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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRISITINA CHASE, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

HOBBY LOBBY STORES, INC., an
Oklahoma corporation, and DOES 1
through 50, inclusive,

Defendant.

Case No: 17CV881 GPC (BLM)

**FIRST AMENDED CLASS ACTION
COMPLAINT**

- 1. Violation of California’s Unfair Competition Laws (“UCL”); California Business & Professions Code Sections 17200, et seq.;**
- 2. Violation of California’s False Advertising Laws (“FAL”); California Business & Professions Code Sections 17500, et seq.;**
- 3. Violations of California Consumer Legal Remedies Act (“CLRA”); California Civil Code Sections 1750, et seq.**

[DEMAND FOR JURY TRIAL]

1 Plaintiff CHRISTINA CHASE brings this action on behalf of herself and all others
2 similarly situated against Defendant HOBBY LOBBY STORES, INC. (“Hobby Lobby”),
3 and states:

4 **I. NATURE OF ACTION**

5 1. “If everyone is getting a deal, is anyone really getting a deal?”¹ This class
6 action targets Hobby Lobby’s unlawful, unfair, and fraudulent business practice of
7 advertising fictitious prices and corresponding phantom discounts on their Hobby Lobby
8 branded and/or trademarked lines of merchandise. This practice of false reference pricing
9 occurs where a retailer fabricates a fake regular, original, and/or former reference price,
10 and then offers an item for sale at a deep “discounted” price. The result is a sham price
11 disparity that misleads consumers into believing they are receiving a good deal and induces
12 them into making a purchase. Retailers drastically benefit from employing a false
13 reference-pricing scheme and experience increased sales.

14 2. The California legislature prohibits this misleading practice. The law
15 recognizes the reality that consumers often purchase merchandise marketed as being “on
16 sale” purely because the proffered discount seemed too good to pass up. Accordingly,
17 retailers have an incentive to lie to customers and advertise false sales. The resulting harm
18 is tangible—the bargain hunter’s expectations about the product she purchased is that it
19 has a higher perceived value and she may not have purchased the product but for the false
20 savings.

21 3. Hobby Lobby utilizes a false and misleading reference price in the marketing
22 and selling of Hobby Lobby branded and/or trademarked merchandise at its retail stores.
23 Hobby Lobby advertises its merchandise for sale by attaching a price tag on the item that
24

25
26 ¹ David Streitfeld, *It’s Discounted, but is it a Deal? How List Prices Lost Their Meaning*,
27 New York Times, <https://www.nytimes.com/2016/03/06/technology/its-discounted-but-is-it-a-deal-how-list-prices-lost-their-meaning.html>, (March 6, 2016), last accessed April
28 28, 2017.

1 sets forth a fictitious “Marked” price. *See e.g.* Exhibit A. The “Marked” price is then
2 substantially discounted from a “__% OFF” price depicted on corresponding price placards
3 adjacent to the respective items. *See e.g.* Exhibit B. The “__% OFF” price represents the
4 percentage of the savings the customer is purportedly saving off the “Marked” reference
5 price by purchasing the product.

6 4. However, the “Marked” price is a total fiction. The only stores in which the
7 Hobby Lobby branded and/or trademarked merchandise is actually sold is at the Hobby
8 Lobby retail stores. Thus, the only market price for the Hobby Lobby branded and/or
9 trademarked merchandise is the price at which the merchandise is sold in the Hobby Lobby
10 retail stores, since Hobby Lobby is the only “market” for Hobby Lobby branded and/or
11 trademarked merchandise.

12 5. The Hobby Lobby branded and/or trademarked merchandise is never offered
13 for sale, nor actually sold, at the represented “Marked” price. Thus, the “Marked” price is
14 false and is used exclusively to induce consumers into believing that the merchandise was
15 once sold at the “Marked” price and from which the false and discount and corresponding
16 “__% OFF” price is derived. Hobby Lobby’s deceptive pricing scheme has the effect of
17 tricking consumers into believing they are receiving a significant deal by purchasing
18 merchandise at a steep discount, when in reality, consumers are paying for merchandise at
19 its regular or original retail price.

20 6. The advertised discounts are fictitious because the regular or original
21 reference price, or “Marked” price, do not represent a *bona fide* price at which Hobby
22 Lobby previously sold a substantial quantity of the merchandise for a reasonable period of
23 time as required by the Federal Trade Commission (“FTC”). In addition, the represented
24 “Marked” price was not the prevailing market retail price within the three months
25 immediately preceding the publication of the advertised former “Market” price, as required
26 by California law.

27 7. Through its false and misleading marketing, advertising, and pricing scheme,
28 Hobby Lobby violated and continues to violate, California and federal law prohibiting

1 advertising goods for sale as discounted from former prices that are false, and prohibiting
2 misleading statements about the existence and amount of price reductions. Specifically,
3 Hobby Lobby violated and continues to violate: California’s Unfair Competition Law,
4 Business and Professions Code §§ 17200, *et seq.* (the “UCL”); California’s False
5 Advertising Law, Business and Professions Code §§ 17500, *et seq.* (the “FAL”); the
6 California Consumer Legal Remedies Act, Civil Code §§ 1750, *et seq.* (the “CLRA”); and
7 the Federal Trade Commission Act (“FTCA”), which prohibits “unfair or deceptive acts or
8 practices in or affecting commerce” (15 U.S.C. § 45(a)(1)) and false advertisements (15
9 U.S.C. § 52(a)).

10 8. Plaintiff brings this action on behalf of herself and other similarly situated
11 consumers who have purchased one or more Hobby Lobby branded and/or trademarked
12 merchandise at Defendant’s Hobby Lobby retail stores that were deceptively represented
13 as discounted from false former “Marked” prices. Plaintiff seeks to halt the dissemination
14 of this false, misleading, and deceptive pricing scheme, to correct the false and misleading
15 perception it has created in consumer’s minds, and to obtain redress for those who have
16 purchased merchandise tainted by this deceptive pricing scheme. Plaintiff also seeks to
17 enjoin Hobby Lobby from using false and misleading misrepresentations regarding retail
18 price comparisons in their labeling and advertising permanently. Further, Plaintiff seeks
19 to obtain damages, restitution, and other appropriate relief in the amount by which Hobby
20 Lobby was unjustly enriched as a result of its sales of merchandise offered at a false
21 discount.

22 9. Finally, Plaintiff seeks reasonable attorneys’ fees pursuant to California Code
23 of Civil Procedure § 1021.5, as this lawsuit seeks the enforcement of an important right
24 affecting the public interest and satisfies the statutory requirements for an award of
25 attorneys’ fees.

26 **II. JURISDICTION AND VENUE**

27 10. This Court has original jurisdiction of this Action pursuant to the Class Action
28 Fairness Act, 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interests and

1 costs, exceeds the sum or value of \$5,000,000 and at least some members of the proposed
2 Class have a different citizenship from Hobby Lobby.

3 11. The Southern District of California has personal jurisdiction over the
4 defendant named in this action because Hobby Lobby is a corporation or other business
5 entity authorized to conduct and does conduct business in the State of California. Hobby
6 Lobby is registered with the California Secretary of State to do sufficient business with
7 sufficient minimum contacts in California, and/or otherwise intentionally avails itself of
8 the California market through the ownership and operation of over 50 retail stores within
9 the State of California and over 750 retail stores nationwide.

10 12. Venue is proper under 28 U.S.C. § 1391(b)(2) because Hobby Lobby transacts
11 substantial business in this District. A substantial part of the events giving rise to Plaintiff's
12 claims arose here.

13 **III. PARTIES**

14 **Plaintiff**

15 13. Christina Chase resides in San Diego, California. Ms. Chase, in reliance on
16 Hobby Lobby's false and deceptive advertising, marketing, and "discount" pricing
17 schemes, purchased a 5" x 7" Green Tree Gallery Shadow Box Display Case Photo Frame
18 for approximately \$8.99 on or around March 1, 2017 at a Hobby Lobby retail store located
19 at 8810 Grossmont Boulevard, La Mesa, California 91942. She also purchased a Master's
20 Touch Fine Art Studio Oil, Acrylic & Watercolor Chisel Blender for approximately \$2.34
21 that same day. Ms. Chase went to the Hobby Lobby store to look for a picture frame for
22 her home and for art supplies.

23 14. Ms. Chase first walked down an aisle lined with photo frames and selected a
24 black wooden 5" x 7" Green Tree Gallery Shadow Box Display Case Photo Frame (the
25 "picture frame"). The back of the picture frame had a white price tag sticker with black
26 print, approximately 2" x 1 1/2" in size (attached hereto as Exhibit A). The price tag on
27 the picture frame listed the "Marked" price as "\$17.99." Among the other picture frames,
28 and prominently displayed upon a shelf in the picture frame aisle, was a white placard with

1 red and black print, approximately 8” x 11” in size. The placard advertised “Photo Frames
2 Always 50% OFF the Marked price*” (attached hereto as Exhibit B). Upon initially
3 viewing the placard, the first (and only) thing Ms. Chase noticed was the large, boldfaced
4 “50% OFF” language, because the word “always” was not in bold-face font and was
5 substantially smaller than the “50% OFF” representation.

6 15. Ms. Chase did not notice and, therefore, did not read any disclaimer or other
7 language on the placard qualifying or explaining details about Defendant’s representation
8 that the items in question were being offered at a 50% discount.

9 16. After examining the price tag, in particular the “Marked” price as \$17.99, Ms.
10 Chase, based on Defendant’s representations on the placard that its Photo Frames were
11 50% off, believed the picture frame had previously been sold for \$17.99 at Hobby Lobby.
12 When she examined the representation on the placard, displaying the discounted sale
13 percentage of “50% OFF the Marked price,” or \$8.99, Ms. Chase reasonably believed she
14 was purchasing a picture frame that had a value significantly higher than the \$8.99 purchase
15 price. In short, Ms. Chase believed she was getting a good deal.

16 17. However, this product was never offered for sale or sold at the \$17.99 price,
17 nor was it offered for sale or sold at that price within the 90-day period immediately
18 preceding Ms. Chase’s purchase. Therefore, Ms. Chase was damaged by her purchase of
19 the picture frame.

20 18. Next, Ms. Chase walked to the art supplies section of the store and selected a
21 Master’s Touch Fine Art Studio Oil, Acrylic & Watercolor, Golden Taklon Chisel Blender,
22 Series 7050 Size 4 (the “paintbrush”). The back of the paintbrush had a white price tag
23 sticker with black print, approximately 2” x 1 1/2” in size. The price tag on the paintbrush
24 listed the “Marked” price as “\$4.69” (attached hereto as Exhibit C). Among the other art
25 supply items, and prominently displayed upon a shelf in the art supply aisle, was a white
26 placard with red and black print, approximately 8” x 11” in size. The placard advertised
27 “Art Supplies 50% OFF the Marked price” in bold print. Ms. Chase did not notice or recall
28 any disclaimer or other language on this advertisement.

1 19. After examining the price tag, in particular the “Marked” price as \$4.69, Ms.
2 Chase believed the paintbrush had previously been sold for \$4.69 at Hobby Lobby. When
3 she examined the representation on the placard, displaying the discounted sale percentage
4 of “50% OFF the Marked price,” or \$2.34, Ms. Chase reasonably believed she was
5 purchasing a paintbrush that had a value significantly higher than the \$2.34 purchase price.
6 In short, Ms. Chase believed she was getting a good deal.

7 20. However, this product was also never offered for sale or sold at the \$4.69
8 price, nor was it offered for sale or sold at that price within the 90-day period immediately
9 preceding Ms. Chase’s purchase. Therefore, Ms. Chase was damaged by her purchase of
10 the paintbrush.

11 **Defendant**

12 21. Plaintiff is informed and believes, and upon such information and belief
13 alleges, Defendant Hobby Lobby Stores, Inc. is a privately held, Oklahoma corporation
14 with its principal place of business in Oklahoma City, Oklahoma. Defendant operates
15 Hobby Lobby retail stores and the hobbylobby.com website, and advertises, markets, and
16 distributes, and/or sells home décor, arts, crafts, hobby supplies, and other accessories in
17 California and throughout the United States.

18 22. Plaintiff does not know the true names or capacities of the persons or entities
19 sued herein as DOES 1-50 inclusive, and therefore sues such Defendants by such fictitious
20 names. Plaintiff is informed and believes, and upon such information and belief alleges,
21 that each of the DOE Defendants is in some manner legally responsible for the damages
22 suffered by Plaintiff and the Class members, as alleged herein. Plaintiff will amend this
23 Complaint to set forth the true names and capacities of these Defendants when they have
24 been ascertained, along with appropriate charging allegations, as may be necessary.

25 **IV. FACTUAL BACKGROUND**

26 **The Fraudulent Sale Discounting Scheme**

27 23. Hobby Lobby is the largest privately owned arts-and-crafts retailer in the
28 world, operating approximately 750 stores in the United States and over 50 stores in

1 California, and earning approximately \$4 billion in revenue in 2015. Hobby Lobby sells
2 merchandise including home décor, picture framing, decorative accessories, woodcrafts,
3 jewelry making, fabrics, floral, party and wedding supplies, holidays, and arts. Hobby
4 Lobby directly markets its merchandise to consumers in the State of California and
5 throughout the United States via its in-store advertisements and its e-commerce website
6 (www.hobbylobby.com). Hobby Lobby sells a variety of merchandise from its own brand
7 and/or trademark, as well as from various manufacturers. This case involves only the
8 Hobby Lobby branded and/or trademarked products sold by Hobby Lobby at its retail
9 stores.

10 24. The Hobby Lobby branded and/or trademarked products sold in the Hobby
11 Lobby retail stores are exclusively sold at Hobby Lobby and they are not sold anywhere
12 else. Thus, there is no other market for the Hobby Lobby branded and/or trademarked
13 products sold at Hobby Lobby other than at Defendant's Hobby Lobby retail stores.

14 25. Hobby Lobby engages in a scheme to defraud its customers by perpetually
15 discounting its merchandise in its retail stores. Hobby Lobby consistently advertises its
16 merchandise with a regular "Marked" price and a corresponding "__% OFF" sale price.
17 The "Marked" price conveys to the customer the purported regular price of the item. The
18 "__% OFF" sale price conveys to the customer a deeply discounted price at which the item
19 is presently being offered for sale. The two prices (the "Marked" price and the "__% OFF"
20 price) are conveyed to consumers on the price tags and the corresponding price placards,
21 respectively. The price tags are white stickers with black lettering and approximately 2" x
22 1 ½" in size. *See e.g.* Exhibit A. The price placards are primarily white with black and red
23 print and approximately 8" x 11" in size. *See e.g.* Exhibit B.

24 26. Although the price placards display a barely visible disclaimer underneath the
25 advertised promotion, (*see e.g.*, Exhibit B), reasonable consumers are likely to disregard
26 this language in light of the prominent, eye-catching "50% OFF" language advertising the
27 promotion on the merchandise. Further, the disclaimer language is unclear, confusing
28 and/or deceptive to the reasonable consumer and thus, has no bearing on the overall impact

1 of the advertised sale and its effect on the reasonable consumer in making their purchasing
2 decision.

3 27. Similarly, the “Always” language used to qualify the “50% OFF” promotion
4 is insignificant, not only in size, but also in substance, compared to the overall impact of
5 the advertised sale and has no effect on the reasonable consumer in making their purchasing
6 decision.

7 28. Additionally, Hobby Lobby continuously advertises its fictitious discounts
8 using in-store flyers. Upon entering the store, consumers are confronted with a 5’-tall
9 metal stand that displays a large white informational advertisement depicting images of
10 various items and listing the purported “__% OFF” discounts for each corresponding item
11 offered in the store. Immediately underneath the large informational advertisement is a
12 small receptacle maintaining a stack of 8” x 11” paper flyers depicting the same
13 advertisement and the “__% OFF” discounts described above. The in-store flyers depict
14 the “__% OFF” discounts Hobby Lobby offers at any given week. An example of the in-
15 store flyer is attached hereto as Exhibit D.

16 29. However, at no time is the Hobby Lobby merchandise ever offered for sale
17 anywhere at the “Marked” price. The “Marked” price is merely a false reference price,
18 which Hobby Lobby utilizes to deceptively manufacture a deeply discounted sale price
19 referred to as the “__% OFF” price on the merchandise sold at the Hobby Lobby retail
20 stores during the class period.

21 30. This practice is not accidental. Rather, this practice is a fraudulent scheme
22 intended to deceive consumers into: 1) making purchases they otherwise would not have
23 made; and/or 2) paying substantially more for merchandise consumers believed was
24 heavily discounted and thus, worth more than its actual value.

25 31. Retailers, including Hobby Lobby, understand that consumers are susceptible
26 to a good bargain, and therefore, Hobby Lobby has a substantial interest in lying in order
27 to generate sales. A product’s “regular” or “original” price matters to consumers because
28 it serves as a baseline upon which consumers perceive a product’s value. In this case,

1 Hobby Lobby has marked its merchandise with a “Marked” price, which it intends to be
2 the equivalent of a “regular” or “original” price. The regular and/or original price conveys
3 to consumers, including Ms. Chase, “the product’s worth and the prestige that ownership
4 of the product conveys.” *See Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1106 (9th Cir. 2013)
5 (citing Dhruv Grewal & Larry D. Compeau, Comparative Price Advertising: Informative
6 or Deceptive?, 11 J. Pub. Pol’y & Mktg. 52, 55 (Spring 1992) (“By creating an impression
7 of savings, the presence of a higher reference price enhances subjects’ perceived value and
8 willingness to buy the product.”); *id.* at 56 (“[E]mpirical studies indicate that as discount
9 size increases, consumers’ perceptions of value and their willingness to buy the product
10 increase, while their intention to search for a lower price decreases.”).

11 32. Hobby Lobby’s pricing advertisements uniformly include both the false
12 regular or original price (the “Marked” price) with a corresponding discount price (“__%
13 OFF” price) displayed on pricing placards adjacent to the products. This uniform scheme
14 intends to and does provide misinformation to the customer. This misinformation
15 communicates to consumers, including Ms. Chase, that the Hobby Lobby products have a
16 greater value than the advertised “__% OFF” sale price.

17 33. As the Ninth Circuit recognizes, “[m]isinformation about a product’s ‘normal’
18 price is . . . significant to many consumers in the same way as a false product label would
19 be.” *See Hinojos*, 718 F.3d at 1106.

20 **Plaintiff’s Counsel’s Investigation**

21 34. Plaintiff’s Counsel’s investigation of Hobby Lobby revealed that Hobby
22 Lobby’s branded and/or trademarked merchandise is priced uniformly. That is, Hobby
23 Lobby merchandise sold at Hobby Lobby bears a price tag with a false “Marked” price and
24 the corresponding price placard bears a substantially discounted “__% OFF” sale price.
25 Plaintiff’s Counsel’s investigation confirmed that Hobby Lobby’s photo frames and
26 paintbrushes were priced with false “Marked” prices and corresponding “__% OFF” price
27 in the 90-day period immediately preceding Plaintiff’s purchase of her picture frame and
28 paintbrush.

35. Plaintiff's Counsel's investigation cataloged the pricing practices at three Hobby Lobby retail stores in San Diego County, including: 40 North Avenue, Chula Vista, California 91910 ("Chula Vista"), 8810 Grossmont Boulevard, La Mesa, California 91942 ("La Mesa"), and 553 Grand Avenue, San Marcos, California 92078 ("San Marcos"). The false "Marked" price and corresponding purported "__% OFF" pricing scheme was both uniform and identical at all stores investigated. For example, Plaintiff's Counsel's investigation revealed the following items were continuously discounted at the stores indicated in the time periods indicated:

Item	"Marked" Price	"% OFF" Price	Continuously discounted from (at least)	Discounted Through	Stores Observed	Photo Exhibit
All Hobby Lobby Branded and/or Trademarked Photo Frames		50% Off	January 13, 2017	At least May 1, 2017	Chula Vista La Mesa San Marcos	
<u>Frames:</u> Green Tree Gallery Black Wooden 5" x 7" Shadow Box Display Case	\$17.99	50% Off	November 30, 2016	At least March 1, 2017	Chula Vista La Mesa San Marcos	A
<u>Frames:</u> Green Tree Gallery Black 5" x 7" Photo Frame	\$14.99	50% Off	January 13, 2017	At least May 1, 2017	Chula Vista La Mesa San Marcos	E

1	<u>Art Supplies:</u>	\$4.69	50% Off	November 30, 2016	At least March 1, 2017	Chula Vista La Mesa San Marcos	C
2	Master's						
3	Touch Fine						
4	Art Studio						
5	Oil, Acrylic						
6	&						
7	Watercolor,						
8	Golden						
9	Taklon						
10	Chisel						
11	Blender,						
12	Series 7050						
13	Size 4						
14							
15	<u>Home</u>	\$39.99	50% Off	January 24, 2017	At least May 1, 2017	Chula Vista La Mesa San Marcos	F
16	<u>Décor:</u>						
17	White						
18	Wooden						
19	Lettered						
20	Cut-Out						
21							
22	All Hobby		30% Off	January 13, 2017	At least May 1, 2017	Chula Vista La Mesa San Marcos	
23	Lobby						
24	Branded						
25	and/or						
26	Trademarked						
27	Furniture						
28							
29	<u>Furniture:</u>	\$49.99	30% Off	February 2, 2017	At least May 1, 2017	Chula Vista La Mesa San Marcos	G
30	Small White						
31	Barstool						
32	with						
33	Wooden						
34	Legs						
35							
36	<u>Furniture:</u>	\$119.99	30% Off	January 13, 2017	At least May 1, 2017	Chula Vista La Mesa San Marcos	H
37	Large White						
38	Barstool						
39	with						
40	Wooden						
41	Legs						

1						
2	<u>Furniture:</u>	\$427.99	30%	At least	At least	La Mesa
3	Multi-		Off	September	May 1,	I
4	Colored			29, 2016	2017	
5	Liberty					
6	Drawers					
7	Chest					
8	<u>Floral:</u>	\$9.99	50%	September	At least	Chula
9	Floral Stems		Off	28, 2016	March 1,	Vista
10	Assorted				2017	La Mesa
11	Variety					San
12						Marcos
13	<u>Fabric:</u>	\$16.99/yard	30%	January 13,	At least	Chula
14	Home Décor		Off	2017	May 1,	Vista
15	Fabrics				2017	La Mesa
16						San
17						Marcos
18	<u>Furniture:</u>	\$99.99	30%	At least	At least	Chula
19	Gold		Off	September	May 1,	Vista
20	Sequined			29, 2016	2017	La Mesa
21	Dress					San
22	Mannequin					Marcos
23						L

36. The fraudulent pricing scheme applies to all Hobby Lobby branded and/or trademarked merchandise offered on sale at every Hobby Lobby retail store, including the picture frame and paintbrush purchased by Ms. Chase on March 1, 2017. By way of example, all items in the above referenced chart were offered at a “__% OFF” price substantially less than their “Marked” price for every day Plaintiff’s Counsel’s investigation was conducted and for well over 90 days at a time.

Plaintiff and the Class Are Injured by Hobby Lobby’s Deceptive Pricing Scheme

37. The “Marked” price listed and advertised on Hobby Lobby’s products are fake reference prices, utilized only to perpetuate Hobby Lobby’s fake-discount scheme.

38. Hobby Lobby knows that its comparative price advertising is false, deceptive, misleading, and unlawful under California, federal, and other state laws.

1 39. Hobby Lobby fraudulently concealed from and intentionally failed to disclose
2 to Plaintiff and other members of the Class the truth about its advertised discount prices
3 and former reference prices.

4 40. At all relevant times, Hobby Lobby has been under a duty to Plaintiff and the
5 Class to disclose the truth about its false discounts.

6 41. Plaintiff relied upon Hobby Lobby’s artificially inflated “Marked” price and
7 false discounts when purchasing the picture frame and paintbrush from Hobby Lobby.
8 Plaintiff would not have made such purchase but for Hobby Lobby’s representations
9 regarding the false “Marked” price and the fictitious sales price of the merchandise.
10 Plaintiff may in the future shop at Hobby Lobby’s retail stores.

11 42. Plaintiff and the Class reasonably and justifiably acted and relied on the
12 substantial price differences that Hobby Lobby advertised, and made purchases believing
13 that they were receiving a substantial discount on an item of greater value than it actually
14 was. Plaintiff, like other Class members, was lured in, relied on, and was damaged by the
15 deceptive pricing scheme that Hobby Lobby carried out.

16 43. Hobby Lobby intentionally concealed and failed to disclose material facts
17 regarding the truth about false former price advertising in order to provoke Plaintiff and
18 the Class to purchase merchandise in its Hobby Lobby retail stores.

19 **V. CLASS ALLEGATIONS**

20 44. Plaintiff brings this action on behalf of herself and all other similarly situated
21 Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil
22 Procedure and seeks certification of the following Class against Hobby Lobby for
23 violations of California state laws:

24 All persons who, within the State of California, from May 1, 2013 through the
25 present (the “Class Period”), purchased from Hobby Lobby one or more
26 Hobby Lobby branded and/or trademarked products at discounts from the
27 advertised “Marked” price and who have not received a refund or credit for
28 their purchase(s).

1 Excluded from the Class are Hobby Lobby, as well as its officers, employees, agents,
2 or affiliates, and any judge who presides over this action, as well as all past and present
3 employees, officers, and directors of Hobby Lobby. Plaintiff reserves the right to expand,
4 limit, modify, or amend this class definition, including the addition of one or more
5 subclasses, in connection with her motion for class certification, or at any other time, based
6 upon, *inter alia*, changing circumstances and/or new facts obtained during discovery.

7 45. **Numerosity:** The class members are so numerous that joinder of all members
8 is impracticable. Plaintiff is informed and believes that the proposed Class contains
9 hundreds of thousands of individuals who have been damaged by Hobby Lobby's conduct
10 as alleged herein. The precise number of Class members is unknown to Plaintiff.

11 46. **Existence and Predominance of Common Questions of Law and Fact:** This
12 action involves common questions of law and fact, which predominate over any questions
13 affecting individual Class members. These common legal and factual questions include,
14 but are not limited to, the following:

- 15 a. Whether, during the Class Period, Hobby Lobby used false "Marked"
16 price labels and falsely advertised price discounts on its branded and/or
17 trademarked products sold in its Hobby Lobby retail stores;
- 18 b. Whether, during the Class Period, the "Marked" prices advertised by
19 Hobby Lobby were the prevailing market prices for the respective
20 Hobby Lobby branded and/or trademarked merchandise during the
21 three months preceding the dissemination and/or publication of the
22 advertised former prices;
- 23 c. Whether Hobby Lobby's alleged conduct constitutes violations of the
24 laws asserted;
- 25 d. Whether Hobby Lobby engaged in unfair, unlawful, and/or fraudulent
26 business practices under the laws asserted;
- 27 e. Whether Hobby Lobby engaged in false or misleading advertising;
- 28

- 1 f. Whether Plaintiff and Class members are entitled to damages and/or
2 restitution and the proper measure of that loss; and
3 g. Whether an injunction is necessary to prevent Hobby Lobby from
4 continuing to use false, misleading, or illegal price comparison.

5 47. **Typicality:** Plaintiff’s claims are typical of the claims of the Class members
6 because, *inter alia*, all Class members have been deceived (or were likely to be deceived)
7 by Hobby Lobby’s false and deceptive price advertising scheme, as alleged herein.
8 Plaintiff is advancing the same claims and legal theories on behalf of herself and all Class
9 members.

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

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

24 50. All Class members, including Plaintiff, were exposed to one or more of Hobby
25 Lobby’s misrepresentations or omissions of material fact claiming that former “Marked”
26 prices were in fact *bona fide*. Due to the scope and extent of Hobby Lobby’s consistent
27 false “discount” price advertising scheme, disseminated in a years-long campaign to
28 California consumers, it can be reasonably inferred that such misrepresentations or

1 omissions of material fact were uniformly made to all members of the Class. In addition,
2 it can be reasonably presumed that all Class members, including Plaintiff, affirmatively
3 acted in response to the representations contained in Hobby Lobby’s false advertising
4 scheme when she purchased her picture frame and paintbrush at the Hobby Lobby retail
5 store.

6 51. Hobby Lobby keeps extensive computerized records of its customers through,
7 *inter alia*, customer loyalty programs and general marketing programs. Hobby Lobby as
8 one or more databases through which a significant majority of Class members may be
9 identified and ascertained, and it maintains contact information, including email and home
10 addresses, through which notice of this action could be disseminated in accordance with
11 due process requirements.

12 VI. CAUSES OF ACTION

13 FIRST CAUSE OF ACTION

14 **Violation of California’s Unfair Competition Law (“UCL”) California Business & Professions Code Section 17200, *et seq.***

15 52. Plaintiff repeats and re-alleges the allegations contained in ever preceding
16 paragraph as if fully set forth herein.

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

20 54. The UCL imposes strict liability. Plaintiff need not prove that Hobby Lobby
21 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—
22 but only that such practices occurred.

23 ***“Unfair” Prong***

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

1 56. Hobby Lobby’s actions constitute “unfair” business practices because, as
2 alleged above, Hobby Lobby engaged in misleading and deceptive price comparison
3 advertising that represented false “Marked” prices and corresponding deeply discounted
4 “__% OFF” prices. The “__% OFF” prices were nothing more than fabricated “regular”
5 prices leading to phantom markdowns. Hobby Lobby’s acts and practices offended an
6 established public policy of transparency in pricing, and engaged in immoral, unethical,
7 oppressive, and unscrupulous activities that are substantially injurious to consumers.

8 57. The harm to Plaintiff and Class members outweighs the utility of Hobby
9 Lobby’s practices. There were reasonably available alternatives to further Hobby Lobby’s
10 legitimate business interests other than the misleading and deceptive conduct described
11 herein.

12 ***“Fraudulent” Prong***

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

15 59. Hobby Lobby’s acts and practices alleged above constitute fraudulent
16 business acts or practices as they have deceived Plaintiff and are highly likely to deceive
17 members of the consuming public. Plaintiff relied on Hobby Lobby’s fraudulent and
18 deceptive representations regarding its “Marked” prices for products which Hobby Lobby
19 sells exclusively at its Hobby Lobby retail stores. These misrepresentations played a
20 substantial role in Plaintiff’s decision to purchase those products at steep discounts, and
21 Plaintiff would not have purchased those products without Hobby Lobby’s
22 misrepresentations.

23 ***“Unlawful” Prong***

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

26 61. Hobby Lobby’s acts and practices alleged above constitute unlawful business
27 acts or practices as they have violated state and federal law in connection with their
28 deceptive pricing scheme. The Federal Trade Commissions Act (“FTCA”) prohibits

1 “unfair or deceptive acts or practices in or affecting commerce” (15 U.S.C. § 45(a)(1)) and
 2 prohibits the dissemination of any false advertisements. 15 U.S.C. § 52(a). Under the
 3 Federal Trade Commission, false former pricing schemes, similar to the ones implemented
 4 by Hobby Lobby, are described as deceptive practices that would violate the FTCA:

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

15 (b) A former price is not necessarily fictitious merely because no sales at the
 16 advertised price were made. The advertiser should be especially careful,
 17 however, in such a case, that the price is one at which the product was
 18 openly and actively offered for sale, for a reasonably substantial period of
 19 time, in the recent, regular course of her business, honestly and in good
 20 faith—and, of course, not for the purpose of establishing a fictitious higher
 21 price on which a deceptive comparison might be based.

22 16 C.F.R. § 233.1(a) and (b) (emphasis added).

23 62. In addition to federal law, California law also expressly prohibits false former
 24 pricing schemes. California’s False Advertising Law, Bus. & Prof. Code § 17501,
 25 (“FAL”), entitled “*Worth or value; statements as to former price,*” states:

26 For the purpose of this article the worth or value of any thing advertised is the
 27 prevailing market priced, wholesale if the offer is at wholesale, retail if the
 28 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**

1 **advertisement** or unless the date when the alleged former price did prevail is
2 clearly, exactly and conspicuously stated in the advertisement.

3 Cal. Bus. & Prof. Code § 17501(emphasis added).

4 63. As detailed in Plaintiff’s Third Cause of Action below, the Consumer Legal
5 Remedies Act, Cal. Civ. Code § 1770(a)(9), (“CLRA”), prohibits a business from
6 “[a]dvertising goods or services with intent not to sell them as advertised,” and subsection
7 (a)(13) prohibits a business from “[m]aking false or misleading statements of fact
8 concerning reasons for, existence of, or amounts of price reductions.”

9 64. The violation of any law constitutes an “unlawful” business practice under the
10 UCL.

11 65. As detailed herein, the acts and practices alleged were intended to or did result
12 in violations of the FTCA, the FAL, and the CLRA.

13 66. Hobby Lobby’s practices, as set forth above, have misled Plaintiff, the
14 proposed Class, and the public in the past and will continue to mislead in the future.
15 Consequently, Hobby Lobby’s practices constitute an unlawful, fraudulent, and unfair
16 business practice within the meaning of the UCL.

17 67. Hobby Lobby’s violation of the UCL, through its unlawful, unfair, and
18 fraudulent business practices, are ongoing and present a continuing threat that Class
19 members and the public will be deceived into purchasing products based on price
20 comparisons of arbitrary and inflated “Marked” prices and substantially discounted “__%
21 OFF” prices. These false comparisons created phantom markdowns and lead to financial
22 damage for consumers like Plaintiff and the Class.

23 68. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent
24 injunctive relief order Hobby Lobby to cease this unfair competition, as well as
25 disgorgement and restitution to Plaintiff and the Class of all Hobby Lobby’s revenues
26 associated with its unfair competition, or such portion of those revenues as the Court may
27 find equitable.

28 ///

SECOND CAUSE OF ACTION

**Violation of California’s False Advertising Law (“FAL”)
California Business and Professions Code Section 17500, *et seq.***

1
2
3 69. Plaintiff repeats and re-alleges the allegations contained in every preceding
4 paragraph as if fully set forth herein.

5 70. Cal. Bus. & Prof. Code § 17500 provides:

6 It is unlawful for any . . . corporation . . . with intent . . . to dispose of . . .
7 personal property . . . to induce the public to enter into any obligation relating
8 thereto, to make or disseminate or cause to be made or disseminated . . . from
9 this state before the public in any state, in any newspaper or other publication,
10 or any advertising device, or by public outcry or proclamation, or in any other
11 manner or means whatever, including over the Internet, any statement . . .
12 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).

13 71. The “intent” required by Section 17500 is the intent to dispose of property,
14 and not the intent to mislead the public in the disposition of such property.

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

20 73. Hobby Lobby’s routine of advertising discounted prices from false “Marked”
21 prices, which were never the prevailing market prices of those products and were materially
22 greater than the true prevailing prices, was an unfair, untrue, and misleading practice. This
23 deceptive marketing practice gave consumers the false impression that the products were
24 regularly sold on the market for a substantially higher price than they actually were;
25 therefore, leading to the false impression that the Hobby Lobby products were worth more
26 than they actually were.

27 74. Moreover, the barely visible “always” and disclaimer language located on the
28 price placards is unclear, confusing and/or deceptive to the reasonable consumer and thus,

1 has no bearing on the overall impact of the advertised sale and its effect on the reasonable
2 consumer in making their purchase decision.

3 75. Hobby Lobby misled consumers by making untrue and misleading statements
4 and failing to disclose what is required as stated in the Code alleged above.

5 76. As a direct and proximate result of Hobby Lobby's misleading and false
6 advertisements, Plaintiff and the Class have suffered injury in fact and have lost money.
7 As such, Plaintiff requests that this Court order Hobby Lobby to restore this money to
8 Plaintiff and all Class members, and to enjoin Hobby Lobby from continuing these unfair
9 practices in violation of the UCL in the future. Otherwise, Plaintiff, Class members, and
10 the broader public will be irreparably harmed and/or denied an effective and complete
11 remedy.

12 **THIRD CAUSE OF ACTION**

13 **Violation of California's Consumers Legal Remedies Act ("CLRA"),**
14 **California Civil Code Section 1750, *et seq.***

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

17 78. This cause of action is brought pursuant to the CLRA, Cal. Civ. Code § 1750,
18 *et seq.* Plaintiff and each member of the proposed Class are "consumers" as defined by
19 Cal. Civ. Code § 1761(d). Hobby Lobby's sale of their merchandise to Plaintiff and the
20 Class were "transactions" within the meaning of Cal. Civ. Code § 1761(e). The products
21 purchased by Plaintiff and the Class are "goods" within the meaning of Cal. Civ. Code §
22 1761(a).

23 79. Hobby Lobby violated and continues to violate the CLRA by engaging in the
24 following practices proscribed by Cal. Civ. Code § 1770(a) in transactions with Plaintiff
25 and the Class which were intended to result in, and did result in, the sale of Hobby Lobby
26 products:

- 27 a. Advertising goods or services with intent not to sell them as advertised;
28 (a)(9);

- 1 b. Making false or misleading statements of fact concerning reasons for,
2 existence of, or amounts of price reductions; (a)(13).

3 80. Pursuant to Section 1782(a) of the CLRA, on May 1, 2017, Plaintiff's counsel
4 notified Hobby Lobby in writing by certified mail of the particular violations of § 1770 of
5 the CLRA and demanded that it rectify the problems associated with the actions detailed
6 above and give notice to all affected consumers of Hobby Lobby's intent to act.

7 81. Hobby Lobby failed to appropriately respond to Plaintiff's letter or agree to
8 rectify the problems associated with the actions detailed above and give notice to all
9 affected consumers within 30 days of the date of written notice pursuant to § 1782 of the
10 Act. Therefore, Plaintiff seeks claims for actual and punitive damages, restitution, and
11 injunctive relief, as is provided for pursuant to § 1780(a).

12 **VII. PRAYER FOR RELIEF**

13 82. Wherefore, Plaintiff, on behalf of herself and all other members of the Class,
14 requests that this Court award relief against Hobby Lobby as follows:

- 15 a. An order certifying the Class and designating Christina Chase as the
16 Class Representative and her counsel as Class Counsel;
- 17 b. Awarding Plaintiff and the proposed Class members damages;
- 18 c. Awarding restitution and disgorgement of all profits and unjust
19 enrichment that Hobby Lobby retained from Plaintiff and the Class
20 members as a result of its unlawful, unfair, and fraudulent business
21 practices described herein;
- 22 d. Awarding declaratory and injunctive relief as permitted by law or
23 equity, including: enjoining Hobby Lobby from continuing the
24 unlawful practices as set forth herein, and directing Hobby Lobby to
25 identify, with Court supervision, victims of its misconduct and pay
26 them all money they are required to pay;
- 27 e. Order Hobby Lobby to engage in a corrective advertising campaign;
- 28 f. Awarding attorneys' fees and costs; and

1 g. For such other and further relief as the Court may deem necessary or
2 appropriate.

3 **VIII. DEMAND FOR JURY TRIAL**

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

5
6 Dated: November 1, 2017

**CARLSON LYNCH SWEET
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/s/ Todd D. Carpenter

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