

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

SARA HAWES and AMY HILL, individually,
and on behalf of all others similarly situated,

Plaintiffs,

v.

MACY'S INC., AQ TEXTILES LLC,
CREATIVE TEXTILE MILLS PVT. LTD.,
JOHN DOE CORPORATIONS (1-100)

Defendants.

Case No.: 1:17-CV-754

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Sara Hawes and Amy Hill ("Plaintiffs") bring this action on their own behalf and on behalf of putative classes (the "Classes") consisting of Plaintiffs and all others similarly situated, pursuant to the laws of the United States and California and Missouri, or, in the alternative, nationwide and in all 50 States and the District of Columbia, against Macy's Inc. ("Macy's"), AQ Textiles LLC ("AQ Textiles"), Creative Textile Mills Pvt. Ltd. ("Creative Textiles"), and John Doe Corporations 1-100 (collectively "Defendants"), and allege the following based on information and belief, except for those paragraphs pertaining to Plaintiffs' own actions, which are alleged based on personal knowledge.

INTRODUCTION

1. Plaintiffs bring this action on their own behalf, and on behalf of a Class consisting of Plaintiffs and all others similarly situated, to redress Defendants' deceptive acts and unconscionable business practices designed to deceive and mislead consumers and the public into believing that Defendants' bedding and linen products had higher thread counts than they actually have and, as such, were of better quality, softer, and more comfortable for sleeping than products with lesser thread counts. In purchasing bedding and linen products, Plaintiffs and the Class received less than what was promised by Defendants due to the improperly inflated thread counts represented on advertisements and bedding and linen labels sold by Defendants.

2. Members of the bedding and linen products industry, including the Defendants, consistently communicate to consumers that higher thread count sheets are of better quality,

softer, and more comfortable for sleeping. As a result, consumers purchasing bedding and linen products use thread count as a primary indicator of the quality of the sheets offered for sale, and pay higher prices for higher thread counts.

3. As part of a scheme to make their bedding and linen products more attractive, boost sales, and increase profits, Defendants knowingly departed from known, well-established, and long-standing industry standards governing the calculation and advertisement of thread counts by inflating the thread counts on the labels of the products they manufactured, marketed, distributed, and/or sold.

4. Defendants misrepresented, and continue to misrepresent, that the thread count in many of the bedding and linen products they advertise, market, distribute throughout the country, resulting in the sale of bedding and linen products represented to have greater than their true thread counts to consumers throughout the United States. The representation of the false and misleading thread count also deceives and misleads consumers into believing that they are purchasing a product which is of higher quality, softness, or better for sleeping than products with a lower thread count.

5. Inaccurate thread counts create reasonable but mistaken beliefs by consumers about the quality of bedding and linen products. For example, reasonable consumers believe that a bedding package label stating that it contains 800 thread-count bedding actually contains bedding with a thread count calculated at 800 according to an honest and consistent industry standard. Likewise, consumers believe that an 800 thread-count bedding is going to be of higher quality, softer, and/or better for sleeping than lower thread-count bedding. Consumers rely on Defendants' representations and advertising as they compare and assess products and make purchase decisions.

6. As a direct result of Defendants' improper, deceptive, and unconscionable scheme to misrepresent bedding and linen thread counts, Plaintiffs and other Class members suffered damages because the inflated thread counts put forth by Defendants in their products induced Plaintiffs and other Class Members to purchase their products when Plaintiffs and other Class Members would not have purchased them, or would only have paid a lower price for the product

if they had known the actual thread counts at the time of purchase.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because (i) there are 100 or more class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one plaintiff and defendant are citizens of different states. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391, because Defendants conduct business in this District, and have intentionally availed themselves of the laws and markets of this District, and a substantial part of the events or omissions giving rise to the claims occurred in this District.

9. Defendant Macy's improper conduct set forth herein occurred in this District or was conceived of and executed from this District in whole or in part. Defendants' decisions to engage in the improper conduct set forth herein were made in this District. Some of the bedding and linen products at issue were advertised, marketed, sold and/or distributed by Macy's, or its operating entities, in this district. Macy's or its operating entities directly advertised, marketed and sold bedding and linen products to consumers in this district.

10. The harm alleged herein occurred in this District, or emanated from Defendants' improper conduct that occurred in this District, in whole or in part.

PARTIES

11. Plaintiff Amy Hill is a resident of the City of St. Louis, Missouri and a citizen of Missouri. Ms. Hill purchased Fairfield Square 1000TC Luxury Sateen sheets from a Macy's store in St. Louis County, MO. She believes she made the purchase in summer or fall of 2016. Plaintiff Hill reasonably believed that the sheets she purchased were in fact of 1000 thread count, and she was deceived by the false label because the sheets' thread count was in fact far less. Plaintiff Hill relied on the thread count representations on the packaging when purchasing these sheets and believed that the sheets were of higher quality, softer, and better for sleeping than

sheets with lower thread counts.

12. Plaintiff Sara Hawes is an adult citizen of California. In or around May 2017, Ms. Hawes purchased a Somerset Collection brand queen-size sheet set, manufactured by Defendant Creative Textiles and represented to be “900 Thread Count” from Defendant Macy’s retail store located at 8500 Beverly Blvd. in Los Angeles, CA. *See* Ex. A, Label on sheets purchased by Plaintiff. Plaintiff relied on and was deceived by the thread count representations on the packaging and in the Macy’s store when purchasing these sheets, and believed that she was purchasing sheets with a 900 thread count and that the sheets were of higher quality, softer and better for sleep than sheets with lower thread counts. The actual thread count of her sheets was much less. Plaintiff paid \$76.11 (\$69.99 plus tax) for this sheet set.

13. Defendant Macy’s is a Delaware corporation, with its principal executive offices located at 7 West 7th Street, Cincinnati, Ohio 45202. Prior to June 1, 2007, Macy’s Inc. was known as Federated Department Stores, Inc. As of April 2, 2016, Macy’s was operating 870 stores in 45 states, the District of Columbia, Guam and Puerto Rico under the names of Macy’s, Macy’s Backstage, Bloomingdale’s, Bloomingdale’s Outlets, and Bluemercury. Macy’s also made sales throughout the United States via its consumer websites: www.macys.com; bloomingdales.com; and bluemercury.com. In Macy’s Annual Report for the fiscal year ending January 30, 2016, Macy’s reported net sales of \$27,079,000,000, of which 16% (\$4,332,640,000) was identified as Home/Miscellaneous sales, which presumably includes sales of bedding and linen products.¹

14. Defendant Macy’s sells bedding and linen products bearing at least the following brand names:

- AQ Textiles
- Bar III
- Betsey Johnson
- Bluebellgray
- Brookstone
- Calvin Klein
- Carter’s
- Charter Club
- Donna Karan
- Echo

¹ The other categories are Women’s Accessories, Intimate Apparel, Shoes and Cosmetics; Woman’s Apparel; and Men’s and Children’s.

Elite Home
Fairfield Square Collection
Hotel Collection
Hugo Boss
Jay Franco
Jessica Sanders
JLA Home
Joy Mangano
Lacoste Home
Martex
Martha Stewart Collection
Nautica
NoJo
Pendleton
Ralph Lauren
Shavel
Sunham
Tommy Bahama Home
Tommy Hilfiger
Trina Turk
Waterford
Westpoint
Westport

See www.macys.com.

15. Defendant Creative Textiles is a private limited company organized under the laws of the Republic of India, with its primary place of business at 212, Cama Industrial Estate, Sun Mill Compound Mumbai, Maharashtra 400013 India.

16. Defendant AQ Textiles is a North Carolina LLC with its principal place of business and registered offices located at 214 Staunton Drive, Greensboro, North Carolina 27410.

17. Defendant Creative Textiles manufactures and sells textiles, including the relevant sheets and bedding products, throughout the United States, through its subsidiary AQ Textiles.

18. Defendant AQ Textiles, on behalf of Creative Textiles, imports and distributes the relevant sheet and bedding products to Defendant Macy's.

FACTUAL ALLEGATIONS

19. For consumers purchasing bedding and linens, thread count is used as an indicator of fabric quality and a basis on which they make purchasing decisions. As the thread count increases, so does the price that consumers are willing to pay for bedding and linens.

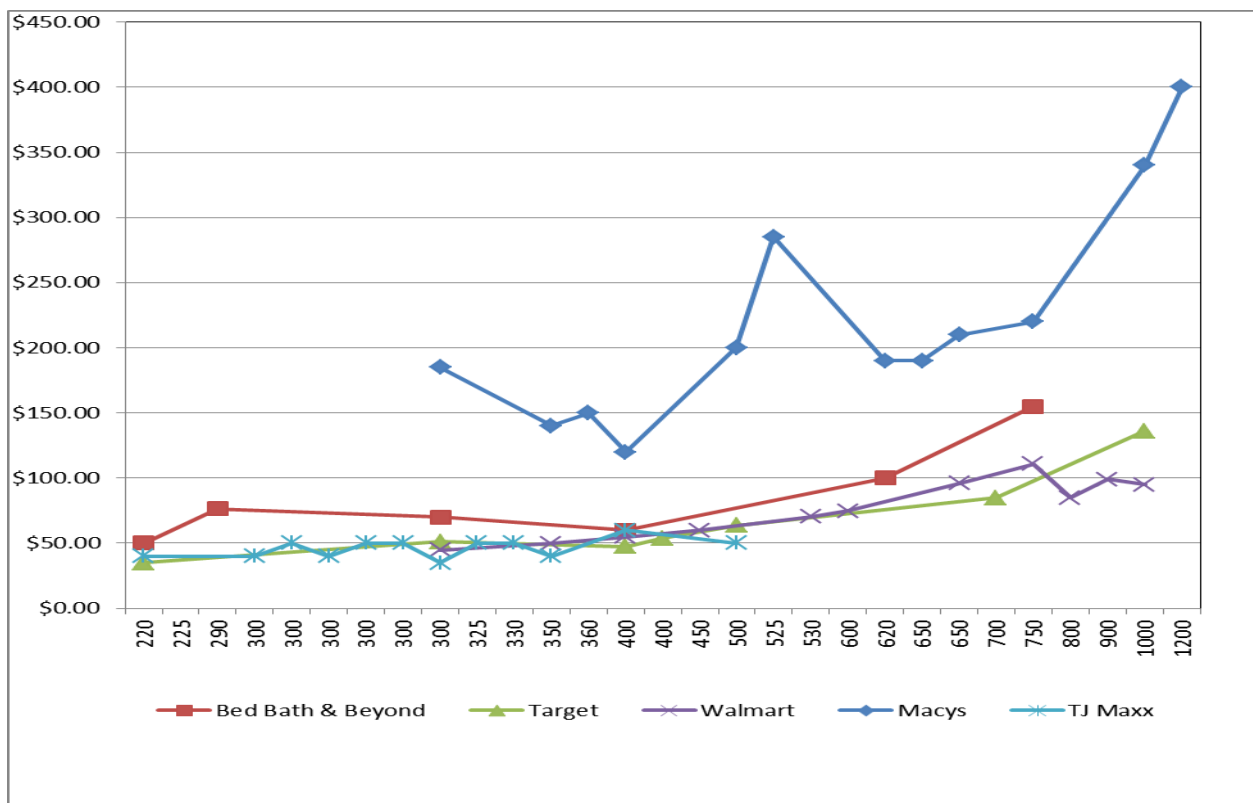
20. Industry participants at each level of the supply chain, including Defendants, know that

consumers will pay higher prices for linens and bedding products with a higher thread count and as such increase the price as the thread counts on the products increase. This includes manufacturers such as Defendant Creative Textiles, distributors/importers such as Defendant AQ Textiles, and retailers such as Defendant Macy's.

21. Consumers rely on represented thread count as the gauge for the quality of their bedding and linen products. *See* ABC News, [Are Shoppers Short-Sheeted by Thread Count?](http://abcnews.go.com/GMA/story?id=125380&page=1), November 14, 2016, *available at* <http://abcnews.go.com/GMA/story?id=125380&page=1> (“Consumers who enjoy slipping under top-quality bed sheets rely on thread count as a gauge while shopping....”).

22. Consumers pay more for higher thread count sheets. *Id.* (“A single-ply 300-count can run about \$55 a set, while the 600 thread-count sheets that [tested as] only a 300-count is \$180 a set.”).

23. An informal survey of the prices of cotton, king-size bedding sets at online retailers in December 2016 showed that as thread count increased, so did the price for the bedding.



24. The common or standard practice in the U.S. bedding and linen industry has been to count the number of threads in both the warp (vertical direction) and filling (horizontal direction). Common or standard practice counts each yarn as one thread, regardless of whether the yarn was a single-ply or multi-ply yarn.

25. The American Society for Testing and Materials' ("ASTM") Standard Test Method for Warp (End) Count and Filling (Pick) Count of Woven Fabric, Designation: D3775-12, covers the standard test method for measuring warp end count and filling pick count and is applicable to all types of woven fabric. Section 9.1.1 of D3775-12 instructs on the appropriate method for determining thread count: "Count individual warp ends and filling picks as single units regardless of whether they are comprised of single or plied components."

26. The terms relevant to ASTM D3775-12, and related to textiles, are defined by ASTM Designation: D123-03. *See* Section 3, Terminology of ASTM D3775-123. These terms, among others, include:

- a. **count**, *n* – in woven textiles, the number of warp yarns (ends) and filling yarns (picks) per unit distance as counted while the fabric is held under zero tension, and is free of folds and wrinkles.
- b. **end**, *n* – in fabric, an individual warp yarn (single or ply) or cord.
- c. **filling**, *n* – yarn running from selvage to selvage at right angles to the warp in a woven fabric.
- d. **pick**, *n* – an individual filling yarn.
- e. **pick count**, *n* – in woven fabrics, the number of filling yarns per unit fabric length.

See ASTM D 123-03, Standard Terminology Relating to Textiles.

27. The prior versions of ASTM D3775, going back at least to 2003, included the same instructions for proper counting under the standard. ASTM, Standard Test Method for Warp End Count and Filling Pick Count of Woven Fabric, Designation: D3775-03a, Section 9.1.4 instructs, "Count individual warp yarns (ends) and filling yarns (picks) as single units regardless of whether they are comprised of single or plied components."

28. Per ASTM D3775-12 § 9.1.4, the standard deviation of the samples tested, should be 5%

or less. In other words, the stated thread count should be within 5% of the actual thread count.

29. However, some bedding and linen manufacturers and retailers, such as Defendants, are not adhering to the standard-based, traditional, and common industry practice. These manufacturers and retailers double or triple the true thread count by counting plied yarns individually.

30. According to the National Textiles Association (“NTA”) and the Federal Trade Commission (“FTC”), this practice of determining thread count by counting plied yarns individually “inflates the thread count numbers to levels which double or triple (or more) the thread count as determined by the long standing, traditional way. This practice has also created confusion in the marketplace and has caused consumers to compare thread counts that may have been calculated in two dramatically different ways.” *See* FTC Letter to National Textile Association, August 2, 2005, Ex. B.

31. In its Letter to the National Textile Association, the FTC stated that:

[C]onsumers could be deceived or misled by the practice of stating an inflated thread count, achieved by multiplying the actual count by the number of plies within the yarn. A possible non-deceptive way to disclose both the thread count and the yarn ply would be to state, for example: ‘300 thread count, 2 ply yarn.’ A representation of ‘600 thread count’ for this same product would likely mislead consumers about the quality of the product being purchased.”

32. The practice of counting the plies that make up each thread was also condemned by the American Textile Manufacturer’s Institute (“ATMI”). In a letter sent to the FTC on January 31, 2002, Ex. C, ATMI addressed marketing of bed sheets and pillowcases to consumers with claims of extremely high yarn or thread count claims, stating that:

Labeling these products based on a count that includes each ply in plied yarns deceives the customer into believing that bedding products with higher counts are better, when, in fact, they might be inferior because of the method used to determine the count.

...

In many cases, these extremely high counts are achieved by counting yarns within a ply as individual yarns, thus dramatically increasing the number of yarns in a square inch of fabric. A plied yarn is one in which two or more yarns are twisted together to form a single strand.

ATMI believes this method of labeling products based on counting each individual yarn in plies to be a deceptive practice, which misleads the American

public into making purchasing decisions to purchase items, based on false and misleading information.

ASTM method D 3775-96 (Standard Test Method for Fabric Count of Woven Fabric) [a prior version of D3775-12] the long-accepted industry standard for determining count. This method has been in use in this country for many years and serves as the industry's standard way to report the count of many woven textile fabrics, including sheeting. It is based on the number of yarns in the warp direction and filling direction, regardless of ply, and has become an important parameter used by consumers to judge the quality of sheeting products, since the higher the count, the more luxurious the product.

ATMI believes that any information provided to the consumer should be true and correct so as not to be deceptive or misleading. We believe that plied yarns are properly counted as only one yarn. For example, a fabric containing 250 individual four ply yarns in a square inch would be described as a "250 thread count fabric, even though each thread or yarn contained four plies twisted together." It would be false and misleading to describe this as a 1000 thread count product.

33. The FTC's reply letter to ATMI dated March 18, 2002, advised how the Commission's staff would analyze claims that counting yarns within a ply as individual yarns to determine thread count was a deceptive practice. *See* Ex. D. The FTC advised that where ASTM standards existed, the Commission would give great weight to the applicable standards to determine if product claims were reasonable or deceptive:

A thread count claim, like other objective, material claims about a product, must be supported by a "reasonable basis." In determining what constitutes a reasonable basis for claims, we would consider what experts in the field believe is appropriate, including whether there are relevant consensus based test procedures, such as an ASTM test procedure, or other widely accepted industry practices that apply to the matter. If so, we would give such procedure or practices great weight in determining whether the advertiser has met its substantiation burden. In other related context, the Commission has encouraged the use of ASTM tests. *See* Press Release, FTC Announces Actions on Wool Labeling Rules, dated March 8, 1994 (copy attached) ("In its clarification of the procedure used for testing the fiber content of wool products, the FTC said the industry members should, where possible, use procedures established by the American Society for Testing and Materials (ASTM).").

34. Despite these long-standing industry standards for calculating thread counts, and the likelihood that deviating from the standards would mislead and deceive consumers, Defendants manufactured, marketed, advertised, sold and/or distributed bedding and linen products with inflated thread counts.

35. Defendant Macy's represented that numerous bedding and linen products were of a

certain thread count, but when measured in accordance with industry standards, these thread counts were far less than claimed because Defendant improperly counted the plies making up the threads in their linens rather than the threads themselves.

36. Defendant Creative Textiles, on information and belief, knowingly packaged and labeled its products with inflated thread counts in order to win business or command higher prices.

37. Defendant AQ Textiles, on information and belief, participated in developing the labeling and packaging with inflated thread counts, and either knew or should have known that the advertised thread counts were false.

38. Plaintiff Hill purchased a Fairfield Square 1000TC brand sheet set, imported by Defendant AQ Textiles and manufactured by Defendant Creative Textiles, which was represented to be 1000TC from Defendant Macy's retail store. However, upon information and belief, the true thread count of those sheets was in fact far less.

39. Plaintiff Hawes purchased a Somerset Collection brand sheet set, imported by Defendant AQ Textiles and manufactured by Defendant Creative Textiles, which was represented by each Defendant to be 900 thread count, from Defendant Macy's retail store at 8500 Beverly Blvd. in Los Angeles, CA. However, the true thread count of those sheets according to industry standards was approximately 249.

40. On information and belief, numerous other brands and marks sold by each Defendant are marketed with false thread counts.

41. Defendants Creative Textiles and AQ Textiles made false written representations as to the thread count of the relevant sheets and bedding products, at least, on product packaging.

42. Defendant Macy's made false representations as to the thread count of their sheets and bedding products on the website <http://macys.com>, as well as in all the retail Macy's stores stocked with the relevant goods in product descriptions and labels.

43. Defendants' representations regarding the thread counts of their sheets and bedding products were deceptive and misleading according to both the industry standard and the FTC's guidelines for accurately describing thread counts.

44. Each Defendant knew or had reason to know that the thread counts on the sheets and

bedding products were false and deceptive for at least the following reason: the prices for the products, at both wholesale and retail levels, were substantially lower than the prices for authentic sheets of the advertised thread counts.

45. Despite their knowledge, Defendants Creative Textiles and AQ Textiles sold sheets and bedding products with inflated thread counts in order to obtain more business, and sell more products in a competitive market.

46. Defendant Macy's, although it knew or should have known that the sheets and bedding products were labeled with inflated thread counts, repeated those misrepresentations, sold the sheets and bedding products with the help of those misrepresentations, and profited from those sales.

47. By improperly inflating thread counts contrary to industry standards, Defendants have engaged in, and continue to engage in, practices which are unconscionable, deceptive, and fraudulent, and which are based on false pretenses, false promises, misrepresentations, and the knowing concealment, suppression, or omission of material facts with the intent that others rely on such concealment, suppression, or omission in their manufacturing, advertising, marketing, selling, and distribution of bedding and linen products.

48. As a direct and proximate result of Defendants' improper conduct, Plaintiffs and Class Members paid more for bedding and linen products which Defendants represented had inflated thread counts.

49. By representing that their products had higher thread counts than they actually had, Defendants unjustly profited from the sale of such bedding and linen products to consumers.

50. The inflated thread counts put forth by Defendants in their products induced Plaintiffs and other Class Members to purchase their products when Plaintiffs and other Class Members would not have purchased them, or would only have paid a lower price for the product if they had known the actual thread counts at the time of purchase.

CLASS ACTION ALLEGATIONS

51. Plaintiffs bring this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and seeks to represent two Classes:

California Class:

All persons in California that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Missouri Class:

All persons in Missouri that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

52. The class period commences on the first date that Defendants manufactured, marketed, advertised, sold and/or distributed the offending bedding and linen products and ending on the date that the Court certifies this suit as a class action.

53. Excluded from the Classes (and in the alternative, the Subclasses defined below) are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants, or employees of Defendants.

54. The Classes are so numerous that joinder of all members is impracticable. The disposition of these claims in a class action will provide benefits to the parties, Class members, and the Court.

55. Although the Class members' identities and numbers are presently unknown, Defendants' records can readily determine this information using objective criteria. The California and Missouri Classes likely consist of thousands of consumers throughout California and Missouri.

56. Additionally or in the alternative to the California and Missouri State Classes, and pursuant to Federal Rules of Civil Procedure Rule 23(c)(5), Plaintiffs seek to represent a Nationwide Class and/or Classes (the "Subclasses") consisting of members from the 50 States and the District of Columbia, as well as any subclasses or issue classes that Plaintiffs may propose and/or the Court may designate at the time of class certification. The alternative Nationwide Class or state-based Classes could be defined as follows:

Nationwide Class:

All persons in the United States that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Alabama State Class:

All persons in Alabama that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Alaska State Class:

All persons in Alaska that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Arizona State Class:

All persons in Arizona that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Arkansas State Class:

All persons in Arkansas that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

California State Class:

All persons in California that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Colorado State Class:

All persons in Colorado that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Connecticut State Class:

All persons in Connecticut that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Delaware State Class:

All persons in Delaware that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

District of Columbia State Class:

All persons in District of Columbia that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Florida State Class:

All persons in Florida that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Georgia State Class:

All persons in Georgia that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Hawaii State Class:

All persons in Hawaii that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Idaho State Class:

All persons in Idaho that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Illinois State Class:

All persons in Illinois that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Indiana State Class:

All persons in Indiana that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Iowa State Class:

All persons in Iowa that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Kansas State Class:

All persons in Kansas that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Kentucky State Class:

All persons in Kentucky that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Louisiana State Class:

All persons in Louisiana that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Maine State Class:

All persons in Maine that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Maryland State Class:

All persons in Maryland that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Michigan State Class:

All persons in Michigan that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Minnesota State Class:

All persons in Minnesota that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Mississippi State Class:

All persons in Mississippi that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Missouri State Class:

All persons in Missouri that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Montana State Class:

All persons in Montana that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Nebraska State Class:

All persons in Nebraska that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Nevada State Class:

All persons in Nevada that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

New Hampshire State Class:

All persons in New Hampshire that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

New Jersey State Class:

All persons in New Jersey that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

New Mexico State Class:

All persons in New Mexico that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

New York State Class:

All persons in New York that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

North Carolina State Class:

All persons in North Carolina that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

North Dakota State Class:

All persons in North Dakota that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Ohio State Class:

All persons in Ohio that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Oklahoma State Class:

All persons in Oklahoma that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Oregon State Class:

All persons in Oregon that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Pennsylvania State Class:

All persons in Pennsylvania that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Rhode Island State Class:

All persons in Rhode Island that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a

representation regarding thread count.

South Carolina State Class:

All persons in South Carolina that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

South Dakota State Class:

All persons in South Dakota that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Tennessee State Class:

All persons in Tennessee that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Texas State Class:

All persons in Texas that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Utah State Class:

All persons in Utah that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Vermont State Class:

All persons in Vermont that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Virginia State Class:

All persons in Virginia that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Washington State Class:

All persons in Washington that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a

representation regarding thread count.

West Virginia State Class:

All persons in West Virginia that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Wisconsin State Class:

All persons in Wisconsin that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

Wyoming State Class:

All persons in Wyoming that purchased bedding or linen from Defendant Macy's that was manufactured or supplied by Defendant AQ Textiles and/or Defendant Creative Textiles and that was packaged or advertised with a representation regarding thread count.

57. Defendants' policy and practice of inflating thread counts and misrepresenting thread counts to consumers has subjected and affected all Class Members. As such, there are many common questions of law and fact among Plaintiffs and the Class Members, which predominate over questions affecting individual Class members. Common questions include, but are not limited to, the following:

- a. Whether ASTM D3775 Standard Test Method for Warp (End) and Filling (Pick) Count of Woven Fabrics was the generally accepted method in the textile industry for calculating thread count during the relevant time period.
- b. Whether Defendants knew or should have known that ASTM D3775 was the generally accepted method in the textile industry for calculating thread count during the relevant time period.
- c. Whether Defendants misrepresented thread counts on their bedding and linen products contrary to industry standards and in contravention of ASTM D3775;
- d. Whether Defendants manufactured, advertised, sold, or delivered for sale bedding and linen products that were advertised or represented to be of a certain thread count, but were, in fact, of a lesser thread count;
- e. Whether Defendants knew or should have known persons would rely on the

inflated thread counts in making their purchase decision;

- f. Whether Defendants were negligent in representing thread counts on their bedding and linen products contrary to industry standards and in contravention of ASTM D3775;
- g. Whether Defendants fraudulently concealed that the thread counts and their bedding and linen products were inflated, contrary to industry standards and in contravention of ASTM D3775;
- h. Whether Defendants' inflated thread counts violated the laws of the States of California and Missouri, and/or other States;
- i. Whether Defendants are liable for violation of the laws of the States of California and Missouri and/or other States;
- j. Whether Defendants' misrepresentations caused damages to Class Members and the extent of those damages;
- k. Whether Defendants were unjustly enriched, and, if so, the extent to which they were unjustly enriched; and
- l. Whether Defendants should be enjoined from future conduct of the type complained of herein.

58. Plaintiffs' claims are representative of the putative Classes because their claims are typical of the claims of the Class members, and rely on Defendants' misrepresentations and application of an industry standard. If brought and prosecuted individually, the claims of each putative Class member would require proof of the same materials and substantive facts, rely on the same remedial theories, and seek the same relief.

59. Plaintiffs will fairly and adequately protect the interests of the Classes, and have retained attorneys experienced in class and complex litigation as counsel.

60. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. A class action will permit an orderly and expeditious administration of the claims of the Classes, will foster economies of time, effort, and expense, and will insure uniformity of decisions. The prosecution of individual actions by Class members would create

the risk of (a) inconsistent or varying adjudications with respect to individual Class members; and (b) be grossly impracticable because the cost of vindicating an individual Class member's claim would likely exceed the value of the claim.

61. Defendants have acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Classes as a whole.

62. Due to the relatively small amounts of damaged to each member of the Classes, a class action is superior to other available methods for the fair and efficient adjudication of the controversy which is subject of this action.

63. The interests of judicial economy will be served by concentrating litigation concerning these claims in this Court, and there is no known difficulty that would be encountered in the management of these Classes.

EQUITABLE TOLLING

64. Despite knowing that their bedding and linen products were defective because they did not contain the qualities that Defendants advertised -- specifically with regard to thread counts - and Defendants concealed their defective nature from Plaintiff and the Class by affirmatively marketing and advertising their products as having certain qualities that they did not have.

65. Plaintiff and Class Members did not and could not have known that their bedding and linen did not have the qualities that it was advertised to have, as this fact was not disclosed to them and could not have been apparent from a superficial inspection the products.

66. Plaintiff and Class Members could not have discovered the defective nature of Defendants' products through the exercise of due diligence.

67. Due to Defendants' fraudulent concealment of the defects associated with their products, Defendants are estopped from asserting statute of limitations defenses to any of the claims alleged herein.

COUNT ONE

Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*

(On Behalf of the California and Missouri Classes,

or Alternatively, the Nationwide and State Subclasses, Against Each Defendant)

68. Plaintiffs incorporate by reference all of the allegations in this Complaint as though fully set forth herein.

69. Plaintiffs bring this Count against each Defendant, Macy's, AQ Textiles, and Creative Textiles, on behalf of themselves and the California and Missouri Classes, or, in the alternative, the Nationwide Class and the State and District of Columbia Classes.

70. This Court has jurisdiction to decide claims brought under the Magnuson-Moss Warranty Act (for the purpose of this Count, the "Act") by virtue of 28 U.S.C. § 1332(a)-(d).

71. Defendants are "suppliers" and "warrantors" within the meaning of 15 U.S.C. § 2301(4) and (5) and/or (7) because they regularly sell sheets and bedding products with a written and/or implied warranty guaranteeing that their products have a certain thread count and a certain corresponding quality.

72. Plaintiffs and other Class Members are "consumers" who purchased "consumer products" for purposes of 15 U.S.C. § 2301(1) and (3) because they purchased sheets and bedding products for personal, family, or household purposes.

73. The sheets and bedding products are "consumer products" within the meaning of the Act. 15 U.S.C. § 2301(1).

74. The Act provides a cause of action for any consumer who suffers damages because of the failure of a warrantor to comply with a written or implied warranty. 15 U.S.C. § 2310(d)(1).

75. The amount in controversy of the Plaintiffs' individual claims meets or exceeds \$25.00 in value. In addition, the amount in controversy meets or exceeds \$50,000 in value (exclusive of interest and costs) on the basis of all claims to be determined in this suit.

76. Under the Act, damaged "consumers" have a private cause of action against any warrantor that fails to comply with a written or implied warranty.

77. Under the Act, damaged consumers have a private cause of action against any warrantor that fails to comply with a written or implied warranty.

78. Defendants provided Plaintiffs and the Nationwide Class with the following express warranty: that the sheets and bedding products had a certain true and accurate thread count.

79. Defendants Creative Textiles and AQ Textiles warranted in their packaging and elsewhere that the sheet and bedding products would meet a certain level of performance over a certain period of time, namely that they had a certain thread count, and would therefore have the performant characteristics of sheets with such thread count.

80. Defendant Macy's warranted in product descriptions and/or advertising, online and in stores, that the sheet and bedding products would meet a certain level of performance over a certain period of time, namely that they had a certain thread count, and would therefore have the performant characteristics of sheets with such thread count.

81. These express warranties constitute written warranties within the meaning of 15 U.S.C. § 2301(6).

82. The sheets and bedding products' implied warranties are covered by 15 U.S.C. § 2301(7).

83. The terms of written warranties and implied warranties became part of the basis of the bargain among Plaintiffs (and all other Class Members) and Defendants when Plaintiffs (and all other Class Members) were deciding to purchase the sheets or bedding products.

84. Defendants breached these written and implied warranties as described in detail above.

85. Without limitation, the sheets and bedding products had actual thread counts lower than the ones warranted and advertised.

86. Plaintiffs and each of the other Nationwide Class members have had sufficient direct dealings with Defendant Macy's to establish privity of contract. Nonetheless, privity is not required here because Plaintiffs and each of the other Nationwide Class members are intended third-party beneficiaries of contracts between Creative Textiles, AQ Textiles, and Macy's, and specifically, of Creative Textiles' and AQ Textiles' warranties. Upon information and belief these contracts provided for products warranted to be of a particular thread count, and therefore of a quality that would merit a higher price than products labeled with a lower thread count. Defendant Macy's was not intended to be the ultimate consumer of the sheets and bedding products and has no rights under the warranty agreements attaching to the products, which were for benefit of the consumers only.

87. Affording Defendants a reasonable opportunity to cure their breaches of warranty would

be unnecessary and futile here. At the time of sale of the sheets and bedding products, Defendants knew, should have known, or were reckless in not knowing of the misrepresentations concerning the products' thread count, but nonetheless failed to rectify the situation. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiffs resort to an informal dispute resolution procedure and/or afford Defendants a reasonable opportunity to cure their breach of warranties is excused and thereby deemed satisfied.

88. As a direct and proximate result of Defendants' breach of the written warranties and the implied warranty of merchantability, Plaintiffs and Class Members have suffered damages in an amount to be determined at trial.

89. Plaintiffs, individually and on behalf of a Nationwide Class, seek all damages permitted by law, including a full refund of the purchase price for the sheets, compensation for the monetary difference between the sheets and bedding products as warranted and as sold, incidental and consequential damages, statutory attorney fees, and all other relief allowed by law.

COUNT TWO

Violation of the Missouri Merchandising Practices Act

(On Behalf of Plaintiff Hill and the Missouri Class, or Alternatively, the Nationwide Class and State Subclasses, Against Each Defendant)²

90. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if fully set forth herein.

91. Missouri's Merchandising Practices Act (the "MMPA") prohibits the act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce. Mo. Rev. Stat. § 407.020.

² Substantially similar statutes exist in each of the other 49 states and the District of Columbia, which would permit the alternatively-pleaded state classes to pursue claims similar to the Missouri and California law based claims in Counts II-V.

92. Defendants' conduct constitutes the act, use or employment of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices and/or the concealment, suppression, or omission of any material facts in connection with the sale or advertisement of any merchandise in trade or commerce because Defendants misrepresent the thread counts of the Products.

93. The misrepresented thread count also creates the false impression and has the tendency and capacity to mislead consumers (see Mo. Code Regs. Ann. tit. 15, § 60-9.020) into believing that the Products are of a higher quality and luxury than they in fact are. Moreover, the overall format and appearance of the Products have the tendency and capacity to mislead consumers (15 Mo. Code Regs. Ann. tit. 15, § 60-9.030) because they create the false impression that the Products have a higher thread count than they actually do.

94. The Products were therefore worth less than the Products as represented, and Plaintiffs and Class Members paid extra or a premium for them.

95. Plaintiffs and Class Members purchased the Products for personal, family, or household purposes and thereby suffered an ascertainable loss as a result of Defendants' unlawful conduct as alleged herein, including the difference between the actual value of the Product and the value of the Product if they had been as represented.

COUNT THREE

Unfair Competition Law – Unlawful Prong

California Business and Professions Code, § 17200, *et seq.*

(On Behalf of Plaintiff Hawes and the California Class, or Alternatively, the Nationwide Class and State Subclasses, Against Each Defendant)

96. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

97. Plaintiffs bring this Count on behalf of themselves and the California Class.

98. The acts of each of Defendant as described herein constitute unlawful business practices and violations of California's Unfair Competition Law, Business and Professions Code § 17200, *et seq.* (UCL). Section 17200 prohibits any "unlawful, unfair or fraudulent business act or practice."

99. Defendants' business practices as alleged are unlawful under Federal Trade Commission Act (FTCA) § 5(a), 15 U.S.C. § 45(a), which outlaws "unfair or deceptive acts or practices in or affecting commerce."

100. Defendants' business practices are unfair under FTCA § 5(a) because they are "likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." 15 U.S.C. § 45(n).

101. Defendants' business practices are deceptive under FTCA § 5(a) because they include affirmative representations and omissions and are likely to mislead reasonable consumers under the circumstances.

102. Defendants' business practices are further unlawful under the CLRA and under UCL § 17000, et seq., as alleged herein.

103. Defendants' business practices are also unlawful pursuant to the FTCA by way of the Textile Fiber Products Identification Act, 15 U.S.C. §§ 70a(a), 70a(b), and/or § 70a(c). These sections make it unlawful, under 15 U.S.C. §§ 41 et seq., to sell, transport, deliver, or advertise "any textile fiber product . . . which is misbranded or deceptively advertised."

104. As a result of Defendants' unlawful business practices, Plaintiff and Class Members have been harmed and are entitled, pursuant to UCL § 17203, to injunctive relief against the continuation of Defendants' practices, as well as the restitution of payments made for Defendants' bedding and linen products, including other equitable relief, costs, and attorneys' fees as recoverable by law.

COUNT FOUR

Unfair Competition Law – Unfair Prong

California Business and Professions Code, § 17200, et seq.

(On Behalf of Plaintiff Hawes and the California Class, or Alternatively, the Nationwide Class and State Subclasses, Against Each Defendant)

105. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

106. Plaintiffs bring this Count on behalf of themselves and the California Class.

107. The acts of each of Defendants as described herein constitute unfair competition under § 17200. They are contrary to public policy, violative of at least the FTCA, CLRA, and California False Advertising Law, and injurious to the public and to competitors who advertise accurate thread counts.

108. Purchasers of Defendants' misleadingly advertised and labeled bedding and linen products, including Plaintiff and Class Members, were injured because they paid an excessive price for a product other than what they thought they were buying.

109. Falsely advertising thread counts has no conceivable benefit to consumers or to competition. This behavior leads consumers to purchase products they do not want, and it forces competitors to either follow suit in the deceptive conduct or suffer lost sales.

110. Consumers could not have reasonably avoided the injuries they suffered because they lack the skill, knowledge, resources, equipment, and opportunity necessary to discern the true nature of the bedding and linen products Defendants sold.

111. As a result of Defendants' unfair business practices, Plaintiff and Class Members have been harmed and are entitled, pursuant to UCL § 17203, to injunctive relief against the continuation of Defendants' practices, as well as the restitution of payments made for Defendants' bedding and linen products including other equitable relief, costs, and attorneys' fees as recoverable by law.

COUNT FIVE

Unfair Competition Law – Fraudulent Prong

California Business and Professions Code, § 17200, et seq.

(On Behalf of Plaintiff Hawes and the California Class, or Alternatively, the Nationwide Class and State Subclasses, Against Each Defendant)

112. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

113. Plaintiffs bring this Count on behalf of themselves and the California Class.

114. The acts of each of Defendants constitute fraudulent business practices under UCL § 17200. They are contrary to public policy, violative of at least the FTCA, CLRA, and California False Advertising Law (UCL § 17500), and injurious to the public and to competitors

who advertise accurate thread counts or no thread counts.

115. Defendants represented the bedding and linen products as having a specified thread count with the intention that customers would rely on those representations in their purchases.

116. Defendants knew or should have known that the thread counts they represented were false.

117. Defendants' thread count representations were material factors in the purchases of the bedding and linen products by Plaintiff and the Class.

118. Defendants' thread count representations were and continue to be relied upon by reasonable consumers, such as Plaintiff and the Class.

119. Due to Defendants' fraudulent and deceptive representations concerning thread count, Plaintiff and the Class paid too much for the bedding and linen products.

120. As a result of Defendants' fraudulent business practices, Plaintiff and Class Members have been harmed and are entitled, pursuant to UCL § 17203, to injunctive relief against the continuation of Defendants' practices, as well as the restitution of payments made for Defendants' bedding and linen products including other equitable relief, costs, and attorneys' fees as recoverable by law.

COUNT SIX

Misleading and Deceptive Advertising

California Business and Professions Code, § 17500, *et seq.*

(On Behalf of Plaintiff Hawes and the California Class, Against Each Defendant)

121. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

122. Plaintiffs bring this Count on behalf of themselves and the California Class.

123. Plaintiffs assert this cause of action against each of Defendants for misleading advertising in violation of California Business and Professions Code Section 17500.

124. Defendants, at relevant times, have offered for sale bedding and linen products with deceptive advertisements and product specifications, as described herein. These deceptive advertisements and product specifications were made in the State of California and include product descriptions, advertisements, price listings, or other inducements in retail stores, or on

the internet or in catalogs and other media.

125. Defendants' representations fall within the ambit of § 17500 because the representations were intended to induce the public to purchase the bedding and linen products referenced in the representations, and Defendants knew or should have known that the representations were misleading.

126. By disseminating representations that falsely represented the nature of the bedding and linen products to the general public, Defendants are likely to deceive the public of the State of California and other States.

127. As a result of Defendants' misleading and deceptive advertising, Plaintiff and Class Members have been harmed and are entitled, pursuant to § 17535, to injunctive relief against the continuation of Defendants' practices, as well as the restitution of payments made for Defendants' bedding and linen products, or the replacement of the products with goods of the type and quality described in the misleading advertisements, including other equitable relief, costs, and attorneys' fees as recoverable by law.

COUNT SEVEN

Violations of the California Consumer Legal Remedies Act,

California Civil Code § 1750, *et seq.*

(On Behalf of Plaintiff Hawes and the California Class, Against Each Defendant)

128. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

129. Plaintiffs bring this Count on behalf of themselves and the California Class.

130. Plaintiff brings this count pursuant to the Consumer Legal Remedies Act, California Civil Code § 1750, *et seq.* ("CLRA"), for omissions by Defendants, made actionable by affirmative misrepresentations and/or exclusive knowledge of material facts, and Defendants' active concealment of the truth.

131. The bedding and linen products are "goods" pursuant to the CLRA at California Civil Code § 1761(a).

132. Defendants are "persons" pursuant to the CLRA at California Civil Code § 1761(c).

133. Plaintiff and the Class Members are "consumers" pursuant to the CLRA at California

Civil Code § 1761(d).

134. Purchases of the bedding and linen products by Plaintiff and the Class Members are “transactions” pursuant to the CLRA at California Civil Code § 1761(e).

Affirmative Misrepresentations

135. Thread count is a specific, quantifiable attribute of bedding and linen products.

136. There is no requirement to communicate the thread count of bedding and linen products when advertising or selling them to consumers. However, thread count is a significant driver of consumers’ perceptions of the value of the products, as alleged throughout this Complaint.

137. Defendants sold to Plaintiff bedding and linen products that were advertised with inflated thread counts.

138. Defendants knew or should have known that the thread counts listed by themselves and/or their manufacturers or wholesalers were false or misleading.

139. Defendants, as detailed in this Complaint, repeated these false or misleading statements of thread count in various product listings and descriptions, either in the store, or advertisements, or the website, which were seen and relied upon by Plaintiff and Class Members.

140. These misstatements of the thread count of the bedding and linen products are prohibited by the CLRA, because they are “undertaken by [Defendants] in a transaction intended to result or which results in the sale or lease of [the bedding and linen products] to any consumer.”

141. Defendants violated the CLRA by knowingly advertising that their bedding and linen products had a higher thread count than they actually had.

142. Defendants violated the CLRA’s proscription against misrepresentation of the “approval, characteristics, ingredients, uses, benefits, or quantities” of the bedding and linen products by advertising a falsely inflated thread count. These misrepresentations violated California Civil Code § 1770(a)(5)’s proscription against representing that goods have characteristics that they do not have; Civil Code § 1770(a)(7)’s proscription against representing that goods are of a particular standard, quality or grade when they are of another; and Civil Code § 1770(a)(9)’s proscription against advertising goods with the intent not to sell the goods as advertised.

Exclusive Knowledge of Material Facts and Omissions of Material Facts

143. Upon information and belief, through examination of their own products and interactions with manufacturers or wholesalers, and as otherwise detailed in this Complaint, Defendants have exclusive knowledge concerning the actual thread count of the bedding and linen products that they import and sell to consumers.

144. Defendants owe consumers a duty to disclose that the thread count information listed by Defendants, and/or the manufacturers or wholesalers of the bedding and linen products and advertised by Defendants is misleading and/or false.

145. Consumers, including Plaintiff, have no realistic means of determining the actual thread count of the bedding and linen products. A textile expert with magnifying equipment is needed to make such a determination. Further, the process of testing the thread count damages the sheets. Consumers therefore cannot be expected to discover the true thread count before making a purchase. This is true under any circumstances, but especially when ordering products over the internet or by catalog.

146. Retailers of bedding and linen products frequently fail to identify the manufacturer, importer, or seller of textiles at the point of sale or on product packaging. Import records similarly do not reveal the names of the original manufacturers of the materials used to construct the imported products. These omissions from packaging and import records make it difficult to trace products back to manufacturers.

147. Defendants concealed from Plaintiff and Class Members that the thread counts advertised for the bedding and linen products are inflated to more than the actual thread count as a result of counting plies rather than threads, and that these thread counts are not calculated according to the method used by other bedding and linen providers and prescribed by ASTM D3775.

148. Plaintiff and Class Members, as reasonable consumers, attached importance to representations by Defendants concerning the thread counts of the bedding and linen products in deciding whether to purchase the products, and in deciding whether the price was reasonable. Thread counts are a material factor in consumers' determinations of the value and quality of bedding and linen products.

149. Without disclosure of the above information, reasonable consumers such as Plaintiff were

and continue to be deceived by Defendants' false thread counts.

150. Defendants violated the CLRA by failing to disclose material facts and continuing to advertise thread counts Defendants knew to be inflated in, without limitation, product labels, advertisements, product descriptions, and website text.

151. Defendants knew or should have known that their misrepresentations would cause Plaintiff and Class Members to pay higher prices for the bedding and linen products than they would have paid, had a misleading thread count not been advertised.

152. In failing to disclose material facts contrary to their affirmative representations, Defendants violated California Civil Code § 1770(a)(5)'s proscription against representing that goods have characteristics that they do not have; Civil Code § 1770(a)(7)'s proscription against representing that goods are of a particular standard, quality, or grade when they are of another; and Civil Code § 1770(a)(9)'s proscription against advertising goods with the intent not to sell the goods as advertised.

153. Pursuant to California Civil Code § 1782(d), Plaintiff seeks the following relief for Defendant's violations of CLRA §§ 1770(a)(5), (7), and (9) with regard to the bedding products identified herein:

- a. Actual damages under Civil Code § 1780(a)(1);
- b. Restitution under Civil Code § 1780(a)(3);
- c. Punitive damages under Civil Code § 1780(a)(4);
- d. Attorneys' fees and costs under Civil Code § 1780(d); and
- e. Any other relief the Court deems just and proper under the CLRA.

While Plaintiffs and the California Class do not seek to recover damages under the CLRA in this complaint, after mailing appropriate notice and demand in accordance with Cal. Civ. Code § 1782(a) & (d), Plaintiffs will subsequently amend this Complaint to also include a request for compensatory and punitive damages.

COUNT EIGHT

Breach of Implied Warranty of Merchantability

(Cal. Civ. Code § 1791.1 and Mo. Rev. Stat. § 400.2-313-315)

(On Behalf of the California and Missouri Classes, or Alternatively, the Nationwide Class and State Subclasses, Against Each Defendant)³

154. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

155. This claim is brought on behalf of Plaintiffs and the California and Missouri Classes against each Defendant.

156. Each Defendant was a “retailer, distributor, or manufacturer,” and Plaintiff Hawes and California Class Members were “buyers,” in the meaning of Cal. Civ. Code § 1791.1(b).

157. Each Defendant was a “merchant with respect to goods” of the kind Plaintiff sold in the meaning of Mo. Rev. Stat. § 400.2-314(1).

158. Pursuant to Cal. Civ. Code § 1791.1(a), an implied warranty for Defendants’ sheets and bedding products was created by law, guaranteeing that the goods “(1) Pass without objection in the trade under the contract description. (2) Are fit for the ordinary purposes for which such goods are used. (3) Are adequately contained, packaged, and labeled; and (4) Conform to the promises or affirmations of fact made on the container or label.”

159. Pursuant to Mo. Rev. Stat § 400.2-314(2), an implied warranty for Defendants’ sheets and bedding products was created by law, guaranteeing that the goods “(a) pass without objection in the trade under the contract description; and (b) in the case of fungible goods, are of fair average quality within the description; and (c) are fit for the ordinary purposes for which such goods are used; and (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and (e) are adequately contained, packaged, and labeled as the agreement may require; and (f) conform to the promises or affirmations of fact made on the container or label if any.”

160. The sheets and bedding products, when sold and thereafter, were not in merchantable condition, were unfit for the ordinary purpose for which they are used, and failed the promises of the warranty of merchantability, because they lacked the quality, properties, and characteristics

³ Substantially similar statutes exist in each of the other 48 states and the District of Columbia, which would permit the alternatively-pleaded state classes to pursue claims similar to the Missouri and California law based claims in Count VIII.

of sheets with thread counts as high as advertised.

161. Defendants were noticed of these issues within a reasonable time by multiple complaints including the instant one.

162. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, California and Missouri Class members have been damaged in an amount to be proven at trial.

COUNT NINE

Breach of Express Warranty

California and Missouri Law / U.C.C. § 2-313

(On Behalf of the California and Missouri Classes, or Alternatively, the Nationwide Class and State Subclasses, Against Each Defendant)

163. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

164. This Count is brought on behalf of the California and Missouri Classes against each Defendant.

165. Defendants' affirmations of fact and/or promises relating to their sheets and bedding products created express written warranties that the products would conform to Defendants' affirmations of fact and/or promises.

166. Alternatively, Defendants' descriptions of their sheets and bedding products became part of the bases of the bargains, creating express written warranties that the products purchased by Plaintiffs and Class Members would conform to Defendants' descriptions and specifications.

167. In fact, the sheets and bedding products purchased by Plaintiff and the Class did not so conform to the descriptions and specifications.

168. Plaintiffs and the Class were the intended targets of Defendants' misrepresentations.

169. Plaintiffs and the Class reasonably relied on Macy's misrepresentations.

170. Macy's expressly warrants on the labels of the sheets and bedding products that they have certain thread counts. In fact, the products' thread counts are lower than promised and warranted.

171. Plaintiffs and Class Members relied on Defendants' false representations as to the sheets

and bedding products' thread counts.

172. Defendants have breached their express warranties.

173. As a result of the foregoing, the Plaintiffs and the Class Members have suffered damages in that the value of the products they purchased was less than warranted by Defendants.

174. Plaintiffs and the Class were injured as a result of Defendants' breach of their express warranties about their sheets and bedding products.

175. By reason of the foregoing, Plaintiffs and the Class were damaged in the amount they paid for the falsely labeled sheets and bedding products, together with punitive damages.

COUNT TEN

Fraud

(On Behalf of the California and Missouri Classes, or Alternatively, the Nationwide Class and State Subclasses, Against Each Defendant)

176. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

177. Plaintiffs bring this Count on behalf of themselves and the Classes.

178. Defendants designed, manufactured, marketed, and/or sold sheets and bedding products with falsely inflated thread counts to Plaintiff and the Class. Defendants represented to Plaintiff and the Class in advertising, packaging, product descriptions, and other forms of communication, including standard and uniform material, that the sheets and bedding products had higher thread counts than their true thread counts.

179. Defendants were aware of or should have been aware of the falsity of these representations.

180. Plaintiffs and the Class reasonably relied upon Defendants' deception. Plaintiffs and the Class had no way of knowing that Defendants' representations were false and/or misleading, and contrary to long-standing industry standards. As consumers, Plaintiffs and the Class did not and could not unravel Defendants' deception on their own. Rather, Defendants intended to deceive Plaintiff and the Class by concealing the true facts about the products' thread counts.

181. Defendants' representations were material to consumers because the representations were directly relevant to the value and quality of the products.

182. Plaintiffs, individually and on behalf of the Class, seeks all damages permitted by law, including full refund of the purchase price for the sheets, compensation for the monetary difference between the sheets and bedding products as warranted and as sold, incidental and consequential damages, punitive damages, attorney fees, and all other relief allowed by law.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all claims so triable as a matter of right pursuant to Federal Rule of Civil Procedure 38(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the putative Class Members pray that the Court enter judgment for them and against Defendants as follows:

- a. Certifying the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, certifying Plaintiffs as the representatives of the Class, and designating Plaintiffs' counsel as counsel for the Class;
- b. Declaring that Defendants' acts and practices, as described herein, constitute deceptive acts and unconscionable business practices that are unlawful under the California and Missouri consumer statutes, and common law.
- c. Awarding Plaintiffs and the Class permanent injunctive relief prohibiting, restraining, and enjoining defendants from engaging in the conduct complained of herein, including, but not limited to, manufacturing, marketing, advertising, selling, and distributing bedding and linen products that have inflated thread counts;
- d. Directing Defendants to disgorge profits from its misleading and deceptive practices and to pay restitution to the Class;
- e. Awarding Plaintiffs and the Class actual, compensatory damages in an amount to be proven;
- f. Awarding Plaintiffs and the Class restitution of all monies paid to Defendants as a result of unlawful, deceptive, and unfair business practices;
- g. Awarding Plaintiffs and the Class exemplary damages in an amount to be proven;

- h. Ordering Defendants to issue corrective advertising;
- i. Awarding Plaintiffs and the Class reasonable attorneys' fees, experts witness fees, pre- and post-judgment interest, and other costs in amounts to be determined by the Court; and
- j. Granting any other further legal or equitable relief as this Court deems appropriate.

Date: November 8, 2017

LANDSKRONER GRIECO MERRIMAN, LLC

By:

Jack Landskroner (0059227)
Drew Legando (0084209)
Landskroner Grieco Merriman, LLC
1360 W 9th St #200
Cleveland, OH 44113
Phone: 888-570-3609
jack@lgmlegal.com
drew@lgmlegal.com

Bruce Steckler
Stuart Cochran
Kirstine Rogers
STECKLER GRESHAM COCHRAN
12720 Hillcrest Road, Suite 1045
Dallas, TX 75230
Phone: 972-387-4040
bruce@stecklerlaw.com
stuart@stecklerlaw.com
krogers@stecklerlaw.com

Erica Mirabella
MIRABELLA LAW LLC
132 Boylston St. 5th Floor
Boston, MA 02116
Telephone: (855) 505-5342
erica@mirabellallc.com

Charles LaDuca
David Black
CUNEO GILBERT & LADUCA LLP
4725 Wisconsin Avenue, NW
Suite 200

Washington, DC 20016
Telephone: (202)789-3960
Facsimile: (202) 789-1813
charles@cuneolaw.com
dblack@cuneolaw.com

Matthew Prewitt
CUNEO GILBERT & LADUCA LLP
16 Court Street
Suite 1012
Brooklyn, NY 11241
Telephone: (202)789-3960
Facsimile: (202) 789-1813
mprewitt@cuneolaw.com

Michael McShane
Ling Y. Kuang
AUDET & PARTNERS, LLP
711 Van Ness Avenue
Suite 500
San Francisco, CA 94102
Telephone: (415) 568-2555
Facsimile: (415) 568-2556
mmcshane@audetlaw.com
lkuang@audetlaw.com

Charles Schaffer
LEVIN SEDRAN & BERMAN
510 Walnut Street
Suite 500
Philadelphia, PA 19106
Telephone: (877) 882-1011
Facsimile: (215) 592-4663
cschaffer@lfsblaw.com

Attorneys for Plaintiffs

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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

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

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

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

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

EXHIBIT A



EXHIBIT B



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Enforcement
Bureau of Consumer Protection

August 2, 2005

Mr. E. Linwood Wright, III
Chairman
Textile Bedding Committee
National Textile Association
6 Beacon Street, Suite 1125
Boston, MA 02108

Dear Mr. Wright:

Thank you for your letter requesting a Commission staff opinion regarding the appropriate way to disclose fabric "thread count" (yarns per square inch) on labels or in advertising for household textile products, such as bed sheets. Please note that this information is not required pursuant to the Textile Fiber Products Identification Act, 15 U.S.C. § 70 *et seq.*, and Commission rules and regulations under the Act, 16 C.F.R. Part 303. It is, however, governed by Section 5 of the FTC Act, which prohibits deceptive acts or practices. 15 U.S.C. § 45.

You state that the thread count is an important indicator of fabric quality for consumers who purchase textile bedding products, and that thread count has evolved over time as a key indicator used by consumers to make purchasing decisions. In addition, you state that it is generally understood that a higher thread count indicates a better product. Your letter describes the specific issue with regard to description of thread count as follows:

The common practice in the U.S. textile bedding industry for decades has been to count the number of threads in both the warp and filling directions. Yarns were counted as one yarn, regardless of whether the yarn was a single ply or multi-ply yarn. (A multi-ply yarn is one yarn that has been created by twisting two or more yarns together.) In recent years, however, some textile bedding suppliers have changed the way they have determined thread count by counting plied yarns individually. This practice inflates the thread count numbers to levels which double or triple (or more) the thread count as determined by the long standing, traditional way. This practice has also created confusion in the marketplace and has caused consumers to compare thread counts that may have been calculated in two dramatically different ways.

Finally, you state that some of your member companies have experienced competitive disadvantage by using the traditional method of counting threads and are considering switching to the method of multiplying by the number of plies within a yarn, thus achieving a higher thread count. You ask for the staff's opinion as to whether the new method could violate Section 5 of the FTC Act.

Mr. E. Linwood Wright, III, page 2

You further note that ASTM, an international standards organization, has addressed this issue in its Standard Test Method for Warp End Count and Filling Pick Count of Woven Fabric, Designation: D3775-03a. Section 9.1.4 instructs: "Count individual warp yarns (ends) and filling yarns (picks) as single units regardless of whether they are comprised of single or plied components."

A representation about thread count, like other objective, material claims about a product, must be supported by a "reasonable basis." In determining what constitutes a reasonable basis for claims, we consider what experts in the field believe is appropriate, including whether there are relevant consensus based test procedures, such as an ASTM test procedure, or other widely accepted industry practices that apply to the matter. If so, we give such procedures or practices great weight in determining whether the advertiser has met its substantiation burden.

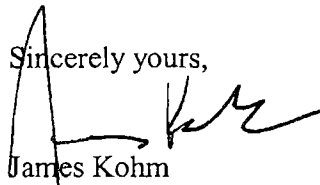
Based upon the ASTM standard, as well as the information you have provided about standard industry practices with regard to disclosing thread count, we believe that consumers could be deceived or misled by the practice of stating an inflated thread count, achieved by multiplying the actual count by the number of plies within the yarn. A possible non-deceptive way to disclose both the thread count and the yarn ply would be to state, for example: "300 thread count, 2 ply yarn." A representation of "600 thread count" for this same product would likely mislead consumers about the quality of the product being purchased.

I also wish to bring to your attention a 1996 closing letter, placed on the FTC public record, terminating an investigation of possibly deceptive practices in connection with the packaging of down comforters. In that instance, the staff determined that no further Commission action was warranted when the company notified the staff that it was changing its package product description from "finely woven 760 threads per sq. inch" to "finely woven 380 2-ply fabric." A copy of this closing letter is attached.

In accordance with Section 1.3(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 1.3(c), this is a staff opinion only and has not been reviewed or approved by the Commission or by any individual Commissioner, and is given without prejudice to the right of the Commission later to rescind the advice and, where appropriate, to commence an enforcement action. In accordance with Section 1.4 of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 1.4, your request for advice, along with this response, will be placed on the public record.

We appreciate your taking the time to write to us. Please feel free to call Steve Ecklund at 202-326-2841 if you have any further questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James Kohm", is written over a horizontal line.

James Kohm

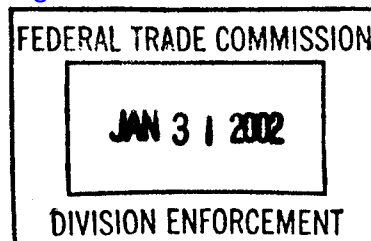
Associate Director for Enforcement

Enclosure

EXHIBIT C



AMERICAN TEXTILE
MANUFACTURERS INSTITUTE



January 31, 2002

Mr. Steve Ecklund
Federal Trade Commission
Division of Enforcement
Washington, DC 20580

Re: Request for FTC Staff
Opinion on Yarn Count

Dear Mr. Ecklund:

It has come to our attention again that some companies are marketing bed sheets and pillowcases to U.S. consumers where extremely high yarn or thread counts are claimed – some as high as 1000 count. We believe these products are mislabeled, creating deceptive information for the consumer.

Labeling these products based on a count that includes each ply in plied yarns deceives the customer into believing that bedding products with higher counts are better when, in fact, they might be inferior because of the method used to determine the count. We wrote to the Commission regarding this same issue on February 24, 1997 (copy enclosed) and provided a fabric sample and independent lab report verifying our position.

In many cases, these extremely high counts are achieved by counting yarns within a ply as individual yarns, thus dramatically increasing the number of yarns in a square inch of fabric. A plied yarn is one in which two or more yarns are twisted together to form a single strand.

ATMI believes this method of labeling products based on counting each individual yarn in plies to be a deceptive practice, which misleads the American



1130 Connecticut Ave., NW • Suite 1200 • Washington, DC 20036-3954
202-862-0500 • fax: 202-862-0570 • <http://www.atmi.org>
fax on demand: 202-862-0572



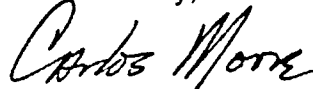
public into making decisions to purchase items, based on false and misleading information.

ASTM method D 3775-96 (Standard Test Method for Fabric Count of Woven Fabric) is the long-accepted industry standard for determining count. This method has been in use in this country for many years and serves as the industry's standard way to report the count of many woven textile fabrics, including sheeting. It is based on the number of yarns in the warp direction and filling direction, regardless of ply, and has become an important parameter used by consumers to judge the quality of sheeting products, since the higher the count, the more luxurious the product.

ATMI believes that any information provided to the consumer should be true and correct so as not to be deceptive or mis-leading. We believe that plied yarns are properly counted as only one yarn. For example, a fabric containing 250 individual four ply yarns in a square inch would be described as a "250 thread count fabric, even though each thread or yarn contained four plies twisted together." It would be false and mis-leading to describe this as a 1000 thread count product.

ATMI requests a staff opinion from the Federal Trade Commission on this issue. We believe that manufacturers, importers and retailers of bed sheets should rely on the ASTM D3775-96 standard test method to determine count.

Sincerely,

A handwritten signature in black ink that reads "Carlos Moore". The signature is written in a cursive, flowing style.

Carlos Moore
Executive Vice President

Enclosure

EXHIBIT D



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
600 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20580

Division of Enforcement
Bureau of Consumer Protection

March 18, 2002

Mr. Carlos Moore
Executive Vice President
American Textile Manufacturers Institute
1130 Connecticut Ave., NW, Suite 1200
Washington, DC 20036-3954

Re: Request for FTC Staff Opinion concerning Thread Count

Dear Mr. Moore:

This is in reply to your letter requesting a Commission staff opinion regarding the appropriate method for determining fabric "thread count," or yarns per square inch, in textile products such as bed sheets and pillow cases. You state that some companies are marketing bedding products with extremely high yarn or thread counts, achieved by counting yarns within a ply as individual yarns, thus dramatically and deceptively increasing the number of yarns in a square inch of fabric. You make specific reference to the American Society for Testing and Materials (ASTM) test method D 3775, titled "Standard Test Method for Fabric Count of Woven Fabric," and you express the view that this method is the long-accepted industry standard for determining thread count.

Under the Commission's Rules of Practice, 16 C.F.R. § 1.1(a), the Commission (and, under delegated authority, its staff) may render an advisory opinion with respect to a prospective course of conduct proposed by the requesting party:

§ 1.1 Policy.

(a) Any person, partnership, or corporation may request advice from the Commission with respect to a course of action which the requesting party proposes to pursue.

In this instance, ATMI is not seeking advice with respect to a course of conduct it proposes to pursue. Rather, ATMI is seeking an opinion as to whether certain representations made by some industry members with regard to thread count might be considered deceptive under the FTC Act. As such, the question is not appropriate for issuance of a staff advisory opinion.

Mr. Carlos Moore
page 2

Although we are unable to provide you with a staff advisory opinion about whether counting yarns within a ply as individual yarns would be deceptive, we can advise you as to how the Commission staff generally would analyze such claims. A thread count claim, like other objective, material claims about a product, must be supported by a "reasonable basis." In determining what constitutes a reasonable basis for claims, we would consider what experts in the field believe is appropriate, including whether there are relevant consensus based test procedures, such as an ASTM test procedure, or other widely accepted industry practices that apply to the matter. If so, we would give such procedures or practices great weight in determining whether the advertiser has met its substantiation burden. In other related contexts, the Commission has encouraged the use of ASTM tests. *See* Press Release, FTC Announces Actions on Wool Labeling Rules, dated March 8, 1994 (copy attached) ("In its clarification of the procedure used for testing the fiber content of wool products, the FTC said the industry members should, where possible, use procedures established by the American Society for Testing and Materials (ASTM).")

I also wish to bring to your attention a closing letter that is on the public record concerning an investigation of possibly deceptive practices in connection with the packaging of down comforters. In that instance, the staff determined that no further Commission action was warranted when the company notified the staff that it was changing its package product description from "760 White Goose Down" to "finely woven 380 2-ply fabric." (copy attached).

Pursuant to Section 1.4 of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 1.4, your letter, together with this response, will be placed on the public record.

I hope you will find the above information helpful.

Sincerely yours,



Elaine D. Kolish
Associate Director for Enforcement

Enclosures