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Clerk of the Superior Court
By Laura Melles, Deputy Clerk

10
11 **IN THE SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN DIEGO**

13 HARLEY SEEGER, on behalf of
14 himself and all others similarly situated,
15
16 Plaintiff,

17 v.

18 LAMPS PLUS, INC., a California
19 corporation, and DOES 1-50, inclusive,
20
21 Defendant.

Case No.: 37-2017-00024439-CU-BT-CTL

[E-FILE]

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 HARLEY SEEGER ("Plaintiff"), on behalf of himself and all others
 2 similarly situated, complains and alleges upon information and belief, among other things,
 3 upon the investigation made by Plaintiff by and through his attorneys, as follows:

4 NATURE OF ACTION

5 1. "If everyone is getting a deal, is anyone really getting a deal?"¹ This class
 6 action targets Lamps Plus's unlawful, unfair, and fraudulent business practice of
 7 advertising fictitious prices and corresponding phantom discounts on their Lamps Plus
 8 branded and/or trademarked lines of merchandise. This practice of false reference pricing
 9 occurs when a retailer fabricates a fake regular, original, and/or former reference price, and
 10 then offers an item for sale at a deep "discounted" price. The result is a sham price disparity
 11 that misleads consumers into believing they are receiving a good deal and induces them
 12 into making a purchase. Retailers drastically benefit from employing a false reference-
 13 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 he or she purchased is that
 19 it has a higher perceived value and she may not have purchased the product but for the false
 20 savings.

21 3. Lamps Plus utilizes a false and misleading reference price in the marketing
 22 and selling of Lamps Plus branded and/or trademarked merchandise at its retail stores.
 23 Lamps Plus advertises its merchandise for sale by attaching a price tag on the item that sets
 24 forth a fictitious "Compare At" price. *See e.g.* Exhibit A. The "Compare At" price is
 25

26
 27 ¹ David Streitfeld, *It's Discounted, but is it a Deal? How List Prices Lost Their Meaning*, New York
 28 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, 2017.

1 crossed-out with a black "X" and substantially discounted to represent the sale price, which
2 is located immediately above the "Compare At" price on the price tag. *See id.* The
3 discounted price represents the savings the customer is purportedly saving off the
4 "Compare At" reference price by purchasing the product.

5 4. However, the "Compare At" price is a total fiction. The only stores in which
6 the Lamps Plus branded and/or trademarked merchandise is actually sold is at the Lamps
7 Plus retail stores. Thus, the only market price for the Lamps Plus branded and/or
8 trademarked merchandise is the price at which the merchandise is sold in the Lamps Plus
9 retail stores, since Lamps Plus is the only "market" for Lamps Plus branded and/or
10 trademarked merchandise.

11 5. The Lamps Plus branded and/or trademarked merchandise is never offered for
12 sale, nor actually sold, at the represented "Compare At" price. Thus, the "Compare At"
13 price is false and is used exclusively to induce consumers into believing that the
14 merchandise was once sold at the "Compare At" price and from which the false discount
15 price is derived. Lamps Plus's deceptive pricing scheme has the effect of tricking
16 consumers into believing they are receiving a significant deal by purchasing merchandise
17 at a steep discount, when in reality, consumers are paying for merchandise at its regular or
18 original retail price.

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

26 7. Through its false and misleading marketing, advertising, and pricing scheme,
27 Lamps Plus violated and continues to violate, California and federal law prohibiting
28 advertising goods for sale as discounted from former prices that are false, and prohibiting

misleading statements about the existence and amount of price reductions. Specifically, Lamps Plus violated and continues to violate: California's Unfair Competition Law, Business and Professions Code §§ 17200, *et seq.* (the "UCL"); California's False Advertising Law, Business and Professions Code §§ 17500, *et seq.* (the "FAL"); the California Consumer Legal Remedies Act, Civil Code §§ 1750, *et seq.* (the "CLRA"); and the Federal Trade Commission Act ("FTCA"), which prohibits "unfair or deceptive acts or practices in or affecting commerce" (15 U.S.C. § 45(a)(1)) and false advertisements (15 U.S.C. § 52(a)).

8. Plaintiff brings this action on behalf of himself and other similarly situated consumers who have purchased one or more Lamps Plus branded and/or trademarked merchandise at Defendant's Lamps Plus retail stores that were deceptively represented as discounted from false former "Compare At" prices. Plaintiff seeks to halt the dissemination of this false, misleading, and deceptive pricing scheme, to correct the false and misleading perception it has created in consumer's minds, and to obtain redress for those who have purchased merchandise tainted by this deceptive pricing scheme. Plaintiff also seeks to enjoin Lamps Plus from using false and misleading misrepresentations regarding retail price comparisons in their labeling and advertising permanently. Further, Plaintiff seeks to obtain damages, restitution, and other appropriate relief in the amount by which Lamps Plus was unjustly enriched as a result of its sales of merchandise offered at a false discount.

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

JURISDICTION AND VENUE

10. Plaintiff is informed and believes that Lamps Plus is a California corporation with its headquarters located at 20250 Plummer Street, Chatsworth, California 91311. Lamps Plus is registered with the California Secretary of State and operates approximately

1 twenty-seven (27) retail stores throughout California. Lamps Plus has accepted credit and
 2 debit cards for the transaction of business throughout California, including the County of
 3 San Diego, which has caused both obligations and liability of Lamps Plus to arise in the
 4 County of San Diego.

5 11. This Court has jurisdiction over Lamps Plus and the claims set forth below
 6 pursuant to Code of Civil Procedure § 410.10 and the California Constitution, Article VI §
 7 10, because this case is a cause not given by statute to other trial courts.

8 12. The amount in controversy exceeds the jurisdictional minimum of this Court.

9 **PARTIES**

10 **Plaintiff**

11 13. Plaintiff Harley Seegert resides in San Diego County, California. Mr. Seegert,
 12 in reliance on Lamps Plus's false and deceptive advertising, marketing, and "discount"
 13 pricing schemes, purchased a 55 Downing Street branded mirrored chest for approximately
 14 \$599.99 on or around February 20, 2017 for pickup at a Lamps Plus retail store located at
 15 8375 Hercules Street, La Mesa, California 91942. Mr. Seegert went to Lamps Plus to
 16 search for a dresser for his home. Mr. Seegert encountered a 55 Downing Street branded
 17 Josephine 3-Drawer Mirrored Accent Chest with Silver Trim, Style No. 7Y365 (the
 18 "Chest). The Chest was from the furniture brand 55 Downing Street, which is a Lamps Plus
 19 brand and/or trademark. The Chest had mirrored paneling with three drawers and is
 20 approximately 35" high and 42" wide. Mr. Seegert observed the price tag hanging from the
 21 Chest. The price tag was covered in plastic, was white and teal with white and black print,
 22 and was approximately 5" x 7" in size. Among other information, the price tag on the Chest
 23 listed the "Compare At" price of the Chest as \$899.99. The \$899.99 price was crossed out
 24 with a black "X" through the text. Immediately above the crossed out \$899.99 price was
 25 the discounted sale price of the Chest, \$599.99, in larger font size. The price tag that Mr.
 26 Seegert saw was similar to the price tag depicted in Exhibit A.

27 14. After examining the price tag, in particular the crossed out "Compare At"
 28 price of \$899.99, Mr. Seegert believed the Chest had previously been sold for \$899.99 at

1 Lamps Plus. When he examined the representations on price tag, displaying the discounted
2 sale price of \$599.99, Mr. Seegert reasonably believed he was purchasing a chest that had
3 a value significantly higher than the \$599.99 purchase price. In short, Mr. Seegert believed
4 he was getting a good deal.

5 15. However, the Chest was never offered for sale or sold at the \$899.99 price,
6 nor was it offered for sale or sold at that price within the 90-day period immediately
7 preceding Mr. Seegert's purchase. Therefore, Mr. Seegert was damaged by his purchase of
8 the Chest.

9 **Defendant**

10 16. Plaintiff is informed and believes, and upon such information and belief
11 alleges, Defendant Lamps Plus, Inc. is a California corporation with its headquarters in
12 Chatsworth, California. Defendant operates Lamps Plus retail stores and the
13 lampsplus.com website, and advertises, markets, and distributes, and/or sells lighting,
14 furniture, and home décor in California and throughout the United States.

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

22 **FACTUAL ALLEGATIONS**

23 **The Fraudulent Sale Discounting Scheme**

24 18. Lamps Plus is the nation's largest lighting retailer. Lamps Plus is a privately
25 owned corporation, operating approximately 39 stores across the western United States,
26 including 27 locations in the State of California. Lamps Plus designs, manufacturers, and
27 sells a variety of lighting, furniture, and home décor, and provides in-home lighting
28 consultation and installation to its customers. The company directly markets its

1 merchandise to consumers in the State of California via its in-store advertisements,
2 including its price tags and its e-commerce website (www.lampsplus.com). Lamps Plus
3 sells a variety of merchandise from its own brand and/or trademark, as well as from various
4 manufacturers and other top brands. This case involves only the Lamps Plus branded and/or
5 trademarked products sold by Lamps Plus at its retail stores.

6 19. The Lamps Plus branded and/or trademarked products sold in the Lamps Plus
7 retail stores are exclusively sold at Lamps Plus and they are not sold anywhere else. Thus,
8 there is no other market for the Lamps Plus branded and/or trademarked products sold at
9 Lamps Plus other than at Defendant's Lamps Plus retail stores.

10 20. Lamps Plus engages in a scheme to defraud its customers by perpetually
11 discounting its merchandise in its retail stores. Lamps Plus consistently advertises its
12 merchandise with a regular "Compare At" price and a corresponding sale price. The
13 "Compare At" price conveys to the customer the purported regular price of the item. The
14 sale price conveys to the customer a deeply discounted price at which the item is presently
15 being offered for sale. The two prices (the "Compare At" price and the sale price) are
16 conveyed to consumers on price tags attached to the item. The price tags are covered in
17 plastic, are white and teal with white with black print, and approximately 5" x 7" in size.
18 *See e.g.* Exhibit A. Sometimes, Lamps Plus uses a smaller price tag with white and black
19 print and approximately 3" x 4" in size. *See e.g.* Exhibit B. The smaller price tags display
20 the same uniform fictitious pricing information: the discounted price located immediately
21 above the crossed out "Compare At" price.

22 21. However, at no time is the Lamps Plus merchandise ever offered for sale
23 anywhere at the "Compare At" price. The "Compare At" price is merely a false reference
24 price, which Lamps Plus utilizes to deceptively manufacture a deeply discounted sale price
25 listed immediately above the crossed out "Compare At" price on the merchandise sold at
26 the Lamps Plus retail stores during the class period.

27 22. This practice is not accidental. Rather, this practice is a fraudulent scheme
28 intended to deceive consumers into: 1) making purchases they otherwise would not have

1 made; and/or 2) paying substantially more for merchandise consumers believed was
2 heavily discounted and thus, worth more than its actual value.

3 23. Retailers, including Lamps Plus, understand that consumers are susceptible to
4 a good bargain, and therefore, Lamps Plus has a substantial interest in lying in order to
5 generate sales. A product's "regular" or "original" price matters to consumers because it
6 serves as a baseline upon which consumers perceive a product's value. In this case, Lamps
7 Plus has marked its merchandise with a "Compare At" price, which it intends to be the
8 equivalent of a "regular" or "original" price. The regular and/or original price conveys to
9 consumers, including Mr. Seegert, "the product's worth and the prestige that ownership of
10 the product conveys." *See Hinojos v. Kohl's Corp.*, 718 F.3d 1098, 1106 (9th Cir. 2013)
11 (citing Dhruv Grewal & Larry D. Compeau, Comparative Price Advertising: Informative
12 or Deceptive?, 11 J. Pub. Pol'y & Mktg. 52, 55 (Spring 1992) ("By creating an impression
13 of savings, the presence of a higher reference price enhances subjects' perceived value and
14 willingness to buy the product."); *id.* at 56 ("[E]mpirical studies indicate that as discount
15 size increases, consumers' perceptions of value and their willingness to buy the product
16 increase, while their intention to search for a lower price decreases.").

17 24. Lamps Plus's pricing advertisements uniformly include both the crossed out
18 false regular or original price (the "Compare At" price) with a corresponding discount price
19 displayed on their price tags. This uniform scheme intends to and does provide
20 misinformation to the customer. This misinformation communicates to consumers,
21 including Mr. Seegert, that the Lamps Plus products have a greater value than the
22 advertised discounted price.

23 25. As the Ninth Circuit recognizes, "[m]isinformation about a product's 'normal'
24 price is . . . significant to many consumers in the same way as a false product label would
25 be." *See Hinojos*, 718 F.3d at 1106.

26 **Plaintiff's Investigation**

27 26. Plaintiff's investigation of Lamps Plus revealed that Lamps Plus's branded
28 and/or trademarked merchandise is priced uniformly. That is, Lamps Plus merchandise

1 sold at Lamps Plus bears a price tag with a crossed out, false "Compare At" price positioned
 2 immediately below a substantially discounted sale price. Plaintiff's investigation
 3 confirmed that the 55 Downing Street Josephine 3-Drawer Mirrored Accent Chest with
 4 Silver Trim, Style No. 7Y365 was priced with a false "Compare At" price and
 5 corresponding discounted price in the 90-day period immediately preceding Plaintiff's
 6 purchase of his Chest.

7 27. Plaintiff's investigation cataloged the pricing practices at three Lamps Plus
 8 retail stores in San Diego County, including: 1303 W Morena Blvd., San Diego, California
 9 92110 ("Morena"), 8375 Hercules St., La Mesa, California 91942 ("La Mesa"), and 2598
 10 Vista Way, Oceanside, California 92054 ("Oceanside"). The false "Compare At" price and
 11 corresponding discount price scheme was both uniform and identical at all stores
 12 investigated. For example, Plaintiff's investigation revealed the following items were
 13 continuously discounted at the stores indicated in the time periods indicated:

14 Item	15 "Compare At" Price	16 Discounted Price	17 Continuously discounted from (at least)	18 Discounted Through	19 Stores Observed	20 Photo Exhibit
21 Studio 55D Flynn Heirloom Camel Accent Chair, Style No. 4W437	\$524.99	\$299.99	22 January 23, 2017	Present	Morena Oceanside	A
23 Franklin Iron Works Bendlin Oil Rubbed Bronze 12- Light Industrial Floor Lamp, Style No. 8J2756	\$599.99	\$399.99	24 January 23, 2017	Present	Morena Oceanside	B

1	Studio 55D	\$524.99	\$299.99	January 23,	Present	Morena	C
2	Keller			2017		Oceanside	
3	Scarlet Red						
4	Bonded						
5	Leather						
6	Swivel Club						
7	Chair, Style						
8	No. U4612						
9	55 Downing	\$599.99	\$399.99	September	Present	La Mesa	D
10	Street Aston			28, 2016		Oceanside	
11	Silver						
12	Alligator						
13	Print						
14	Upholstered						
15	Wingback						
16	Armchair,						
17	Style No.						
18	7K190						
19	Kensington	\$449.99	\$299.99	November 3,	Present	Morena	E
20	Hill Tufted			2016		La Mesa	
21	Chair with					Oceanside	
22	Nailheads,						
23	Style No.						
24	2Y057						
25	Studio 55D	\$164.99	\$109.99	January 24,	Present	Morena	F
26	Orbit Black			2017		La Mesa	
27	Faux					Oceanside	
28	Leather						
29	Adjustable						
30	Barstool,						
31	Style No.						
32	00570						
33	Barnes and	\$224.99	\$129.99	January 25,	Present	La Mesa	G
34	Ivy			2017		Oceanside	
35	Brighton						
36	Hammered						
37	Pot Bronze						
38	Table						
39	Lamp, Style						
40	No. X4785						
41	Barnes and	\$104.99	\$69.99	January 25,	Present	Morena	H
42	Ivy Paris			2017		La Mesa	
43	Lights Wall					Oceanside	

Sconce, Style No. 53411						
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28. The fraudulent price scheme applies to all Lamps Plus branded and/or trademarked merchandise offered on sale at every Lamps Plus retail store, including the Chest purchased by Mr. Seegert on February 20, 2017. By way of example, all items in the above referenced chart were offered at a discounted price substantially less than their “Compare At” price for every day Plaintiff’s investigation was conducted and for well over 90 days at a time.

29. In fact, as the date of this filing, all Lamps Plus branded and/or trademarked merchandise offered for sale at the Lamps Plus retail stores that Plaintiff’s counsel investigated, including the Chest Mr. Seegert purchased, remained on sale at a discounted price.

Lamps Plus’s Deceptive Pricing Scheme Injures Plaintiff and the Class

30. The “Compare At” prices listed and advertised on Lamps Plus’s products are fake reference prices, utilized only to perpetuate Lamps Plus’s fake discount scheme.

31. Lamps Plus knows that its comparative price advertising is false, deceptive, misleading, and unlawful under California and federal law.

32. Lamps Plus fraudulently concealed from and intentionally failed to disclose to Plaintiff and other members of the Class the truth about its advertised discount prices and former reference prices.

33. At all relevant times, Lamps Plus has been under a duty to Plaintiff and the Class to disclose the truth about its false discounts.

34. Plaintiff relied upon Lamps Plus’s artificially inflated “Compare At” price and false discounts when purchasing the Chest from Lamps Plus. Plaintiff would not have made such purchase but for Lamps Plus’s representations regarding the false “Compare At” price and the fictitious sales price of the merchandise. Plaintiff may in the future shop at Lamps Plus’s retail stores.

1 40. This action involves common questions of law and fact, which predominate
2 over any questions affecting individual Class members. These common legal and factual
3 questions include, but are not limited to, the following:

- 4 a) Whether, during the Class Period, Lamps Plus used false “Compare At”
5 price tags and falsely advertised price discounts on its branded and/or
6 trademarked products sold in its Lamps Plus retail stores;
- 7 b) Whether, during the Class Period, the “Compare At” prices advertised
8 by Lamps Plus were the prevailing market prices for the respective
9 Lamps Plus branded and/or trademarked merchandise during the three
10 months preceding the dissemination and/or publication of the
11 advertised former prices;
- 12 c) Whether Lamps Plus’s alleged conduct constitutes violations of the
13 laws asserted;
- 14 d) Whether Lamps Plus engaged in unfair, unlawful, and/or fraudulent
15 business practices under the laws asserted;
- 16 e) Whether Lamps Plus engaged in false or misleading advertising;
- 17 f) Whether Plaintiff and Class members are entitled to damages and/or
18 restitution and the proper measure of that loss; and
- 19 g) Whether an injunction is necessary to prevent Lamps Plus from
20 continuing to use false, misleading, or illegal price comparison.

21 41. Plaintiff’s claims are typical of the claims of the members of the Class
22 because, *inter alia*, all Class members have been deceived (or were likely to be deceived)
23 by Lamps Plus’s false and deceptive price advertising scheme, as alleged herein. Plaintiff
24 is advancing the same claims and legal theories on behalf of herself and all Class members.

25 42. Plaintiff will fairly and adequately protect the interests of the Class members.
26 Plaintiff has retained counsel experienced in complex consumer class action litigation, and
27 Plaintiff intends to prosecute this action vigorously. Plaintiff has no antagonistic or adverse
28 interest to those of the Class.

1 43. The nature of this action and the nature of the laws available to Plaintiff and
2 the Class make the use of the class action format a particularly efficient and appropriate
3 procedure to afford relief to him and the Class for the wrongs alleged. The damages or
4 other financial detriment suffered by individual Class members is relatively modest
5 compared to the burden and expense that would be entailed by individual litigation of their
6 claims against Lamps Plus. It would thus be virtually impossible for Plaintiff and Class
7 members, on an individual basis, to obtain effective redress for the wrongs done to them.
8 Absent the class action, Class members and the general public would not likely recover, or
9 would not likely have the chance to recover, damages or restitution, and Lamps Plus will
10 be permitted to retain the proceeds of its fraudulent and deceptive misdeeds.

11 44. All Class members, including Plaintiff, were exposed to one or more of Lamps
12 Plus's misrepresentations or omissions of material fact claiming that former "Compare At"
13 prices were in fact *bona fide*. Due to the scope and extent of Lamps Plus's consistent false
14 "discount" price advertising scheme, disseminated in a years-long campaign to California
15 consumers, it can be reasonably inferred that such misrepresentations or omissions of
16 material fact were uniformly made to all members of the Class. In addition, it can be
17 reasonably presumed that all Class members, including Plaintiff, affirmatively acted in
18 response to the representations contained in Lamps Plus's false advertising scheme when
19 he purchased his Chest at the Lamps Plus retail store.

20 45. Lamps Plus keeps extensive computerized records of its customers through,
21 *inter alia*, customer loyalty programs and/or general marketing programs. Lamps Plus has
22 one or more databases through which a significant majority of Class members may be
23 identified and ascertained, and it maintains contact information, including email addresses,
24 through which notice of this action could be disseminated in accordance with due process
25 requirements.

26 ///

27 ///

28 ///

CAUSES OF ACTION

COUNT I

**Violation of California's Unfair Competition Law ("UCL")
California Business & Professions Code Section 17200, *et seq.***

46. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

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

48. The UCL imposes strict liability. Plaintiff need not prove that Lamps Plus intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such practices occurred.

"Unfair" Prong

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

50. Lamps Plus's actions constitute "unfair" business practices because, as alleged above, Lamps Plus engaged in misleading and deceptive price comparison advertising that represented false "Compare At" prices and corresponding deeply discounted prices. The discounted sale prices were nothing more than fabricated "regular" prices leading to phantom markdowns. Lamps Plus's acts and practices offended an established public policy of transparency in pricing, and engaged in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers.

51. The harm to Plaintiff and Class members outweighs the utility of Lamps Plus's practices. There were reasonably available alternatives to further Lamps Plus's

1 legitimate business interests other than the misleading and deceptive conduct described
2 herein.

3 ***“Fraudulent” Prong***

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

6 53. Lamps Plus’s acts and practices alleged above constitute fraudulent business
7 acts or practices as they have deceived Plaintiff and are highly likely to deceive members
8 of the consuming public. Plaintiff relied on Lamps Plus’s fraudulent and deceptive
9 representations regarding its “Compare At” prices for products, which Lamps Plus sells
10 exclusively at its Lamps Plus retail stores. These misrepresentations played a substantial
11 role in Plaintiff’s decision to purchase the Chest at a steep discount, and Plaintiff would
12 not have purchased the Chest without Lamps Plus’s misrepresentations.

13 ***“Unlawful” Prong***

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

16 55. Lamps Plus’s acts and practices alleged above constitute unlawful business
17 acts or practices as they have violated state and federal law in connection with their
18 deceptive pricing scheme. The Federal Trade Commissions Act (“FTCA”) prohibits
19 “unfair or deceptive acts or practices in or affecting commerce” (15 U.S.C. § 45(a)(1)) and
20 prohibits the dissemination of any false advertisements. 15 U.S.C. § 52(a). Under the
21 Federal Trade Commission, false former pricing schemes, similar to the ones implemented
22 by Lamps Plus, are described as deceptive practices that would violate the FTCA:

- 23 (a) One of the most commonly used forms of bargain advertising is to offer a
24 reduction from the advertiser’s own former price for an article. If the
25 former priced is the actual, bona fide price at which the article was
26 offered to the public on a regular basis for a reasonably substantial period
27 of time, it provides a legitimate basis for the advertising of a price
28 comparison. Where the former price is genuine, the bargain being
advertised is a true one. If, on the other hand, the former price being
advertised is not bona fide but fictitious—**for example, where an
artificial, inflated price was established for the purpose of enabling a**

subsequent offer of a large reduction—the “bargain” being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the “reduced” price is, in reality, probably just the seller’s regular price.

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

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

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

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

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

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

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

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

1 (Emphasis added).

2 65. The “intent” required by Section 17500 is the intent to dispose of property,
3 and not the intent to mislead the public in the disposition of such property.

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

9 67. Lamps Plus’s routine of advertising discounted prices from false “Compare
10 At” prices, which were never the prevailing market prices of those products and were
11 materially greater than the true prevailing prices, was an unfair, untrue, and misleading
12 practice. This deceptive marketing practice gave consumers the false impression that the
13 products were regularly sold on the market for a substantially higher price than they
14 actually were; therefore, leading to the false impression that the Lamps Plus products were
15 worth more than they actually were.

16 68. Lamps Plus misled consumers by making untrue and misleading statements
17 and failing to disclose what is required as stated in the Code alleged above.

18 69. As a direct and proximate result of Lamps Plus’s misleading and false
19 advertisements, Plaintiff and the Class have suffered injury in fact and have lost money.
20 As such, Plaintiff requests that this Court order Lamps Plus to restore this money to
21 Plaintiff and all Class members, and to enjoin Lamps Plus from continuing these unfair
22 practices in violation of the UCL in the future. Otherwise, Plaintiff, Class members, and
23 the broader public will be irreparably harmed and/or denied an effective and complete
24 remedy.

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COUNT III

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

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

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

72. Lamps Plus violated and continues to violate the CLRA by engaging in the following practices proscribed by Cal. Civ. Code § 1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of Lamps Plus products:

- a. Advertising goods or services with intent not to sell them as advertised; (a)(9);
- b. Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions; (a)(13).

73. Pursuant to Section 1782(a) of the CLRA, on July 5, 2017, Plaintiff's counsel notified Lamps Plus in writing by certified mail of the particular violations of § 1770 of the CLRA and demanded that it rectify the problems associated with the actions detailed above and give notice to all affected consumers of Lamps Plus's intent to act.

74. If Lamps Plus fails to respond to Plaintiff's letter, fails to agree to rectify the problems associated with the actions detailed above, or fails to give notice to all affected consumers within 30 days of the date of written notice, as proscribed by Section 1782, Plaintiff will move to amend his Complaint to pursue claims for actual, punitive, and

1 statutory damages, as appropriate against Lamps Plus. As to this cause of action at this
 2 time, Plaintiff seeks only injunctive relief.

3 **PRAYER FOR RELIEF**

4 Wherefore, Plaintiff, on behalf of himself and all other members of the Class,
 5 requests that this Court award relief against Lamps Plus as follows:

- 6 a. An order certifying the Class and designating Harley Seegert as the
 7 Class Representative and his counsel as Class Counsel;
 8 b. Awarding Plaintiff and the proposed Class members damages;
 9 c. Awarding restitution and disgorgement of all profits and unjust
 10 enrichment that Lamps Plus retained from Plaintiff and the Class
 11 members as a result of its unlawful, unfair, and fraudulent business
 12 practices described herein;
 13 d. Awarding declaratory and injunctive relief as permitted by law or
 14 equity, including: enjoining Lamps Plus from continuing the unlawful
 15 practices as set forth herein, and directing Lamps Plus to identify, with
 16 Court supervision, victims of its misconduct and pay them all money
 17 they are required to pay;
 18 e. Order Lamps Plus to engage in a corrective advertising campaign;
 19 f. Awarding attorneys' fees and costs; and
 20 g. For such other and further relief as the Court may deem necessary or
 21 appropriate.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by the law.

Dated: July 5, 2017

**CARLSON LYNCH SWEET
KILPELA & CARPENTER, LLP**

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