful, unfair and deceptive, because they caused Plaintiff, and
9 on information and belief, reasonable consumers, to falsely believe that Defendant has
10 and is offering discounts from the prevailing market price or based on a substantial
11 number of sales through stores in California, which caused them to purchase merchandise
12 from Defendant. As a result, Plaintiff and Class Members, reasonably perceived that they
13 were receiving merchandise and products that are regularly sold in the retail marketplace
14 at substantially higher prices than what Plaintiff and Class Members paid . Defendant’s
15 conduct induced reasonable purchasers, including Plaintiff and Class Members to buy
16 such merchandise and products, which they otherwise would not have purchased from
17 Defendant.

18 **CLASS ACTION ALLEGATIONS**

19 25. Plaintiff brings this action and all claims stated within on his own behalf and
20 on behalf of all similarly situated persons pursuant to Federal Rule of Civil Procedure 23.

21 26. Plaintiff seeks to certify the following class (the “Proposed Class”):

22 All persons located in California who purchased any product from STEIN
23 MART’S retail stores that contained a “Compare at” price tag, within the
24 applicable statute of limitations preceding the filing of this action to the
25 present date.

1 27. Excluded from the class are Defendants in this action, any entity in which
2 Defendants have a controlling interest, including, but not limited to officers, directors,
3 shareholders, current employees and any and all legal representatives, heirs, successors,
4 and assigns of Defendants.

5 28. Plaintiff reserves the right to amend the definition of the Proposed Class as
6 discovery and investigation reveal additional information.

7 29. There is a well-defined community of interest in this litigation and the class
8 is easily ascertainable:

9 A. Numerosity: The members of the Proposed Class numerous that
10 joinder of all members is impracticable. While the exact number of Proposed Class
11 Members can only be ascertained through discovery, Plaintiff believe that thousands to
12 hundreds of thousands of Californians have purchased and continue to purchase products
13 from STEIN MART'S website and that, as a result, on information and belief, there are
14 thousands of aggregate members of the Proposed Class.

15 B. Typicality: Plaintiff's claims are typical of the claims of the Proposed Class.
16 Plaintiff and members of the Proposed Class sustained injuries and damages arising out
17 of defendants' common course of conduct in violation of the law as alleged herein. The
18 injuries and damages of each member of the Proposed Class were caused directly by
19 defendants' wrongful conduct as alleged herein and are/were common to all Class
20 Members.

21 C. Adequacy: Plaintiff does not have a conflict with the Proposed Class and is
22 qualified to and will fairly and adequately protect the interests of each member of the
23 class with whom he has a well- defined community of interest and typicality of claims, as
24 alleged herein. Plaintiff acknowledges that he have an obligation to the Court to make
25 known any relationship, conflict, or differences vis-à-vis any class member. Plaintiff's
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1 attorneys and proposed class counsel are well versed in the rules governing class action
2 and complex litigation regarding discovery, certification, and settlement.

3 D. Superiority: A class action is superior to other available means for the fair
4 and efficient adjudication of this controversy and will result in a substantial benefit to the
5 Proposed Class, the public and the Court. The likelihood of individual Class Members
6 prosecuting separate claims is remote, and individual members of the Proposed Class do
7 not have a significant interest in individually controlling the prosecution of separate
8 actions. Because the damages suffered by individual Class Members is relatively small,
9 the expenses and burden of individual litigation would make it difficult, if not impossible,
10 for individual members of the Proposed Class to redress the wrongs done to them. The
11 cost to the judicial system of the adjudication of many individualized claims would
12 substantial whereas the litigation of these claims simultaneously as a class action will
13 result in substantial savings of judicial resources. Furthermore, the prosecution of
14 separate actions by individual Class Members would create a risk of inconsistent and
15 varying adjudications concerning the subject of this action, which adjudications could
16 establish incompatible standards of conduct for defendants under the law alleged herein.
17 Class treatment will permit a large number of similarly situated persons to prosecute
18 common claims in a single forum simultaneously, efficiently and without unnecessary
19 duplication of effort and expense that individual actions would engender. Class treatment
20 will enable the Proposed Class to redress the wrongs done to them and to serve the public
21 interest by ensuring that defendants' conduct be punished and enjoined from future
22 repetition. Class treatment will thus result in the most fair and efficient adjudication of
23 this controversy, as well as conferring substantial benefits on the litigants, the public and
24 the Court.

1 30. There are common questions of law and fact as to the class that predominate
2 over questions affecting only individual members, including but not limited to:

3 A. Whether STEIN MART has engaged in an unlawful business practice;

4 B. Whether STEIN MART engaged in unlawful advertising;

5 C. Whether STEIN MART products were advertised on its price tags with
6 inflated, arbitrary, false “Compare At” (indicating STEIN MART’s “Our Price”) on a
7 class-wide basis;

8 D. Whether STEIN MART intentionally misrepresented the “Compare at” of
9 sale-priced items on its price tags;

10 E. Whether STEIN MART advertised prices that accurately reflected the true
11 market prices during the three months preceding the publication of the “Compare at” for
12 products sold on the STEIN MART price tags;

13 F. Whether STEIN MART knew that it misrepresented the “Compare at” of
14 products sold on its website;

15 G. Whether STEIN MART engaged in an unlawful business practice in
16 connection with the advertising and sale of products at its retail stores;

17 H. Whether STEIN MART engaged in a misleading business practice in
18 connection with the advertising and sale of products at its retail stores;

19 I. Whether STEIN MART engaged in false advertising in connection with the
20 advertising and sale of products at its retail stores;

21 J. Whether STEIN MART concealed and/or failed to disclose material facts
22 about its discount pricing practices;

23 K. Whether STEIN MART’S practices as alleged herein were knowing,
24 intentional, or undertaken in conscious disregard of foreseeable risk of harm to the
25 Plaintiff and the Proposed Class;

1 L. Whether STEIN MART knew its discount pricing scheme was illegal, unfair
2 and/or deceptive and intended to gain an unfair commercial or competitive benefit by
3 doing so;

4 M. Whether STEIN MART is likely to continue engaging in false, misleading
5 price comparisons such that injunctive and declaratory relief are necessary and
6 appropriate;

7 N. Whether Plaintiff and the Proposed Class are entitled to injunctive relief,
8 restitution or disgorgement of profits and in what amount.

9 34. Were it not for this class action, most Class Members would find the cost
10 associated with litigating claims extremely prohibitive, which would result in no remedy
11 to this widespread and ongoing harm.

12 31. This class action would serve to preserve judicial resources, the respective
13 parties' resources, and present fewer issues with the overall management of claims, while
14 at the same time ensuring a consistent result as to each class member.

15
16 **FIRST CAUSE OF ACTION**

17 Consumers Legal Remedies Act, California Civil Code §§ 1750, et seq.

18 By Plaintiff and the Proposed Class against Defendant

19 (Injunctive Relief Only with Reservation)

20 32. Plaintiff hereby incorporates by reference the allegations contained in all
21 preceding paragraphs of this complaint.

22 33. Plaintiff and the Proposed Class are "consumers" as defined by Civil Code §
23 1761(d) because they purchased products from STEIN MART'S retail store for personal,
24 family or household purposes.

1 34. Products purchased by Plaintiff and the Proposed Class during the class
2 period from STEIN MART'S retail stores are "goods" as defined by Cal. Civil Code §
3 1761(a).

4 35. Plaintiff and the Proposed Class engaged in "transactions" within the
5 meaning of Cal. Civil Code § 1761(e) by purchasing products from STEIN MART'S
6 website.

7 36. The Consumers Legal Remedies Act [Civil Code § 1770, *et seq.*] (the
8 "CLRA") at section 1770(a)(5) prohibits representing that goods or services have
9 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they
10 do not have. STEIN MART violated the CLRA by falsely representing the nature,
11 existence and amount of price discounts by fabricating inflated "Compare at" price.

12 37. STEIN MART violated the CLRA at § 1770(a)(7) because STEIN MART
13 represented that its products were of a particular standard, quality, or grade when they are
14 of another. STEIN MART falsely claimed that products for sale on its website were
15 worth a fabricated and inflated "Compare at" were therefore more valuable when, in
16 truth, the products are/were not worth the misrepresented "Compare At" and were
17 therefore never as valuable as advertised by STEIN MART.

18 38. STEIN MART violated the CLRA at § 1770(a)(9) because STEIN MART
19 advertised goods with the intent not to sell them as advertised. STEIN MART always
20 knew that the advertised "Compare at" price was not an accurate representation about the
21 prices for the products, and that the goods were not properly valued at the "Compare at"
22 advertised by STEIN MART.

23 39. STEIN MART violated the CLRA at § 1770(a)(13) because STEIN MART
24 made false or misleading statements of fact concerning the amount of a price reduction.
25 The arbitrary, illusory, fabricated, inaccurate "Compare at" advertised by STEIN MART
26

1 on its website were knowingly inflated by STEIN MART, and Plaintiff and the Proposed
2 Class did not receive the discounts they thought they were receiving.

3 40. STEIN MART violated the CLRA at § 1770(a)(14) because STEIN MART
4 represented that the transaction confers or involves rights that it does not have or involve.
5 Despite the claimed “discount” between the advertised “Compare at” price and STEIN
6 MART’s “Our Price,” because the “Compare at” prices were substantially inflated, the
7 discount presented to the Plaintiff and the Proposed Class was false, the right to receive
8 the apparent “discount” offered by STEIN MART was not received, and the illusory
9 “discount” offered and advertised was never delivered.

10 41. Plaintiff and the Proposed Class suffered injuries caused by Defendant
11 because they would not have purchased the products from STEIN MART if the true facts
12 were known concerning the falsely represented price discounts. Plaintiff and the
13 Proposed Class relied on the advertised price discounts by STEIN MART and would not
14 have purchased products from STEIN MART without STEIN MART’S unlawful
15 conduct. Had Plaintiff and the Proposed Class known the true facts of STEIN MART’S
16 price discount scheme they would not have purchased products from STEIN MART’S
17 website and/or would have paid less for the same or similar products elsewhere.

18 42. On January 26, 2017, Plaintiff served written notice and demand on
19 Defendant in compliance with Civil Code § 1782(a) via certified mail, return receipt
20 requested, advising STEIN MART that it is in violation of the CLRA and demanding
21 remedies for Plaintiff and the Proposed Class Members.

22 43. Plaintiff seeks injunctive relief only for this violation of the CLRA, but
23 reserves it right to amend this complaint to include allegations for the recovery of
24 damages under the CLRA.

1 **SECOND CAUSE OF ACTION**

2 Violation of California Business & Professions Code §§17500, *et seq.*

3 By Plaintiff and the Proposed Class against Defendant

4 44. Plaintiff hereby incorporates by reference the allegations contained in all
5 preceding paragraphs of this complaint.

6 45. This cause of action is brought pursuant to the False Advertising Law at
7 Business & Professions Code § 17500, *et seq.*

8 46. Plaintiff brings this cause of action as an individual, in his capacity as a
9 private attorney general pursuant to Business & Professions Code § 17535, and on behalf
10 of the Proposed Class.

11 47. Defendant intended to sell goods through its retail stores to Plaintiff and the
12 Proposed Class.

13 48. Defendants disseminated advertising before the public in California that: (a)
14 contained statements that were illegal, untrue or misleading; (b) defendants knew, or in
15 the exercise of reasonable care should have known, was illegal, untrue or misleading; (c)
16 concerned the nature, quantity and characteristics of goods intended for sale to California
17 consumers, including Plaintiff and the Proposed Class; and (d) was likely to mislead
18 or deceive a reasonable consumer.

19 49. Cal. Bus. and Prof. Code §17501, states, in pertinent part, as follows:

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

25 50. During the class period, STEIN MART'S scheme regarding illusory price
26 discounts included advertisements that claimed its products were subject to discounts

1 based upon “MSRP” and “Our Price (indicating STEIN MART’S Regular Price) that did
2 not reflect the prevailing market price.

3 51. During the class period, STEIN MART published advertisements on its
4 website that failed to indicate the date upon which the advertised “Regular Price” was
5 established.

6 52. STEIN MART’S illusory “MSRP” and “Our Price (indicating STEIN
7 MART’S Regular Price) advertisements were “advertisements” within the meaning of
8 Business & Professions Code § 17500, *et seq.*, and included written inducements that
9 were intended to cause Plaintiff and the Proposed Class to make product purchases from
10 STEIN MART’S retail stores.

11 53. At all relevant times during the class period, STEIN MART knew or in the
12 exercise of reasonable care should have known that its representations regarding price
13 discounts and its advertisements of “Compare at” (the suggest MSRP by STEIN MART)
14 and “Our Price” (indicating STEIN MART’S Regular Price) were false and misleading.

15 54. Plaintiff and the Proposed Class reasonably relied on STEIN MART’S false
16 and misleading advertisements about price discounts, all of whom were exposed to
17 STEIN MART’S false representations and who were the intended target of such false
18 representations.

19 55. Plaintiff and the Proposed Class have been harmed by STEIN MART’S false
20 and misleading advertisements in that they made purchases which they would not have
21 made or they paid more for products purchased from STEIN MART than they would
22 have paid if they had known the advertisements were false and misleading, and/or they
23 would have purchased products from some other source, or would have paid less for
24 them.

1 56. Plaintiff, on behalf of himself, the Proposed Class, and the general public,
2 seeks an order for injunctive relief and restitution to remedy the ongoing harm caused by
3 STEIN MART'S false and misleading price discount scheme.

4 57. Plaintiff and the Proposed Class lost money or property as a result of
5 Defendant's false advertising insofar as Plaintiff and the Proposed Class would not have
6 purchased products from STEIN MART if they had reason to know that STEIN MART
7 was and is engaging in unlawful price discount advertising.

8
9 **THIRD CAUSE OF ACTION**

10 Violations of California Business & Professions Code § 17200, *et seq.*
11 By Plaintiff and the Proposed Class against Defendant

12 58. Plaintiff hereby incorporates by reference the allegations contained in all
13 preceding paragraphs of this complaint.

14 59. Plaintiff and Defendant are "person[s]" as defined by California Business &
15 Professions Code § 17201. California Business & Professions Code § 17204 authorizes a
16 private right of action on both an individual and representative basis.

17 60. "Unfair competition" is defined by Business & Professions Code § 17200 as
18 encompassing several types of business "wrongs," including, but not limited to: (1) an
19 "unlawful" business act or practice, (2) an "unfair" business act or practice, and (3)
20 "unfair, deceptive, untrue or misleading advertising." The definitions in § 17200 are
21 drafted in the disjunctive, meaning that each of these "wrongs" operates independently
22 from the others.

23 61. Plaintiff, like all other Class Members, saw Defendant's "Compare at"
24 reference prices on the products that he purchased before purchasing those products. The
25 "Compare at" pricing displayed by STEIN MART were material to Plaintiff and the
26 Proposed Class, as they were to all other Class Members. Plaintiff relied on the

1 “Compare at” prices in making her purchasing decisions. Plaintiff, like all other Class
2 Members, placed added value on the products he purchased from STEIN MART.
3 Plaintiff believed the “Compare at” reference prices were true and verified comparative
4 reference prices (i.e. MSRP) that represented the market retail prices of the products he
5 purchased. Because Defendant’s “Compare at” prices were not true or verified
6 comparative reference prices, the actual value of the products Plaintiff and Proposed
7 Class purchased at STEIN MART was less than they believed and less than what they
8 paid for those products. Plaintiff and all other Class Members therefore paid more for the
9 products they purchased from Defendant than the value they received.

10 62. Defendant engaged in conduct which constitutes unlawful and/or unfair
11 business practices, and unfair, deceptive, untrue or misleading advertising prohibited by
12 Business & Professions Code § 17200, *et seq.*

13
14 **A. The “Unlawful” Prong**

15 63. Beginning at a date currently unknown through the time of this Complaint,
16 Defendant has committed acts of unfair competition, including those described above, by
17 engaging in a pattern of “unlawful” business practices, within the meaning of Cal. Bus. &
18 Prof. Code § 17200, *et seq.* By and through Defendant’s conduct STEIN MART violated
19 and continue to violate the California Business and Professions Code sections 17200 and
20 17500, *et seq.*, California Civil Code 1770, FTCA, 15 U.S.C. §45(a)(1) and 15 U.S.C.
21 §52(a), as well as FTC Pricing Guides as a result of advertising false comparative prices
22 as described herein.

23 64. Additionally, Defendant has violated 16 C.F.R. § 233.1(a), which prohibits
24 the Defendant from advertising false price discounts by representing fictitious, artificial,
25 inflated prices for the purpose of enabling the offer of an illusory price reduction.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

1. For an order certifying the Proposed Class under Rule 23 of the Federal Rules of Civil Procedure;
2. For an order certifying Plaintiff as the representative of the Proposed Class and certifying Plaintiff's attorneys as Class Counsel;
3. For an order declaring the Defendant's conduct violates the statutes and laws identified herein;
4. For an order of judgment in favor of Plaintiff and the Proposed Class on all causes of action alleged herein;
5. For an award of compensatory and punitive damages in amounts to be determined;
6. For prejudgment interest;
7. For an order of restitution and all other forms of equitable monetary relief;
8. For an order of injunctive relief to remedy the past, present and threatened future harm of Defendant's conduct as set forth herein;
9. For an order disgorging the ill-gotten gains obtained by the Defendant in connection with the conduct alleged herein;

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**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself)
ANTHONY MORALES

DEFENDANTS (Check box if you are representing yourself)
STEIN MART, INC.

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

County of Residence of First Listed Defendant FLORIDA
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.
Reuben Nathan SNB 208436
Nathan & Associates, APC
600 W. Broadway, Suite 700, San Diego, CA 92101 Tel 619-272-7014

Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

II. BASIS OF JURISDICTION (Place an X in one box only.)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

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

IV. 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 - Transfer
 8. Multidistrict Litigation - Direct File

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ 5,000,001

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Cal. Bus. Prof 17200 and 17500 et seq. Ca. Civ Code 1750, et seq.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 140 Negotiable Instrument	PERSONAL INJURY	<input checked="" type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 530 General	SOCIAL SECURITY
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	PERSONAL PROPERTY	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	Other:	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	FEDERAL TAX SUITS
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 891 Agricultural Acts	REAL PROPERTY	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	LABOR	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

FOR OFFICE USE ONLY: Case Number:

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

<p>QUESTION A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.</p>	<p>STATE CASE WAS PENDING IN THE COUNTY OF:</p> <p><input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo</p> <p><input type="checkbox"/> Orange</p> <p><input type="checkbox"/> Riverside or San Bernardino</p>	<p>INITIAL DIVISION IN CACD IS:</p> <p>Western</p> <p>Southern</p> <p>Eastern</p>
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<p>QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "no," skip to Question C. If "yes," answer Question B.1, at right.</p>	<p>B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co.? <i>check one of the boxes to the right</i> →</p> <p>B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →</p>	<p><input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.</p> <p><input type="checkbox"/> NO. Continue to Question B.2.</p> <p><input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.</p> <p><input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.</p>
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<p>QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "no," skip to Question D. If "yes," answer Question C.1, at right.</p>	<p>C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.? <i>check one of the boxes to the right</i> →</p> <p>C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →</p>	<p><input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.</p> <p><input type="checkbox"/> NO. Continue to Question C.2.</p> <p><input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.</p> <p><input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.</p>
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QUESTION D: Location of plaintiffs and defendants?	A. Orange County	B. Riverside or San Bernardino County	C. Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<p>D.1. Is there at least one answer in Column A? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "yes," your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question E, below, and continue from there. If "no," go to question D2 to the right. →</p>	<p>D.2. Is there at least one answer in Column B? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If "yes," your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question E, below. If "no," your case will be assigned to the WESTERN DIVISION. Enter "Western" in response to Question E, below. ↓</p>
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QUESTION E: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, C, or D above: →	<input type="checkbox"/>

QUESTION F: Northern Counties?	
Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? <input type="checkbox"/> Yes <input type="checkbox"/> No	

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

IX(a). IDENTICAL CASES: Has this action been previously filed in this court? NO YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Is this case related (as defined below) to any civil or criminal case(s) previously filed in this court? NO YES

If yes, list case number(s): 5:15-cv-01411

Civil cases are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

A civil forfeiture case and a criminal case are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): /s/Reuben Nathan DATE: 1/27/17

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY(S)
OR OF PARTY APPEARING IN PRO PER

Reuben D. Nathan, Esq. SBN 208436
NATHAN & ASSOCIATES, APC
600 W. Broadway, Suite 700
San Diego, CA 92101
rnathan@nathanlawpractice.com
Tel:619-272-7014

ATTORNEY(S) FOR:

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

ANTHONY MORALES, an individual on behalf
of himself and all others similarly situated,

v.
STEIN MART.; and DOES 1 through 10,
inclusive.

Plaintiff(s)

Defendant(s)

CASE NUMBER:

**CERTIFICATION AND NOTICE
OF INTERESTED PARTIES
(Local Rule 7.1-1)**

TO: THE COURT AND ALL PARTIES OF RECORD:

The undersigned, counsel of record for ANTHONY MORALES
or party appearing in pro per, certifies that the following listed party (or parties) may have a pecuniary interest in
the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification
or recusal.

(List the names of all such parties and identify their connection and interest. Use additional sheet if necessary.)

PARTY	CONNECTION / INTEREST
ANTHONY MORALES	Plaintiff
STEIN MART, INC.	Defendant

Date

Signature

Attorney of record for (or name of party appearing in pro per):

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: