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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION
13

14
15 JAMES KNAPP, individually and on
behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 ART.COM, INC., a California
19 corporation; and DOES 1 through 50,
inclusive,

20 Defendants.
21
22
23
24

CASE NO.: 4:16-cv-00768-DMR

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. **Violation of the California False Advertising Law**
2. **Violation of the California Unfair Competition Law**
3. **Violation of the California Consumer Legal Remedies Act**
4. **Unjust Enrichment and Common Law Restitution**

DEMAND FOR JURY TRIAL

1 Plaintiff James Knapp (“Plaintiff”), on behalf of himself and all others
2 similarly situated, brings this action against Defendant Art.com, Inc. and Does 1
3 through 50 (“Art.com” or “Defendant”) to recover monetary damages, injunctive
4 relief, and other remedies for violations of California laws. Plaintiff makes the
5 following allegations on information and belief, except as to allegations pertaining
6 to Plaintiff individually, which is based on his personal knowledge.

7 **INTRODUCTION**

8 1. Art.com owns and operates several highly successful online commerce
9 (hereinafter, “E-commerce”) websites that sell posters and other home décor
10 products. During the statute of limitations period, and continuing to this day,
11 Art.com has created, maintained, and implemented an online advertising and sales
12 campaign that is false, misleading and deceptive.

13 2. Specifically, Art.com deceives consumers throughout the United States,
14 who are browsing online via its E-commerce websites, www.art.com,
15 www.posters.com, and www.allposters.com, by offering perpetual sales. These
16 sales are perpetual because they never end; there is generally zero lag time between
17 the end of one sale and the beginning of another sale. Because the merchandise is
18 perpetually on sale, the so-called sale price is actually the price at which Art.com
19 regularly offers for sale, and sells, its merchandise.

20 3. Art.com has willfully engaged in this deceptive and unlawful conduct
21 for one purpose – to maximize profits. Consumers, like Plaintiff, who are browsing
22 Art.com’s websites, are deceived into purchasing merchandise because they are
23 likely to believe that the purported sale (and consequently the discounted price) is
24 going to end, when in reality, Art.com simply replaces the sale with another sale.

25 4. As a result of Art.com’s unlawful scheme, Art.com has been able to
26 overcharge Plaintiff and other Class members for merchandise, induce purchases
27 that would otherwise not have occurred, and/or obtain wrongful profits. Art.com’s
28 misconduct has caused Plaintiff and Class members to suffer significant damages.

1 **JURISDICTION AND VENUE**

2 5. This Court has subject matter jurisdiction pursuant to the Class Action
3 Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action,
4 including claims asserted on behalf of a nationwide class, filed under Rule 23 of the
5 Federal Rules of Civil Procedure; there are hundreds of thousands of proposed Class
6 members; the aggregate amount in controversy exceeds five million dollars; and
7 Art.com, Inc. is a citizen of a state different from that of members of the Class. This
8 Court also has subject matter jurisdiction over the claims of Plaintiff and the
9 proposed Class pursuant to 28 U.S.C. § 1367(a).

10 6. This Court has personal jurisdiction over Art.com because: a
11 substantial portion of the wrongdoing alleged in this Complaint took place in the
12 State of California; Art.com is California corporation that maintains its corporate
13 headquarters in Emeryville, California; and Art.com is authorized to do business in
14 the State of California, has sufficient minimum contacts with the State of California,
15 and/or otherwise intentionally avails itself of the markets in the State of California
16 through the promotion, marketing, and sale of products and services in this State, to
17 render the exercise of jurisdiction by this Court permissible under traditional notions
18 of fair play and substantial justice.

19 7. Venue is proper in this District under 28 U.S.C. §§ 1391(a)-(d) because
20 the headquarters of Art.com are located in the Northern District of California and
21 because substantial parts of the events or omissions giving rise to the claims
22 occurred in this District and/or a substantial part of property that is the subject of
23 this action is situated in this District.

24 **PLAINTIFF**

25 8. Plaintiff is a United States citizen and currently resides in Los Angeles,
26 California. On October 11, 2015, Plaintiff purchased a framed piece of artwork
27 from Art.com online through the www.art.com website.
28

1 9. Plaintiff brings this action on behalf of himself and the following
2 similarly situated Class of individuals (“Class members”): all natural persons
3 located within the United States who purchased any product online from Art.com
4 through the E-commerce websites, www.art.com, www.posters.com, and/or
5 www.allposters.com at any time beginning four (4) years prior to the filing of this
6 action on February 16, 2016, and ending at the time this action settles or proceeds to
7 final judgment. Plaintiff reserves the right to name additional Class representatives.

8 **DEFENDANT**

9 10. Art.com is a corporation existing under the laws of the State of
10 California, with its headquarters and principal place of business located at 2100
11 Powell Street, Emeryville, California 94608. Art.com does business throughout the
12 State of California and the United States primarily through several E-commerce
13 websites (www.art.com, www.posters.com, and www.allposters.com), which it
14 owns and operates, and which are the vehicles of the false advertising and unfair
15 business practices that form the basis of this action.

16 **FACTUAL ALLEGATIONS**

17 **Art.com Dominates the Online Wall Décor Market**

18 11. Art.com dominates the online wall décor market in California and
19 throughout the United States. Art.com utilizes the E-commerce websites
20 www.art.com, www.posters.com, and www.allposters.com to jointly and
21 simultaneously deceive consumers through false perpetual sales.

22 12. The E-commerce website www.art.com is the primary, if not only,
23 means by which consumers, in the State of California and throughout the United
24 States, can purchase merchandise from Art.com. On its E-commerce website,
25 Art.com advertises itself as “the world’s largest online specialty retailer of high-
26 quality wall art and complementary décor.” Art.com further advertises on its E-
27 commerce website as follows:
28

1 “From the moment you browse our site to the day your art is delivered, our
2 team has one goal in mind: to delight you, every step of the way. From
3 Basquiat to Van Gogh and every style in between, Art.com features an
4 unparalleled assortment of fine art, limited edition and exclusive pieces,
5 specialty prints, tapestries, reproductions of contemporary originals,
6 handpainted originals, photography, vintage art and more. Sophisticated
7 mobile and visual search tools make it fun to explore Art.com’s vast
8 collection of more than one million works and preview artwork on your own
9 walls.”

10 13. On its Facebook page, in the “About” section, Art.com represents that
11 it provides “[e]asy access to the world’s largest selection of curated art images . . . ”
12 On its Twitter page, Art.com represents that it has the, “[w]orld's largest online
13 collection of curated art and stylish home décor.”

14 14. On information and belief, Art.com owns and operates the E-commerce
15 website www.posters.com. At the bottom of the www.posters.com website it states,
16 “POSTERS.COM, A DIVISION OF ART.COM INC.” *See, infra*, Figure 11.

17 15. AllPosters.com, which has been owned and operated by Art.com during
18 the relevant period, also specializes in the sale of wall décor products, primarily
19 through the E-commerce website www.allposters.com. On information and belief,
20 in or around 2005, and well outside the statute of limitations period, AllPosters.com
21 merged with Art.com to form a single company. AllPosters.com is a brand name
22 that is owned and operated by Art.com. On the www.art.com website, Art.com lists
23 AllPosters.com as one of its “brands.”

24 16. The E-commerce website www.allposters.com is the primary, if not
25 only, means by which consumers, in the State of California and throughout the
26 United States, can purchase merchandise from AllPosters.com. On its website,
27 AllPosters.com similarly advertises itself as “the world’s largest online retailer of
28 wall décor.” AllPosters.com further advertises on its E-commerce website as
follows:

1 “With its unparalleled assortment, AllPosters.com is a ‘one-stop-shop’ for
 2 finding unique items that can’t be found anywhere else, in a variety of
 3 formats: everything from posters and prints to wall signs, wall murals, stand-
 4 ups and even T-shirts. In addition to offering the world’s largest assortment
 5 of classic posters and art prints, the site also features the latest trends in pop
 culture, music, movies, TV, sports, college, and humor.”

6 17. On its Facebook page, in the “About” section, AllPosters represents
 7 that it is “the world’s largest online retailer of posters and wall décor, with over 1
 8 million items including posters, prints, wall decals, life-sized stand-ups and more.”
 9 On its Twitter page, AllPosters makes a similar representation that, “From classic
 10 movies to the hottest trends, AllPosters.com is the world’s largest poster and print
 11 store with over 1 million items!”

12 18. In addition to posters and other home decorative products, AllPosters
 13 advertises and offers for sale a variety of other products, including t-shirts,
 14 cardboard cutouts, mobile device cases, tote bags, blankets, jigsaw puzzles, and
 15 other miscellaneous items, such as decorative key chains, mugs, hats, dolls, guitar
 16 picks, towels, etc., which AllPosters refers to as “Novelty (Specialty Products).”

17 19. According to Internet Retailer Guide’s Top 500 E-Commerce Guide,
 18 for the year 2015, Art.com was ranked number 134 on the list of the largest U.S. and
 19 Canadian E-commerce retailers.

20 20. Art.com boasts on its E-commerce website www.art.com that it has
 21 “[m]ore than 17 million customers in 120 countries worldwide . . .”

22 21. Art.com has reaped tremendous profits from online sales, which
 23 continue to increase year after year, as demonstrated in the table below:

Year	Web Sales
2014	\$248,000,000
2013	\$216,000,000

2012	\$179,550,000
2011	\$171,000,000
2010	\$166,321,273

Internet Retailer Guide's Top 500 E-Commerce Guide.

22. According to Internet Retailer Guide's Top 500 E-Commerce Guide, in the year 2014, 74% of all traffic on www.art.com was attributed to new shoppers, while return shoppers accounted for 26% of website traffic. Art.com has derived, and continues to derive, substantial profits from the misleading advertising of false sales to both new and returning online customers.

The Unlawful Conduct Stems from California

23. All of the unlawful conduct alleged herein occurred in the State of California. Art.com controls all business activities and decisions of Art.com and AllPosters.com out of its corporate headquarters located in Emeryville, California. The misleading marketing, advertising, and sales information alleged herein was conceived, reviewed, approved, controlled and disseminated from Art.com's headquarters in Emeryville, California.

24. At the direction of its corporate officers and board of directors – most if not all of whom work and reside in Emeryville, California – Art.com creates, implements, designs, utilizes, maintains and disseminates the false and deceptive advertising, marketing, and business and profit models that are the subject of this lawsuit. All significant decisions regarding marketing and advertising, including the unlawful conduct alleged herein, were made within California.

25. The injuries suffered by Plaintiff and Class members were caused by Art.com's false advertising that originated from Art.com's headquarters in Emeryville, California, and was carried out, and inflicted upon consumers, from there to consumers throughout California and the United States through Art.com's E-commerce websites (www.art.com, www.posters.com, and www.allposters.com).

1 26. On information and belief, when Plaintiff and Class members
2 purchased merchandise through Art.com's E-commerce websites, the billing and
3 payment for those transactions was processed on Art.com's servers located in
4 Emeryville, California. On further information and belief, Art.com has developed
5 its E-commerce websites with a combination of in-house and outsourced
6 technology. All technological operations were created, designed, contracted,
7 implemented, modified, and/or maintained in the State of California.

8 27. Art.com has been named as a defendant in several patent lawsuits, in
9 which various companies have alleged that Art.com has infringed upon their patents
10 pertaining to software programming. For instance, one company has alleged that
11 Art.com infringed upon its patent regarding the "method of triggering a selected
12 machine event in a system including a multiplicity of computer controlled machines
13 and a multiplicity of users. One such machine event includes sending reminder
14 emails to online shoppers who place items in their online shopping carts and then
15 delay purchasing items in their online shopping carts." *See Complaint, UbiComm*
16 *LLC v. Art.com, Inc. d/b/a AllPosters*, Case No. 1:13-cv-01018-RGA (Del. June 6,
17 2013).

18 28. Thus, on information and belief, an integral part of Art.com's business
19 and profitability stems from its complex computer software, some of which Art.com
20 has intentionally designed to advertise deceptive sales to online consumers.

21 29. On the "TERMS OF SALE" page of www.art.com, under the header,
22 "APPLICABLE LAW," Art.com requires that, "The offers by Art.com, Inc., your
23 orders, and the agreements between us for the delivery of or services and products
24 are subject to the laws of the State of California. The state or federal courts located
25 in Alameda County, California will have exclusive jurisdiction to settle any dispute
26 between us in or relation to our products or services." The "APPLICABLE LAW"
27 provision quoted herein purports to have been updated as of "April 2015."
28

1 30. Similarly, on the “TERMS OF SALE” page of www.allposters.com,
2 under the header “Applicable Law,” Art.com requires that, “The offers by Art.com,
3 Inc., your orders, and the agreements between us for the delivery of our services and
4 products are subject to the laws of the State of California. The state or federal courts
5 located in Alameda County, California will have exclusive jurisdiction to settle any
6 dispute between us in relation to our products or services.” The “Applicable Law”
7 provision quoted herein purports to have been updated as of “August 2015.”

8 **Art.com’s Unlawful Perpetual Sales**

9 31. By and through the three E-commerce websites www.art.com,
10 www.posters.com, and www.allposters.com, Art.com implements a scheme to
11 deceive consumers into believing they are being offered a discount from Art.com’s
12 regular prices when, in fact, they are not.

13 **www.posters.com**

14 32. When a consumer visits the E-commerce website www.posters.com,
15 various merchandise is advertised – all of which are purportedly on sale. For
16 instance, on January 29, 2016, advertised on the homepage of www.posters.com,
17 was a “Deadpool Comic Book Poster” for “\$8.44 With 35% Coupon AWR946.” In
18 a text box it also says, “~~\$12.99~~ ADD TO CART.” See Figure 1 (Sale advertised on
19 www.posters.com on January 29, 2016).

20 33. When the consumer then clicks on the “Add to Cart” button – which is
21 the only means of purchasing the product on the www.posters.com website – the
22 consumer is automatically redirected to www.allposters.com, and the item is also
23 automatically added to the consumer’s shopping cart on www.allposters.com. See
24 Figure 2 (on January 29, 2016, the consumer is automatically redirected to
25 www.allposters.com after clicking “ADD TO CART” on www.posters.com).

26 34. Art.com provides a six-character code on all three of its E-commerce
27 websites (hereinafter referred to as “Sale Code”), which changes with each sale, and
28 which consumers can enter at the time of checkout in order to take advantage of the

1 purported sale. *See* Figure 3 (on January 29, 2016, after clicking on the “Checkout”
2 button, the consumer is given the option of entering the Sale Code).

3 35. On January 29, 2016, www.allposters.com had a 35% sale with the
4 same coupon code “AWR946,” and www.art.com also had a 35% sale with a
5 different coupon code.

6 36. Art.com essentially uses www.posters.com as a conduit to redirect
7 consumers to www.allposters.com. Thus, the specific allegations regarding
8 Art.com’s false and deceptive pricing scheme are focused on www.art.com and
9 www.allposters.com, below.

10 **www.art.com and www.allposters.com**

11 37. The E-commerce websites www.art.com and www.allposters.com have
12 sales that mirror each other: they both have a similar design layout, wherein sales
13 are perpetually listed at the top of each homepage.

14 38. During the relevant time period, and continuing to this day, Art.com
15 prominently displays at the top of its E-commerce websites, www.art.com and
16 www.allposters.com, sales that are designed to falsely induce consumers to purchase
17 their products under the mistaken belief that they are getting a significant bargain.
18 These sales (hereinafter referred to as “Perpetual Sales”) are substantially identical
19 on each website. Specifically, www.art.com and www.allposters.com have the same
20 Perpetual Sales ranging from 30% to 50% off the “regular price.” *See* Figures 4 and
21 5 (Examples of Perpetual Sales advertised on www.art.com and
22 www.allposters.com on October 13, 2015).

23 39. Art.com also regularly advertises another separate sale in a text box
24 right below the Perpetual Sale advertised at the top of the website.¹ These sales
25

26 ¹ Sometimes there are no sales listed in this text box, and instead there are simply
27 advertisements for different products. For instance, on October 13, 2015, there was
28 an advertisement regarding custom framing. *See, e.g., supra*, Figure 4 (relevant
provision circled in blue).

1 (hereinafter referred to as “Concurrent Sales”) run at the same time as the Perpetual
2 Sales. The Concurrent Sale, on occasion, differs from the Perpetual Sale (i.e., the
3 Concurrent Sale offers a different discount off the regular price from the Perpetual
4 Sale). For instance, on October 25, 2015, Art.com advertised a Perpetual Sale of
5 “40% OFF ALL ORDERS* – TODAY ONLY ENDS 10/25/15” at the top of the
6 www.art.com website, but in an orange text box right below it, there was a
7 Concurrent Sale advertised for “45% EVERYTHING* ENDS TODAY.” The Sale
8 Code for the Perpetual Sale was “WRA437” and the Sale Code for the Concurrent
9 Sale was “XYM747.” *See* Figure 6 (Example of Concurrent Sale advertised on
10 www.art.com on October 25, 2015 that differs from the Perpetual Sale).

11 40. Similarly, on October 25, 2015, Art.com advertised a Perpetual Sale of
12 “40% OFF EVERYTHING* TODAY ONLY” at the top of the www.allposters.com
13 website, but in a black text box right below it, there was a Concurrent Sale
14 advertised for “45% OFF EVERYTHING* ENDS TODAY.” The Sale Code for the
15 Perpetual Sale was “RDW994” and the Sale Code for the Concurrent Sale was
16 “ZRW347.” *See* Figure 7 (Example of Concurrent Sale advertised on
17 www.allposters.com on October 25, 2015 that differs from the Perpetual Sale).

18 41. On other occasions, the Concurrent Sale corresponds with the Perpetual
19 Sale (i.e., both sales purportedly offer the same discount off the regular price and
20 have the same Sale Code). For instance, on November 17, 2015, Art.com advertised
21 a Perpetual Sale of “45% OFF ALL ORDERS – TODAY ONLY ENDS 11/17/15”
22 at the top of the www.art.com website, and in a black text box right below it, there
23 was a Concurrent Sale advertised for “45% OFF EVERYTHING* OFFER
24 EXTENDED – ENDS TODAY.” The Sale Code for both the Perpetual Sale and the
25 Concurrent Sale was “FRT343.” *See* Figure 8 (Example of Concurrent Sale
26 advertised on www.art.com on November 17, 2015 that is the same as the Perpetual
27 Sale).

28

1 42. Similarly, on November 17, 2015, Art.com advertised a Perpetual Sale
2 of “45% OFF EVERYTHING* TODAY ONLY” at the top of the
3 www.allposters.com website, and in an orange text box right below it, there was a
4 Concurrent Sale advertised for “45% OFF EVERYTHING* OFFER EXTENDED –
5 ENDS TODAY.” The Sale Code for both the Perpetual Sale and the Concurrent
6 Sale was “PLR963.” *See* Figure 9 (Example of Concurrent Sale advertised on
7 www.allposters.com on November 17, 2015 that is the same as the Perpetual Sale).

8 43. The variation between the Perpetual Sales and the Concurrent Sales –
9 in which sometimes they are the same and sometimes they are different – further
10 illustrates that these are not bona fide sales, but rather, they are nothing more than
11 marketing ploys to deceive consumers into believing they are getting a bargain deal.

12 44. Thus, Art.com does not actually offer for sale or sell its merchandise at
13 the advertised regular price. Instead, Art.com conducts sale after sale. Because the
14 merchandise is perpetually on sale, the so-called sale price is actually the price at
15 which Art.com regularly offers for sale, and sells, its merchandise.

16 45. Art.com’s merchandise has been continually on sale for years, even
17 though each advertised sale is described as being of limited duration (for varying
18 periods of time, usually between one and two days), thus creating the false and
19 misleading impression that the price will increase back to the regular price if a
20 consumer does not make a purchase by the end of the sale. In fact, the price does
21 not increase back to the regular price at the conclusion of the sale, as each sale is
22 simply followed by another one.

23 46. The short lived sales on Art.com’s websites end at “23:59 in your local
24 time zone” on the date for which the sale purportedly ends. *See* Figure 10 (Example
25 of a pop-up window on www.allposters.com on December 4, 2015, when a
26 consumer clicks on the “See Offer Details” link right below the advertised Perpetual
27 Sale).

28

1 47. There is also a disclaimer at the bottom of the www.posters.com
 2 website that states, “DISCLAIMER. All deals end at 11:59PM Pacific Standard
 3 Time on the stated end date.” See Figure 11 (the bottom of the homepage of
 4 www.posters.com on January 29, 2016).

5 48. There is generally zero lag time between the end of one sale and the
 6 beginning of another sale. The www.art.com and www.allposters.com websites are
 7 programmed to automatically generate, and prominently advertise, a new sale
 8 between 12:00 p.m. on the end date of the sale and 12:05 a.m. on the day after the
 9 end date of the sale. On the www.art.com website, the new sale is frequently
 10 regenerated at approximately 11:59 p.m. on the sale end date – even before the
 11 previous sale was advertised to expire.

12 49. As depicted in the tables below, Art.com continuously and without
 13 interruption offers Perpetual Sales at top of their E-commerce websites:

14 **Perpetual Sales: www.art.com**

Sale Start Date	Sale End Date	Sale Description	Sale Code
10/12/15	10/12/15	“45% OFF ALL ORDERS* - TODAY ONLY” “ENDS 10/12/15”	“MZN898”
10/13/15	10/13/15	“45% OFF SALE EXTENDED* - ENDS TONIGHT” “ENDS 10/13/15”	“MZN898”
10/14/15	10/14/15	“35% OFF ALL ORDERS* - ENDS TODAY” “ENDS 10/14/15”	“NHH798”
10/15/15	10/16/15	“35% OFF ALL ORDERS* - ENDS TOMORROW” “ENDS 10/16/15”	“PKT398”
10/16/15	10/16/15	“35% OFF ALL ORDERS* - ENDS TODAY” “ENDS 10/16/15”	“PKT398”
10/17/15	10/17/15	“40% OFF FRAMED ART* - TODAY ONLY” “ENDS 10/17/15”	“RMR696”
10/18/15	10/18/15	“40% OFF ALL ORDERS* - TODAY ONLY” “ENDS 10/18/15”	“RPP498”
10/19/15	10/19/15	“45% OFF ALL ORDERS* - TODAY ONLY” “ENDS 10/19/15”	“YMD463”
10/20/15	10/20/15	“45% OFF ALL ORDERS - EXTENDED” “ENDS 10/20/15”	“YMD463”
10/21/15	10/21/15	“30% OFF ALL ORDERS* - TODAY ONLY” “ENDS 10/21/15”	“KDK643”
10/22/15	10/23/15	“35% OFF ALL ORDERS* - ENDS TOMORROW” “ENDS 10/23/15”	“TTY836”
10/23/15	10/23/15	“35% OFF ALL ORDERS* - ENDS TODAY” “ENDS 10/23/15”	“TTY836”

1	10/24/15	10/24/15	“35% OFF FRAMED ART* - TODAY ONLY” “ENDS 10/24/15”	“WEL333”
2	10/25/15	10/25/15	“40% OFF ALL ORDERS* - TODAY ONLY” “ENDS 10/25/15”	“WRA437”
3	10/26/16	10/26/15	“45% OFF ALL ORDERS* - TODAY ONLY” “ENDS 10/26/15”	“XYM747”
4	10/27/15	10/27/15	“45% OFF ALL ORDERS - EXTENDED” “ENDS 10/27/15”	“HKN339”
5	10/28/15	10/28/15	“30% OFF ALL ORDERS - TODAY ONLY” “ENDS 10/28/15”	“ELD646”
6	10/29/15	10/30/15	“35% OFF ALL ORDERS – ENDS TOMORROW” “ENDS 10/30/15”	“ZTG734”
7	10/30/15	10/30/15	“35% OFF ALL ORDERS – ENDS TODAY” “ENDS 10/30/15”	“ZTG734”
8	10/31/15	10/31/15	“40% OFF FRAMED ART* - TODAY ONLY” “ENDS 10/31/15”	“ZTF736”
9	11/1/15	11/1/15	“40% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/1/15”	“AGR797”
10	11/2/15	11/2/15	“45% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/2/15”	“ANT378”
11	11/3/15	11/3/15	“45% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/3/15”	“CAA987”
12	11/4/15	11/4/15	“35% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/4/15”	“CCH838”
13	11/5/15	11/6/15	“35% OFF ALL ORDERS – ENDS TOMORROW” “ENDS 11/6/15”	“CDE834”
14	11/6/15	11/6/15	“35% OFF ALL ORDERS – ENDS TODAY” “ENDS 11/6/15”	“CDE834”
15	11/7/15	11/7/15	“35% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/7/15”	“CGX439”
16	11/8/15	11/8/15	“40% OFF ALL ORDERS – TODAY ONLY” “ENDS 10/30/15”	“CHF389”
17	11/9/15	11/9/15	“45% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/9/15”	“DMK646”
18	10/10/15	11/10/15	“45% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/10/15”	“DPK466”
19	11/11/15	11/12/15	“35% OFF ALL ORDERS – ENDS TOMORROW” “ENDS 11/12/15”	“DZH398”
20	11/12/15	11/12/15	“35% OFF ALL ORDERS – ENDS TODAY” “ENDS 11/12/15”	“DZH398”
21	11/13/15	11/14/15	“35% OFF ALL ORDERS – ENDS TOMORROW” “ENDS 11/14/15”	“ELE994”
22	11/14/15	11/14/15	“35% OFF ALL ORDERS – ENDS TODAY” “ENDS 11/14/15”	“ELE994”
23	11/15/15	11/15/15	“40% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/15/15”	“ERN788”
24	11/16/15	11/16/15	“45% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/16/15”	“FRR936”
25	11/17/15	11/17/15	“45% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/17/15”	“FRT343”
26	11/18/15	11/18/15	“35% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/18/15”	“FXA646”
27	11/19/15	11/20/15	“35% OFF ALL ORDERS – ENDS TOMORROW” “ENDS 11/20/15”	“GGE897”

1	11/20/15	11/20/15	“35% OFF ALL ORDERS – ENDS TODAY” “ENDS 11/20/15”	“GGE897”
2	11/21/15	11/22/15	“40% OFF ALL ORDERS – ENDS TOMORROW” “ENDS 11/22/15”	“HLN848”
3	11/22/15	11/22/15	“40% OFF ALL ORDERS – ENDS TODAY” “ENDS 11/12/15”	“HLN848”
4	11/23/15	11/23/15	“40% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/23/15”	“KAA897”
5	11/24/15	11/24/15	“40% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/24/15”	“KAA897”
6	11/25/15	11/27/15	“45% OFF ALL ORDERS – ENDS FRIDAY” “ENDS 11/27/15”	“BLACK FRIDAY”
7	11/1/15	11/27/15	“45% OFF ALL ORDERS – ENDS TOMORROW” “ENDS 11/27/15”	“BLACK FRIDAY”
8	11/27/15	11/27/15	“BLACK FRIDAY – 45% OFF ALL ORDERS” “ENDS 11/27/15”	“BLACK FRIDAY”
9	11/28/15	11/28/15	“BLACK FRIDAY EXTENDED – 45% OFF TODAY ONLY” “ENDS 11/28/15”	“BLACK FRIDAY”
10	11/29/15	11/29/15	“45% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/29/15”	“XEL786”
11	11/30/15	11/30/15	“CYBER MONDAY – 50% OFF ALL ORDERS” “ENDS 11/30/15”	“CYBER MONDAY”
12	12/1/15	12/1/15	“50% OFF – CYBER MONDAY EXTENDED” “ENDS 12/1/15”	“CYBER MONDAY”
13	12/2/15	12/2/15	“45% OFF ALL ORDERS – TODAY ONLY” “ENDS 12/2/15”	“NGC479”
14	12/3/15	12/4/15	“45% OFF ALL ORDERS – ENDS TOMORROW” “ENDS 12/4/15”	“DDA787”
15	12/4/15	12/4/15	“45% OFF ALL ORDERS – ENDS TODAY” “ENDS 12/4/15”	“DDA787”
16	12/5/15	12/13/15	“45% OFF ALL ORDERS* – ENDS SOON” “ENDS 12/13/15”	“WEW686”
17	12/6/15	12/13/15	“45% OFF ALL ORDERS* – ENDS SOON” “ENDS 12/13/15”	“WEW686”
18	12/7/15	12/13/15	“45% OFF ALL ORDERS* – ENDS SOON” “ENDS 12/13/15”	“WEW686”
19	12/8/15	12/8/15	“45% OFF ALL ORDERS – ENDS TODAY” “ENDS 12/8/15”	“ZDC946”
20	12/9/15	12/9/15	“45% OFF ALL ORDERS* – TODAY ONLY” “ENDS 12/9/15”	“CMC784”
21	12/10/15	12/10/15	“45% OFF ALL ORDERS* – TODAY ONLY” “ENDS 12/10/15”	“WMK486”
22	12/11/15	12/11/15	“45% OFF ALL ORDERS* – TODAY ONLY” “ENDS 12/11/15”	“DKY868”
23	12/12/15	12/12/15	“45% OFF ALL ORDERS* – TODAY ONLY” “ENDS 12/12/15”	“NDR999”
24	12/13/15	12/13/15	“45% OFF ALL ORDERS* – TODAY ONLY” “ENDS 12/13/15”	“GLM646”
25	12/14/15	12/14/15	“50% OFF ALL ORDERS – TODAY ONLY” “ENDS 12/14/15”	“WPY986”
26	12/15/15	12/15/15	“50% OFF OFFER EXTENDED* – ENDS TODAY” “ENDS 12/15/15”	“REN687”

12/16/15	12/16/16	"45% OFF ALL ORDERS* – TODAY ONLY" "ENDS 12/16/15"	"WYR894"
12/17/15	12/17/15	"45% OFF OFFER EXTENDED* – ENDS TODAY" "ENDS 12/17/15"	"XPY897"
12/18/18	12/18/18	"45% OFF ALL ORDERS* – TODAY ONLY" "ENDS 12/18/15"	"KXN474"

Perpetual Sales: www.allposters.com

Sale Start Date	Sale End Date	Sale Description	Sale Code
10/12/15	10/12/15	"45% OFF EVERYTHING* TODAY ONLY"	"KAT998"
10/13/15	10/13/15	"45% OFF EVERYTHING* TODAY ONLY"	"KAT998"
10/14/15	10/14/15	"35% OFF EVERYTHING* TODAY ONLY"	"ART493"
10/15/15	10/16/15	"35% OFF EVERYTHING* ENDS TOMORROW"	"DKW334"
10/16/15	10/16/15	"35% OFF EVERYTHING* ENDS TODAY"	"DKW334"
10/17/15	10/17/15	"35% OFF EVERYTHING* TODAY ONLY"	"NWH479"
10/18/15	10/18/15	"40% OFF EVERYTHING* TODAY ONLY"	"CGM873"
10/19/15	10/19/15	"45% OFF EVERYTHING* TODAY ONLY"	"LRE743"
10/20/15	10/20/15	"45% OFF EVERYTHING* TODAY ONLY"	"LRE743"
10/21/15	10/21/15	"30% OFF EVERYTHING* ENDS TODAY"	"AAR697"
10/22/15	10/23/15	"35% OFF EVERYTHING* ENDS TOMORROW"	"RZN768"
10/23/15	10/23/15	"35% OFF EVERYTHING* ENDS TODAY"	"RZN768"
10/24/15	10/24/15	"35% OFF EVERYTHING* TODAY ONLY"	"PPT793"
10/25/15	10/25/15	"40% OFF EVERYTHING* TODAY ONLY"	"RDW994"
10/26/15	10/26/15	"45% OFF EVERYTHING* TODAY ONLY"	"ZRW347"
10/27/15	10/27/15	"45% OFF EVERYTHING* TODAY ONLY"	"ZLG694"
10/28/15	10/28/15	"30% OFF EVERYTHING* ENDS TODAY"	"RAW679"
10/29/15	10/30/15	"35% OFF EVERYTHING* ENDS TOMORROW"	"MRF884"
10/30/15	10/30/15	"35% OFF EVERYTHING* ENDS TODAY"	"MRF884"
10/31/15	10/31/15	"35% OFF EVERYTHING* TODAY ONLY"	"RMK346"
11/1/15	11/1/15	"40% OFF EVERYTHING* TODAY ONLY"	"RGC643"

1	11/2/15	11/2/15	“45% OFF EVERYTHING* TODAY ONLY”	“GPA747”
2	11/3/15	11/3/15	“40% OFF EVERYTHING* TODAY ONLY”	“MMP684”
3	11/4/15	11/4/15	“35% OFF EVERYTHING* TODAY ONLY”	“CFR776”
4	11/5/15	11/6/15	“35% OFF EVERYTHING* ENDS TOMORROW”	“CCK967”
5	11/6/15	11/6/15	“35% OFF EVERYTHING* ENDS TODAY”	“CCK967”
6	11/7/15	11/7/15	“35% OFF EVERYTHING* TODAY ONLY”	“ARZ983”
7	11/8/15	11/8/15	“40% OFF EVERYTHING* TODAY ONLY”	“HRW389”
8	11/9/15	11/9/15	“45% OFF EVERYTHING* TODAY ONLY”	“TDY976”
9	11/10/15	11/10/15	“45% OFF EVERYTHING* TODAY ONLY”	“FHM687”
10	11/11/15	11/12/15	“35% OFF EVERYTHING* ENDS TOMORROW”	“WXK369”
11	11/12/15	11/12/15	“35% OFF EVERYTHING* ENDS TODAY”	“WXK369”
12	11/13/15	11/14/15	“35% OFF EVERYTHING* ENDS TOMORROW”	“TGL896”
13	11/14/15	11/14/15	“40% OFF EVERYTHING* ENDS TODAY”	“TGL896”
14	11/15/15	11/15/15	“40% OFF EVERYTHING* TODAY ONLY”	“TPN869”
15	11/16/15	11/16/15	“45% OFF EVERYTHING* TODAY ONLY”	“PLR963”
16	11/17/15	11/17/15	“45% OFF EVERYTHING* TODAY ONLY”	“PLR963”
17	11/18/15	11/18/15	“35% OFF EVERYTHING* TODAY ONLY”	“ZWG986”
18	11/19/15	11/20/15	“35% OFF EVERYTHING* ENDS TOMORROW”	“YYC638”
19	11/20/15	11/20/15	“35% OFF EVERYTHING* ENDS TODAY”	“YYC638”
20	11/21/15	11/22/15	“40% OFF EVERYTHING* ENDS TOMORROW”	“KND944”
21	11/22/15	11/22/15	“40% OFF EVERYTHING* ENDS TODAY”	“KND944”
22	11/23/15	11/23/15	“40% OFF EVERYTHING* TODAY ONLY”	“KZM434”
23	11/24/15	11/24/15	“40% OFF EVERYTHING* TODAY ONLY”	“KZM434”
24	11/25/15	11/27/15	“45% OFF EVERYTHING* ENDS FRIDAY”	“BLACK FRIDAY”
25	11/26/15	11/27/15	“45% OFF EVERYTHING* ENDS TOMORROW”	“BLACK FRIDAY”
26	11/27/15	11/27/15	“45% OFF EVERYTHING* ENDS TODAY”	“BLACK FRIDAY”
27	11/28/15	11/28/15	“45% OFF EVERYTHING* TODAY ONLY”	“BLACK FRIDAY”
28				

1	11/29/15	11/29/15	“45% OFF EVERYTHING* TODAY ONLY”	“XEL786”
2	11/30/15	11/30/15	“50% OFF EVERYTHING* TODAY ONLY”	“CYBER MONDAY”
3	12/1/15	12/1/15	“50% OFF EVERYTHING* TODAY ONLY”	“CYBER MONDAY”
4	12/2/15	12/2/15	“45% OFF EVERYTHING* TODAY ONLY”	“PHM394”
5	12/3/15	12/4/15	“45% OFF EVERYTHING* ENDS TOMORROW”	“DDA787”
6	12/4/15	12/4/15	“45% OFF EVERYTHING* TODAY ONLY”	“DDA787”
7	12/5/15	12/13/15	“45% OFF EVERYTHING* ENDS SOON”	“XNZ348”
8	12/6/15	12/13/15	“45% OFF EVERYTHING* ENDS SOON”	“XNZ348”
9	12/7/15	12/8/15	“45% OFF EVERYTHING* ENDS TOMORROW”	“CRP767”
10	12/8/15	12/8/15	“45% OFF EVERYTHING* ENDS TODAY”	“CRP767”
11	12/9/15	12/9/15	“45% OFF EVERYTHING* TODAY ONLY”	“WYC368”
12	12/10/15	12/10/15	“45% OFF EVERYTHING* TODAY ONLY”	“CZR849”
13	12/11/15	12/11/15	“45% OFF EVERYTHING* TODAY ONLY”	“NZC876”
14	12/12/15	12/12/15	“45% OFF EVERYTHING* TODAY ONLY”	“KTL777”
15	12/13/15	12/13/15	“45% OFF EVERYTHING* OFFER EXTENDED – ENDS TODAY”	“XDC469”
16	12/14/15	12/14/15	“50% OFF EVERYTHING* TODAY ONLY”	“DML966”
17	12/15/15	12/15/15	“50% OFF EVERYTHING* OFFER EXTENDED – ENDS TODAY”	“DML966”
18	12/16/16	12/16/16	“45% OFF EVERYTHING* TODAY ONLY”	“YYA738”
19	12/17/17	12/17/17	“45% OFF EVERYTHING* OFFER EXTENDED – ENDS TODAY”	“WHZ387”
20	12/18/18	12/18/18	“45% OFF EVERYTHING* OFFER EXTENDED – ENDS TODAY”	“FKZ849”
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Art.com’s Comprehensive Marketing Campaign of Unlawful Sales

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50. These deceptive sales are not just marketed to consumers through Art.com’s E-commerce websites. Art.com also markets these sales through several other mechanisms, including online search engines and email advertisements.

51. Art.com’s Perpetual Sales are targeted to consumers through an online advertising campaign involving Google AdWords and/or other online advertising

1 services, wherein Art.com’s E-commerce websites, and Perpetual Sales on those
2 websites, are displayed on Search Fee websites and Content Network websites
3 and/or are targeted to specific consumers based on criteria selected by Art.com, such
4 as demographics, geographical location, web-viewing history, etc.

5 52. Search Fee websites display advertisements along with search results
6 after a user searching for information enters a particular search term. For instance,
7 when a consumer searches for “posters” on Google, Bing, Yahoo, or other popular
8 search engines, many of the top ads are for www.allposters.com, www.art.com, and
9 www.posters.com. Some of these advertisements also represent the Perpetual Sale
10 in order to induce consumers to visit the website. For instance, on January 29, 2016,
11 after searching “posters” on Google, the first ad for AllPosters.com states in relevant
12 part, “Extra 35% Off When You Buy Today!” *See* Figure 12 (Search result on
13 Google on January 29, 2016 for “posters” yields an ad for www.allposters.com with
14 the Perpetual Sale clearly visible to the consumer).

15 53. Content Network websites are full content websites, such as news sites,
16 which publish information independent of search results. Advertisements would
17 appear on Content Network websites if the advertiser’s selected key words (e.g.,
18 “posters” or “framed art”) and/or selected topics (e.g., “Autos and Vehicles”) match
19 those of the content on the website.

20 54. On Youtube – a video-sharing website owned by Google – Art.com has
21 video advertisements that play before the actual video the user wants to watch and
22 which advertise the Perpetual Sales. *See* Figure 13 (Art.com Perpetual Sale
23 advertised on Youtube on March 7, 2016 that is shown before the actual Youtube
24 video begins).

25 55. Art.com’s advertisements, including its Perpetual Sales, are also
26 targeted to online consumers based on criteria such as their demographics
27 (consumers’ age, gender, parental status, etc.), their interests (consumers that have
28 viewed products similar to those sold by Art.com), and their web-viewing history

1 (consumers that have visited Art.com’s websites or other websites), their geographic
2 location, etc.

3 56. Art.com also advertises these deceptive sales through an email
4 marketing campaign. If a consumer signs up to receive emails, Art.com begins to
5 regularly send emails to that consumer that advertise its Perpetual Sales. For
6 instance, on December 28, 2015, Art.com sent an email with a subject line entitled
7 “45% OFF – The Clock’s Ticking,” reminding consumers that there were only
8 “HOURS LEFT” before the 45% off sale ended. *See* Figure 14 (December 28, 2015
9 email sent by allpostersemail@em.allposters.com at approximately 3:04 PM).

10 57. As part of its comprehensive and deceptive marketing campaign,
11 Art.com may occasionally advertise sales slightly differently, depending on the
12 platform the consumer is using to browse its E-commerce website and/or the
13 consumer’s IP address and/or the consumer’s browsing/purchase history with
14 Art.com. In other words, a consumer could potentially see a different sale
15 advertised on one of Art.com’s E-commerce websites depending on whether the
16 consumer was viewing the website on a mobile device, such as a phone, or on a
17 desktop computer. The Perpetual Sales, in some form, are always being marketed to
18 consumers by Art.com.

19 58. For instance, on February 14, 2016, a consumer viewing
20 www.allposters.com on a desktop computer may have seen a Perpetual Sale of
21 “45% OFF EVERYTHING* TODAY ONLY” as well as “A VALENTINE’S
22 TREAT 45% OFF EVERYTHING* TODAY ONLY” with the same Sale Code of
23 “GRT998” for both sales. However, a consumer viewing the same website at the
24 same time on a mobile phone may have seen a Perpetual Sale of “40% OFF
25 EVERYTHING* - TODAY ONLY” as well as “A VALENTINE’S TREAT 45%
26 OFF EVERYTHING* TODAY ONLY.” Interestingly, for the consumer using her
27 mobile phone, the same Sale Code “GRT998” applied for both the Perpetual Sale
28

1 and the Valentine’s Day Sale, even though the two sales were for a discount of 40%
2 and 45%, respectively.

3 59. The fact that consumers might potentially see different sales depending
4 on the platform they are using to browse Art.com’s E-commerce websites, and/or
5 other factors, is immaterial to the deceptive nature of the sales because the sales
6 perpetually exist on some platform – whether it be a computer, phone, or tablet.
7 Rather, Art.com’s marketing scheme demonstrates the willful nature of its unlawful
8 conduct.

9 60. Art.com is well aware of its deceptive pricing scheme and essentially
10 acknowledges that it “misprices” items – presumably, in an effort to shield itself
11 from upset customers. For instance, on the “Terms of Sale” page on the
12 www.allposters.com website, Art.com states, in relevant part, “Notwithstanding the
13 product prices shown on the website, we cannot confirm the price of an item until
14 you order. Despite our best efforts, a small number of the items shown on the
15 website may be mispriced as a result of price changes that are implemented at or
16 about the time of your visit to the website.” See Figure 15 (“Terms of Sale” section
17 on www.allposters.com on January 29, 2016).

18 **Plaintiff’s Purchase through Art.com’s E-commerce Website**

19 61. On October 11, 2015, Plaintiff was browsing the www.art.com website
20 in search of piece of framed artwork. Plaintiff saw an item that he liked in the style
21 of art that he was looking for, but he was not immediately prepared to purchase the
22 item. Plaintiff noticed the 40% off sale prominently displayed at the top of the
23 www.art.com website, and further saw that the sale ended at midnight that day.
24 Enticed by the idea of saving 40% off his purchase, Plaintiff went ahead and
25 purchased the product online, using his credit card, for price of \$133.06. See Figure
26 16 (Email from Art.com confirming Plaintiff’s purchase).

27 62. On October 12, 2015, slightly after midnight, the sale at www.art.com
28 automatically renewed, although this time the sale became 45% of everything.

1 Plaintiff was induced to purchase the product at “40% off” because he believed that
2 the sale was ending that day. Had Plaintiff waited until just after midnight – when
3 the sale that induced him to make the purchase ended – he could have gotten “45%
4 off” the product he purchased. Plaintiff would not have purchased the product if it
5 were not for the “40% off sale” advertised on the www.art.com website.

6 63. Consumers were likely to be deceived by Art.com’s misrepresentations
7 that its merchandise was on sale when making their online purchases in that they
8 would not have rushed to purchase it, would not have purchased it all, or would
9 have paid substantially less for it, had the misrepresentations not been made. In
10 reality, Art.com never intended, nor did it ever actually sell, any of its merchandise
11 at the advertised regular price. Thus, consumers were likely to be deceived by the
12 false price comparison into making a full retail purchase that was not really on sale.

13 64. As a result of Art.com’s misrepresentations, Plaintiff and the Class
14 have been injured and damaged, all to the financial benefit of Art.com.

15 **CLASS ACTION ALLEGATIONS**

16 65. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of
17 Civil Procedure, individually and on behalf of all members of the following Class:

18 All natural persons located within the United States who purchased any
19 product online from Art.com through the E-commerce websites,
20 www.art.com, www.posters.com, and/or www.allposters.com, at any time
21 beginning four (4) years prior to the filing of this action on February 16,
2016, and ending at the time this action settles or proceeds to final judgment.

22 66. Excluded from the Class are the following individuals and/or entities:
23 Art.com and its parents, subsidiaries, affiliates, officers and directors, current or
24 former employees, and any entity in which Art.com has a controlling interest; all
25 individuals who make a timely election to be excluded from this proceeding using
26 the correct protocol for opting out; and all judges assigned to hear any aspect of this
27 litigation, as well as their immediate family members.

28

1 67. Plaintiff reserves the right to modify or amend the definition of the
2 proposed Class and/or add subclasses before the Court determines whether
3 certification is appropriate.

4 68. The Class is so numerous that joinder of all members would be
5 impractical. On information and belief, the number of individuals who purchased
6 products online through the www.art.com, www.posters.com, and
7 www.allposters.com E-commerce websites within the relevant time period is in the
8 hundreds of thousands, if not millions. Since the majority, if not all, consumer
9 purchases are made online through the use of a credit card, these individuals are
10 identifiable and ascertainable through Art.com's records.

11 69. There are questions of law and fact common to the Class that will drive
12 the resolution of this action. These questions include, but are not limited to, the
13 following:

- 14 a. Whether Art.com misrepresented the regular price of its products;
- 15 b. Whether Art.com's products are perpetually on sale;
- 16 c. Whether the sale price of Art.com's products is actually the regular
17 price at which Art.com offers its products;
- 18 d. Whether Art.com misrepresented that its products were on sale for a
19 limited duration, thus creating the false impression that the price of
20 the product would increase back to the regular price if a consumer
21 did not make a purchase by the end of the purported sale;
- 22 e. Whether Art.com misrepresented material facts and/or failed to
23 disclose material facts in connection with the marketing and sale of
24 its products;
- 25 f. Whether Art.com's use of false or deceptive price advertising
26 constituted false advertising under California Law;
- 27 g. Whether Art.com engaged in unfair, unlawful and/or fraudulent
28 business practices under California law;

- 1 h. Whether Art.com made false or misleading statements of fact
- 2 concerning the existence of sales;
- 3 i. Whether Art.com's unlawful conduct, as alleged herein, was
- 4 intentional and knowing;
- 5 j. Whether Plaintiff and the Class are entitled to damages and/or
- 6 restitution, and in what amount;
- 7 k. Whether Art.com is likely to continue using false, misleading or
- 8 unlawful sales such that an injunction is necessary; and
- 9 l. Whether Plaintiff and the Class are entitled to an award of
- 10 reasonable attorneys' fees, interest, and costs of suit.

11 70. Art.com engaged in a common course of conduct giving rise to
12 violations of the legal rights sought to be enforced uniformly by Plaintiff and the
13 Class members. Similar or identical statutory and common law violations, business
14 practices, and injuries are involved. Therefore, individual questions, if any, pale in
15 comparison to the numerous common questions presented in this action.

16 71. The injuries sustained by members of the Class flow, in each instance,
17 from a common nucleus of operative fact. Each instance of harm suffered by
18 Plaintiff and the Class has directly resulted from a single course of illegal conduct –
19 namely, the creation, design, maintenance, and operation of websites that were
20 programmed to automatically, and generally without any lag time, create short-lived
21 sales, in conjunction with other advertising methods, in order to induce consumers
22 to make purchases on their websites. A substantial portion, if not all, of the alleged
23 unlawful conduct occurred in and stemmed from business activities in the State of
24 California.

25 72. Given the similar nature of the Class members' claims and the absence
26 of material differences in the statutes and common laws upon which the Class
27 members' claims are based, a nationwide class will be easily managed by the Court
28 and the parties.

1 73. Because of the relatively small size of the individual Class members’
2 claims, no Class member could afford to seek legal redress on an individual basis.
3 A class action is superior to any alternative means of prosecution.

4 74. The representative Plaintiff’s claims are typical of those of the Class, as
5 all members of the Class are similarly affected by Art.com’s uniform unlawful
6 conduct as alleged herein.

7 75. Art.com acted, and failed to act, on grounds generally applicable to
8 Plaintiff and the Class, supporting the imposition of uniform relief to ensure
9 compatible standards of conduct toward the members of the Class.

10 76. Plaintiff will fairly and adequately protect the interests of the Class, and
11 has retained counsel competent and experienced in class action litigation. The Class
12 representative has no interest which conflicts with or is adverse to those of the other
13 Class members.

14 **COUNT I**

15 **Violation of the California False Advertising Law**

16 **(On behalf of Plaintiff and the Class against Art.com)**

17 77. Plaintiff incorporates herein by specific reference, as though fully set
18 forth, the allegations in paragraphs 1 through 76.

19 78. California’s False Advertising Law (“FAL”), California Business and
20 Professions Code § 17500, *et seq.*, prohibits unfair, deceptive, untrue, or misleading
21 advertising, including, but not limited to, false statements as to worth, value and
22 former price.

23 79. Art.com’s practice of advertising sales of limited duration, but that are
24 immediately followed by another sale, are false and they are designed to mislead
25 consumers into believing they are getting a significant discount, when in actuality,
26 they are paying the regular or even greater price for the item they are purchasing.

27 80. The FAL specifically prohibits this type of false advertising. Cal. Bus.
28 & Prof. Code § 17501 provides in relevant part, “No price shall be advertised as a

1 former price of any advertised thing, unless the alleged former price was the
2 prevailing market price . . . within three months next immediately preceding the
3 publication of the advertisement or unless the date when the alleged former price did
4 prevail is clearly, exactly and conspicuously stated in the advertisement.”

5 81. Art.com’s false advertisements, as alleged herein, were calculated to
6 induce Plaintiff and Class members to purchase merchandise they otherwise would
7 not have and/or to spend more money than they otherwise would have spent, in
8 order to increase Art.com’s profits.

9 82. Through its unfair acts and practices, Art.com has improperly obtained
10 money from Plaintiff and the Class. As such, Plaintiff requests that this Court cause
11 Art.com to restore this money to Plaintiff and all Class members, and to enjoin
12 Art.com from continuing to violate the FAL in the future.

13 **COUNT II**

14 **Violation of the California Unfair Competition Law**
15 **(On behalf of Plaintiff and the Class against Art.com)**

16 83. Plaintiff incorporates herein by specific reference, as though fully set
17 forth, the allegations in paragraphs 1 through 82.

18 84. Plaintiff and Class members are “persons” within the meaning of Cal.
19 Bus. & Prof. Code § 17204.

20 85. The California Unfair Competition Law (“UCL”), Cal. Bus. & Prof.
21 Code § 17200, *et seq.*, defines unfair business competition to include any “unlawful,
22 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
23 misleading” advertising.

24 86. A business act or practice is “unfair” under the UCL if the reasons,
25 justifications and motives of the alleged wrongdoer are outweighed by the gravity of
26 the harm to the alleged victims. A business act or practice is “fraudulent” under the
27 UCL if it is likely to deceive members of the consuming public. A business act or
28 practice is “unlawful” under the UCL if it violates any other law or regulation.

1 87. Art.com has violated the “unfair” prong of the UCL by misrepresenting
2 a false sale price to induce consumers into believing they are getting a discount,
3 when they are not. Consequently, the regular price of the merchandise is inflated,
4 and the corresponding sale price was nothing more than a false, misleading and
5 deceptive illusion of a discount.

6 88. The business acts and practices alleged herein are unfair because they
7 caused Plaintiff and Class members to falsely believe that Art.com is offering value,
8 discounts or bargains from the prevailing market worth of the products sold that did
9 not exist. As a result, consumers, including Plaintiff, were likely to believe that they
10 were receiving products at a substantially discounted price. This deception was
11 likely to have induced reasonable consumers, including Plaintiff, to buy Art.com
12 merchandise, which they otherwise would not have purchased.

13 89. The gravity of the harm to Plaintiff and Class members resulting from
14 these unfair acts and practices outweighs any conceivable reasons, justifications
15 and/or motives of Art.com for engaging in such deceptive acts and practices. By
16 committing the acts and practices alleged herein, Art.com has engaged in, and
17 continues to engage in, unfair business practices within the meaning of California
18 Business & Professions Code § 17200, *et seq.*

19 90. Art.com has also violated the “unlawful” prong of the UCL. California
20 statutory and regulatory law expressly prohibit false pricing schemes. As referenced
21 above, Cal. Bus. & Prof. Code § 17501 provides in relevant part, “No price shall be
22 advertised as a former price of any advertised thing, unless the alleged former price
23 was the prevailing market price . . . within three months next immediately preceding
24 the publication of the advertisement or unless the date when the alleged former price
25 did prevail is clearly, exactly and conspicuously stated in the advertisement.”

26 91. Art.com violated and continues to violate Cal. Bus. & Prof. Code
27 § 17501 by advertising false discounts from purported former prices that were, in
28 fact, not the prevailing market prices within three months next immediately

1 preceding the publication and dissemination of advertisements containing the false
2 former prices.

3 92. Moreover, sections 15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a) of the
4 Federal Trade Commission Act (“FTCA”) also prohibit “unfair or deceptive acts or
5 practices in or affecting commerce,” and like the FAL, specifically prohibit false
6 advertisements. The FTC has established guidelines that prohibit false pricing
7 schemes similar to those implemented by Art.com:

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

16 C.F.R. § 233.1(a).

18 93. Art.com’s use of and reference to a materially false sale prices in
19 connection with its online marketing and advertisements violated and continues to
20 violate 15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a), as well as FTC Guidelines,
21 published at 16 C.F.R. § 233.

22 94. In addition, California Civil Code § 1770, subsection (a)(9), prohibits a
23 business from “[a]dvertising goods or services with intent not to sell them as
24 advertised,” and subsection (a)(13) prohibits a business from “[m]aking false or
25 misleading statements of fact concerning reasons for, existence of, or amounts of
26 price reductions.”

27 95. Through its unlawful acts and practices, Art.com has improperly
28 obtained money from Plaintiff and the Class. As such, Plaintiff requests that this

1 Court cause Art.com to restore this money to Plaintiff and the Class, and to enjoin
2 Art.com from continuing to violate the UCL as alleged herein.

3 96. Plaintiff also requests that the Court award reasonable attorneys' fees
4 and costs pursuant to Cal. Code of Civ. Proc. § 1021.5.

5 **COUNT III**

6 **Violation of the California Consumer Legal Remedies Act**

7 **(On behalf of Plaintiff and the Class against Art.com)**

8 97. Plaintiff incorporates herein by specific reference, as though fully set
9 forth, the allegations in paragraphs 1 through 96.

10 98. This cause of action is brought pursuant to the California Consumer
11 Legal Remedies Act ("CLRA"), California Civil Code § 1750, *et seq.*

12 99. Plaintiff and Class members are "consumers" within the meaning of
13 California Civil Code § 1761(d).

14 100. The selling of merchandise by Art.com to Plaintiff and the Class were
15 "transactions" within the meaning of California Civil Code § 1761(e). The
16 merchandise purchased by Plaintiff and the Class are "goods" within the meaning of
17 Civil Code §1761(a).

18 101. As alleged herein, Art.com violated the CLRA by falsely representing
19 the nature, existence and amount of price discounts by advertising false perpetual
20 sales. Such a pricing scheme is in violation of California Civil Code § 1770,
21 subsection (a)(9) ("[a]dvertising goods or services with intent not to sell them as
22 advertised") and subsection (a)(13) ("[m]aking false or misleading statements of fact
23 concerning reasons for, existence of, or amounts of price reductions").

24 102. Plaintiff relied on Art.com's false representations regarding the sale
25 price of the product that he purchased on October 11, 2015. Plaintiff would not
26 have purchased Art.com's products but for Art.com's unlawful conduct. Consumers
27 were likely to also have relied upon Art.com's deceptive sales.

28

1 103. On February 16, 2016, Plaintiff provided proper notice of his intent to
2 pursue claims under the CLRA and an opportunity to cure to Art.com via certified
3 mail to its principal place of business located at 2100 Powell Street, 13th Floor,
4 Emeryville, California 94608. More than 30 days have expired since Plaintiff
5 provided this notice and Art.com has made no efforts to correct or remedy the
6 alleged unlawful conduct.

7 104. To the contrary, Art.com has continued to engage in the unlawful
8 conduct alleged herein, even after receiving Plaintiff's notice letter. As of March
9 22, 2016, Art.com has not notified Plaintiff that it intends to address any of the
10 concerns raised in Plaintiff's notice letter, and it continues to offer its unlawful
11 Perpetual Sales.

12 105. For instance, on March 20, 2016, there was a Perpetual Sale of "35%
13 OFF ALL ORDERS* - TODAY ONLY" (Coupon Code "LLE664") on
14 www.art.com and a Perpetual Sale of "40% OFF EVERYTHING* TODAY ONLY"
15 (Coupon Code "NED999") www.allposters.com. New sales were regenerated the
16 following day: on March 21, 2016, there was a Perpetual Sale of "40% OFF ALL
17 ORDERS* - TODAY ONLY" (Coupon Code "RXK776") on www.art.com and a
18 Perpetual Sale of "40% OFF EVERYTHING* TODAY ONLY" (Coupon Code
19 "KMD443") on www.allposters.com. And on March 22, 2016, these sales were
20 again regenerated: there was "30% OFF ALL ORDERS* - ENDS TOMORROW"
21 (Coupon Code "AAF734") on www.art.com and a sale of "35% OFF
22 EVERYTHING* ENDS TOMORROW" (Coupon Code "XDK747") on
23 www.allposters.com.

24 106. Plaintiff requests that this Court enjoin Art.com from continuing to
25 violate the CLRA as discussed herein and/or from violating the UCL in the future
26 and to order restitution to Plaintiff and the Class. Plaintiff also requests an award of
27 actual and punitive damages, attorneys' fees and costs, and any other relief that the
28 Court deems proper, pursuant to California Civil Code § 1780(a).

COUNT IV

**Unjust Enrichment and Common Law Restitution
(On behalf of Plaintiff and the Class against Art.com)**

107. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 106.

108. As a result of Art.com's wrongful and deceptive conduct, Plaintiff and Class members have suffered a detriment while Art.com has received a benefit.

109. Art.com's misleading, inaccurate and deceptive marketing intentionally cultivates the perception that consumers are being offered a discount from the company's regular prices when they are not. Plaintiff and Class members were intended to rely upon Art.com's misrepresentations when they purchased Art.com's merchandise. Plaintiff and Class members likely would not have purchased Art.com's merchandise, or would have paid significantly less for the merchandise, if Art.com had not misrepresented that the merchandise was on sale.

110. Art.com has received a premium price benefit and/or additional sales from Plaintiff and Class members as a result of this unlawful conduct.

111. Art.com should not be allowed to retain the premium price profits and/or additional sales generated from the sale of products that were unlawfully marketed, advertised and promoted. Allowing Art.com to retain these unjust profits would offend traditional notions of justice and fair play and induce companies to misrepresent key characteristics of their products in order to increase sales.

112. Thus, Art.com is in possession of funds that were wrongfully retained from Plaintiff and Class members that should be disgorged as illegally gotten gains.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff, individually and on behalf of the Class,
3 respectfully prays for following relief:

4 1. Certification of this case as a class action on behalf of the Class defined
5 above, appointment of Plaintiff as Class representative, and appointment of his
6 counsel as Class counsel;

7 2. A declaration that Art.com's actions, as described herein, violate the
8 claims described herein;

9 3. An award of injunctive and other equitable relief as is necessary to
10 protect the interests of Plaintiff and the Class, including, *inter alia*, an order
11 prohibiting Art.com from engaging in the unlawful act described above;

12 4. An award to Plaintiff and the Class of restitution and/or other equitable
13 relief, including, without limitation, restitutionary disgorgement of all profits and
14 unjust enrichment that Art.com obtained from Plaintiff and the Class as a result of
15 its unlawful, unfair and fraudulent business practices described herein;

16 5. An award of all economic, monetary, actual, consequential, and
17 compensatory damages caused by Art.com's conduct;

18 6. An award of punitive damages;

19 7. An award to Plaintiff and his counsel of their reasonable expenses and
20 attorneys' fees;

21 8. An award to Plaintiff and the Class of pre and post-judgment interest,
22 to the extent allowable; and

23 9. For such further relief that the Court may deem just and proper.
24

25 **DEMAND FOR JURY TRIAL**

26 Plaintiff, on behalf of himself and the Class, hereby demands a jury trial with
27 respect to all issues triable of right by jury.
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DATED: March 23, 2016

THE WAND LAW FIRM

By: /s/ Aubry Wand
AUBRY WAND

DATED: March 23, 2016

SCHNEIDER WALLACE COTTRELL
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