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17 **UNITED STATES DISTRICT COURT**
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
19 **WESTERN DIVISION**

20 **KNUT GREVLE**, an Individual,
21 Individually and on Behalf of All Others
22 Similarly Situated,

23 Plaintiff,

24 v.

25 **CLOSETS BY DESIGN, INC.**, a
26 California Corporation, and **CBD**
27 **FRANCHISING, INC.**, a California
28 Corporation,

Defendants.

Case No: 2:19-cv-3881

CLASS ACTION COMPLAINT FOR:

- (1) **Violation of California's Unfair Competition Laws;**
- (2) **Violation of California's False Advertising Laws;**
- (3) **Violations of California Consumer Legal Remedies Act.;**
- (4) **Violations of the Consumer Protection Laws on Behalf of Classes in States with Similar Laws;**
- (5) **Unjust Enrichment;**
- (6) **Breach of Contract;**
- (7) **Fraud in the Inducement;**
- (8) **Breach of Express Warranty;**
- and
- (9) **Violation of Magnuson-Moss Warranty Act;**

JURY TRIAL DEMANDED

1 Plaintiff Knut Grevle alleges the following based upon personal knowledge as to
2 himself and his own acts, and, as to all other matters, upon information and belief and
3 investigation of counsel, which included, among other things, a review of public
4 documents, advertising materials, and public statements concerning, transmitted, or
5 made by or on behalf of Closets by Design, Inc. (“CBD, Inc.”) or CBD Franchising,
6 Inc. (“CBD Franchising,” collectively “Closets by Design” or “Defendants”). Plaintiff
7 believes that substantial additional evidentiary support exists for the allegations set forth
8 herein and will be available after a reasonable opportunity for discovery.

9 **I. JURISDICTION AND VENUE**

10 1. This Court has jurisdiction over this action under the Class Action Fairness
11 Act, 28 U.S.C. §1332(d). The aggregated claims of the individual Class members
12 exceed the sum or value of \$5,000,000, exclusive of interests and costs; there are more
13 than 100 members of the proposed Class; and this is a class action in which there is
14 minimal diversity because at least one member of the proposed nationwide Class is a
15 citizen of a different state than Defendants. This Court also has jurisdiction over the
16 Magnuson-Moss Warranty Act claim pursuant to 28 U.S.C. § 1331. This Court has
17 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a),
18 because they are so related to the MMWA claim that they form part of the same case or
19 controversy.

20 2. This Court has personal jurisdiction over Defendants because they are
21 California corporations, headquartered in the State of California, systematically and
22 continuously conducted business in and throughout the State, and intentionally avail
23 themselves of the markets within California through the advertising and sale of their
24 products. Moreover, their wrongful conduct, as described herein, emanated from
25 California and foreseeably affects consumers in California.

26 3. Venue is proper in this District under 28 U.S.C. §1391(b)(1), because
27 Defendants each reside in this District. Defendants are deemed to reside in this District
28 under 28 U.S.C. §§1391(c)(2) and (d), because they are subject to the Court’s personal

1 jurisdiction with respect to this action and because their contacts with the District are
2 sufficient to subject them to personal jurisdiction. Venue is also proper in this District
3 under 28 U.S.C. §1391(b)(2), because a substantial part of the events or omissions
4 giving rise to Plaintiff's claims occurred in this District. Specifically, Defendants'
5 wrongful conduct relating to the deceptive pricing scheme described herein emanated
6 and was directed from this District. A venue affidavit pursuant to California Civil Code
7 §1780(d) is attached as **Exhibit 1**.

8 **II. INTRODUCTION**

9 4. This action seeks to remedy Defendants' unfair, deceptive, and unlawful
10 business practices with respect to the advertising and sales of closets, garage cabinets,
11 and other home organizer systems across the United States.

12 5. Throughout the Class Period (defined below), Defendants advertised their
13 home organizer systems at "40% off" or "\$200 off." These offers represent and warrant
14 that Defendants' products are usually sold at a higher undiscounted price and that the
15 sale offer represents a significant savings over that reference price. In fact, Defendants'
16 "discounted" price is simply their regular price. During the relevant time period,
17 Defendants never offered their home organizer systems for sale or actually sold them at
18 the reference price. Defendants also manufacture their own products and are the
19 exclusive source for them, so there is no basis for the reference price in the market for
20 home organizer systems. Accordingly, the reference price and the supposed "sale"
21 based on the reference price are deceptive and misleading to reasonable consumers.
22 Defendants' offers misrepresent the existence of a discount, the particular worth of
23 Closets By Design products, the perceived value of those products, and the products'
24 resale or market value.

25 6. The Federal Trade Commission prohibits offering these kinds of
26 "fictitious" or "false" bargains because the purchaser does not receive "the unusual
27 value he expects":
28

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

16 C.F.R. §233.1(a) (emphasis added). As the Ninth Circuit observed in *Hinojos v. Kohls Corp.*, the California legislature has likewise “prohibited” retailers from using such “misleading” schemes:

Most consumers have, at some point, purchased merchandise that was marketed as being ‘on sale’ because the proffered discount seemed too good to pass up. Retailers, well aware of consumers’ susceptibility to a bargain, therefore have an incentive to lie to their customers by falsely claiming that their products have previously sold at a far higher ‘original’ price in order to induce customers to purchase merchandise at a purportedly marked-down ‘sale’ price. *Because such practices are misleading—and effective—the California legislature has prohibited them.*

718 F.3d 1098, 1101 (9th Cir. 2013) (emphasis added).

7. Indeed, Defendants’ false and misleading advertising led Plaintiff to believe he was purchasing Closets By Design services and merchandise at a steep discount, when he was actually paying a standard retail price. The existence of the

1 discount and the information it conveyed regarding Closets By Design products were
2 material to Plaintiff and formed part of the basis of the bargain he struck with
3 Defendants. But for Defendants' wrongful conduct, Plaintiff would not have purchased
4 a Closets By Design home organizer system or would have paid less for one. Plaintiff
5 and Class members (defined below) were harmed thereby.

6 8. As a result of this illicit pricing scheme, Defendants violated and continue
7 to violate California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et*
8 *seq.*; California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*; the
9 California Consumer Legal Remedies Act, Civ. Code § 1750, *et seq.*, and the consumer
10 protection laws in states with laws similar to California. Defendants also have been
11 unjustly enriched as a result of their wrongful conduct, breached their contracts with
12 Plaintiff and Class members, fraudulently induced Plaintiff and Class members to
13 purchase Closets By Design products, breached express warranties regarding their
14 products, and violated the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*

15 9. Plaintiff seeks damages, restitution, and disgorgement of all profits and
16 unjust enrichment that Defendants obtained from Class members as a result of their
17 unlawful, unfair, and fraudulent business practices (except as provided by the CLRA).
18 Plaintiff seeks declaratory and injunctive relief enjoining Defendants from continuing
19 the unlawful practices as set forth herein, directing Defendants to identify all victims of
20 their misconduct, ordering Defendants to engage in a corrective advertising campaign,
21 and ordering Defendants to provide an accounting of their profits and unjust enrichment.
22 Plaintiff seeks reasonable attorneys' fees and costs, and such other and further relief as
23 the Court may deem necessary or appropriate.

24 **III. PARTIES**

25 10. Plaintiff Knut Grevle is a citizen of California. On October 26, 2017,
26 Plaintiff used a "40% off" mailer he received from Defendants to purchase several
27 Closets By Design home organization systems to be installed in his home for \$4,900.00.
28 A mailer Plaintiff received from Defendants that is substantially similar to the one he

1 used for this purchase is attached as **Exhibit 2**. Plaintiff paid an initial deposit of
2 \$490.00, \$1,960.00 on delivery, and financed the remaining balance of \$2,450.00 due
3 on those products. A copy of Plaintiff's Purchase Agreement and Design Worksheet are
4 attached as **Exhibit 3**. A copy of Plaintiff's Wells Fargo Home Projects statement dated
5 January 12, 2018 is attached as **Exhibit 4**. Plaintiff's purchase included shelves and
6 drawers installed in his master bedroom. As noted on Plaintiff's Delivery Receipt, the
7 "regular" price for these items was \$3,380.00 and the amount Plaintiff actually paid was
8 \$2,028.00— falsely representing that a 40% discount had been applied. Plaintiff's
9 purchase also included drawers and cabinets installed in another bedroom. The
10 "original" price for those items was \$2,870.00 and the amount Plaintiff actually paid
11 was \$1,722.00—again, falsely representing Defendants applied a 40% discount as noted
12 on Plaintiff's Delivery Receipt. The Delivery Receipt lists the "regular" and actual
13 prices for a cabinet installed in a bathroom (\$847.00 and \$508.00), as well as for several
14 accessories and optional add-ons. A copy of Plaintiff's Delivery Receipt dated
15 November 16, 2017 is attached as **Exhibit 5**. Plaintiff believed Defendants' advertised
16 bargain was genuine. In deciding to complete his purchase, Plaintiff relied on
17 Defendants' offer of "40% off" and would not have purchased anything from
18 Defendants but for their "40% off" offer. Because this offer was false and misleading,
19 Plaintiff has suffered damages as a direct and proximate result.

20 11. On March 27, 2019, Plaintiff mailed a Class Action Notification and Pre-
21 Lawsuit Demand ("Demand") to Defendants to advise them that Plaintiff would seek to
22 represent a class of consumers who, within the relevant time period, purchased
23 Defendants' products and services using a purported discount; to explain the basis for
24 Plaintiff's belief that the purported discount was illegally represented; and to demand
25 corrective action on behalf of all similarly situated consumers. **Exhibit 6**.

26 12. Defendant Closets by Design, Inc. ("CBD Inc.") is a California company
27 with its principal place of business located at 3860 Capitol Ave., Whittier, CA 90601.
28 CBD Inc. is a subsidiary of Home Organizers, Inc., a California company. CBD Inc.

owns and operates the Closets by Design brand's corporate-owned locations, and therefore, is an active and material participant in the deceptive pricing scheme. CBD Inc. also owns and controls the website and landing pages, as well as the print advertising and coupons, where Defendants offered their false and misleading discounts. CBD Inc. received Plaintiff's Demand on April 1, 2019. **Exhibit 7.**

13. Defendant CBD Franchising, Inc. ("CBD Franchising") is a California company with its principal place of business located at 13272 Garden Grove Boulevard, Garden Grove, CA 92843. CBD Franchising is also a subsidiary of Home Organizers, Inc. CBD Franchising is a franchisor that sells Closets by Design branded franchises to franchisees located across the country. CBD Franchising controls the uniform nationwide marketing and advertising program utilized by both the corporate-owned and franchised locations as described herein. CBD Franchising received Plaintiff's Demand on April 2, 2019. **Exhibit 7.**

14. By letter dated April 10, 2019, Defendants confirmed receipt of Plaintiff's Demand. **Exhibit 8.** To date, neither Defendant has responded in words or conduct to the Demand.

IV. SUBSTANTIVE ALLEGATIONS

A. Closets by Design's Business and Uniform Nationwide Advertising Practices

15. Since 2001, Defendants have been operating retail outlets that sell, manufacture, and install closets, home and office organizers, and related products throughout the United States. Defendants both directly own Closets By Design stores, and franchise them to independent operators.

16. As of July 2018, Defendants owned or franchised 57 Closets By Design outlets. This number includes 47 franchised outlets in the United States, 7 franchised outlets in Canada, and 3 corporate-owned outlets in California. In addition to the 3 corporate-owned outlets in California, there is a fourth outlet owned by a franchisee.

17. Throughout the Class Period, Defendants have operated an e-commerce website (www.closetsbydesign.com) (the “Website”). This Website includes information reflecting the nationwide scope of Defendants’ business, including a list of over 50 regions where Defendants conduct business. *See Closets By Design, Locations*, <https://www.closetsbydesign.com/locations>.

18. Defendants also use the Closets By Design Website to disseminate information concerning their products and services, including their materially false and misleading sales offers, on a nationwide basis. Currently, for example, clicking either the “Get Started Now” or “Find Out How” buttons on the Website homepage leads to a page with the same “40% off” offer that Plaintiff used in 2017 for his purchase:

SCHEDULE A FREE IN-HOME DESIGN CONSULTATION

40% Off Plus Free Installation.

Ask about our 12 month Special Financing. To get started, complete and submit this form.

Closets By Design, *Schedule A Free In-Home Design Consultation*, <https://www.closetsbydesign.com/ScheduleRequests>.

19. This Website contains pages for each of the Closets By Design outlets in the U.S. and Canada, which Defendants also use to disseminate their false and misleading advertisements. Each of these outlet pages, which are identical in all material respects, have a “Check Out Coupons For This Location” button that leads to advertising materials. For example, the offer accessible through the “Fresno CA” page is for “40% off” and for the “Southern CA” region “\$200 off”:

**40% Off Plus
Free Installation**

40% off any order of \$1000 or more. 30% off any order of \$700 or more. Not valid with any other offer. Free Installation with any complete unit order of \$500 or more. With incoming order, at time of purchase only.

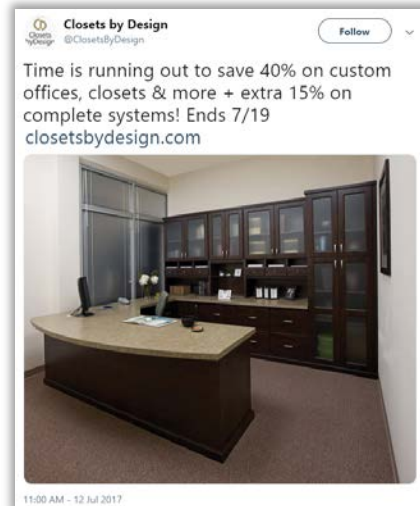
**\$200 Off plus
Free Installation**

\$200 off any order of \$1000 or more. \$100 off any order of \$700 or more. Not valid with any other offer. Free Installation with any complete unit order of \$500 or more. With incoming order, at time of purchase only.

Closets By Design, *Coupons*, <https://fresno.closetsbydesign.com/coupons>; Closets By Design, *Coupons*, <https://southerncalifornia.closetsbydesign.com/coupons>. One of these two offers is currently accessible on *every* one of the outlet pages on Defendants' website.

20. Defendants have offered these identical online "coupons" through their Website continuously during the Class Period. Beginning at least in or around July 2014, Defendants offered coupons for \$200 off plus free installation for all outlets through their Website. Beginning in late 2015, they began offering coupons for 40% off plus free installation for certain outlets, while other outlets maintained the \$200 off coupons. Since that time, Defendants have continued to offer one of these two coupons continuously and without interruption.

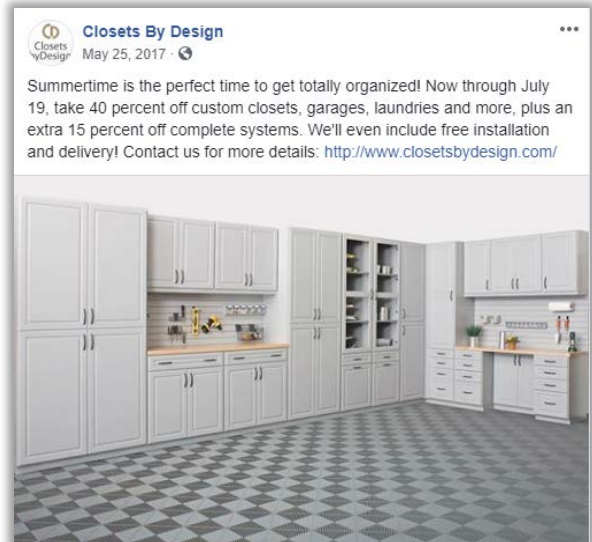
21. Defendants also used social media to broadcast their "sales." For example, Defendants used their Closets By Design Twitter account (@ClosetsByDesign), which they established in October 2009 and which links to the Website, to continuously market and promote variations of its 40% off "sale" price since December 2015:





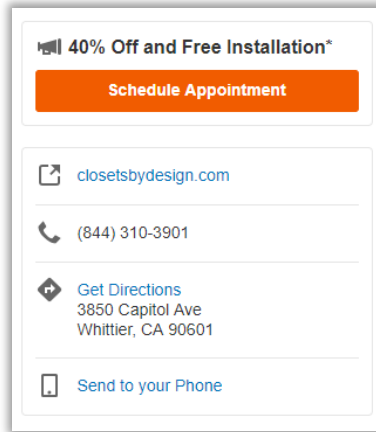
Twitter, @ClosetsByDesign,
<https://twitter.com/ClosetsByDesign/status/679700791603630082;> https
[://twitter.com/ClosetsByDesign/status/885151941239681025;](https://twitter.com/ClosetsByDesign/status/885151941239681025;)
[https://twitter.com/ClosetsByDesign/](https://twitter.com/ClosetsByDesign/status/1042914814853636097;) status/1042914814853636097;
[https://twitter.com/ClosetsByDesign/status/1086637160239939585.](https://twitter.com/ClosetsByDesign/status/1086637160239939585)

22. Defendants also used their Facebook account (@closetsbydesign), which also links to the Website, to promote the offers described herein:



Facebook, *Closets By Design*, <https://www.facebook.com/closetsbydesign/>.

23. Defendants used the Yelp.com sites associated with individual Closets By Design outlets to advertise their “sale” offers:



Yelp.com, *Closets By Design*, <https://www.yelp.com/biz/closets-by-design-whittier-5>.

24. Defendants also advertise through more traditional means, like print and television media. For example, Closets by Design distributes their “sale” offers to consumers via direct mail advertising on a nationwide basis. The front and back of the sample mailer below, for example, provide a nationwide toll-free contact phone number for a consultation and estimate that contains the same 40% off offer Plaintiff relied upon for his purchase in 2017:



1 25. Accordingly, since at least in or around July 2014, Defendants have
2 engaged in a nationwide, continuous, and uniform multimedia advertising campaign
3 that centered on percentage and dollar-off discounts to consumers for Closets By Design
4 home organizer systems. Defendants' promotional offers were and remain, however,
5 illusory. Based on the continuous nature of the marketing campaign, Plaintiff is
6 informed and believes that Closets by Design merchandise and services are never sold
7 to customers at undiscounted reference prices.

8 26. Defendants' "40% off" and "\$200 off" offers are predicated on fictitious
9 reference prices and mislead consumers regarding the value of Closets By Design home
10 organizer systems. Defendants' representations are likely to mislead reasonable
11 consumers into believing that Defendants' sale prices are significantly lower than the
12 prices regularly offered for those products by Defendants, or offered by other merchants
13 for similar products, and that consumers would enjoy significant savings by purchasing
14 those products from Defendants instead of from other merchants.

15 27. Because value and sale prices matter and are material to consumers,
16 Defendants' knew or should have known that consumers would rely on their false and
17 misleading promotional offers and would be induced to purchase home organizer
18 systems they would not otherwise have purchased, or would pay more for those systems
19 than they would have paid but for Defendants' false and misleading advertising.
20 Defendants' false and misleading pricing scheme thus made it more likely that
21 consumers would purchase particular products from Defendants, and benefited
22 Defendants immensely.

23 **B. Federal and State Laws Prohibit Deceptive Pricing Schemes**

24 28. The Federal Trade Commission Act prohibits "unfair or deceptive acts or
25 practices in or affecting commerce." 15 U.S.C. §45(a)(1). The FTCA specifically makes
26 it "unlawful for any person, partnership, or corporation to disseminate, or cause to be
27 disseminated, any false advertisement." 15 U.S.C. §52(a).
28

1 29. Under the FTCA, advertising must be truthful and non-deceptive,
2 advertisers such as Defendants must have evidence to back up their claims, and
3 advertisements cannot be unfair. An advertisement is deceptive, according to the FTC,
4 if it contains a misstatement or omits information that is likely to mislead consumers
5 acting reasonably under the circumstances, and the statement or omitted information is
6 material—that is, important to a consumer’s decision to buy or use the product.

7 30. The FTC has issued regulations describing misleading discount price
8 comparison schemes such as those used by Defendants as deceptive. Besides 16 C.F.R.
9 §233.1(a), quoted in ¶ 3, *supra*, the FTC has also promulgated regulations warning
10 retailers not to advertise former prices “for the purpose of establishing a fictitious higher
11 price on which a deceptive comparison might be based”:

12 A former price is not necessarily fictitious merely because no sales at
13 the advertised price were made. The advertiser should be especially
14 careful, however, in such a case, that the price is one at which the
15 product was openly and actively offered for sale, for a reasonably
16 substantial period of time, in the recent, regular course of his business,
17 honestly and in good faith—and, of course, not for the purpose of
18 establishing a fictitious higher price on which a deceptive comparison
19 might be based. And the advertiser should scrupulously avoid any
20 implication that a former price is a selling, not an asking price (for
21 example, by use of such language as, “Formerly sold at \$ ”), unless
22 substantial sales at that price were actually made.

23 16 C.F.R. §233.1(b). The FTC has likewise cautioned retailers to “make certain that the
24 former price is not a fictitious one”:

25 If the former price is set forth in the advertisement, whether
26 accompanied or not by descriptive terminology such as “Regularly,”
27
28

1 “Usually,” “Formerly,” etc., the advertiser should make certain that the
2 former price is not a fictitious one.

3 16 C.F.R. §233.1(e). The FTC requires that any “advertised higher price must be
4 based upon fact, and not be fictitious and misleading”:

5 Another commonly used form of bargain advertising is to offer goods
6 at prices lower than those being charged by others for the same
7 merchandise in the advertiser’s trade area (the area in which he does
8 business). This may be done either on a temporary or a permanent basis,
9 but in either case the advertised higher price must be based upon fact,
10 and not be fictitious or misleading. Whenever an advertiser represents
11 that he is selling below the prices being charged in his area for a
12 particular article, he should be reasonably certain that the higher price
13 he advertises does not appreciably exceed the price at which substantial
14 sales of the article are being made in the area—that is, a sufficient
15 number of sales so that a consumer would consider a reduction from
16 the price to represent a genuine bargain or saving.

17 16 C.F.R. §233.2(a). Irrespective of the particular nature of any advertisement, the FTC
18 requires advertisers to “make certain that the bargain offer is genuine and truthful”:

19 The practices covered in the provisions set forth above represent the
20 most frequently employed forms of bargain advertising. However, there
21 are many variations which appear from time to time and which are, in
22 the main, controlled by the same general principles. For example,
23 retailers should not advertise a retail price as a “wholesale” price. They
24 should not represent that they are selling at “factory” prices when they
25 are not selling at the prices paid by those purchasing directly from the
26 manufacturer. They should not offer seconds or imperfect or irregular
27 merchandise at a reduced price without disclosing that the higher
28

1 comparative price refers to the price of the merchandise if perfect. They
2 should not offer an advance sale under circumstances where they do not
3 in good faith expect to increase the price at a later date, or make a
4 “limited” offer which, in fact, is not limited. In all of these situations,
5 as well as in others too numerous to mention, advertisers should make
6 certain that the bargain offer is genuine and truthful. Doing so will serve
7 their own interest as well as that of the public.

8 16 C.F.R. §233.5. Defendants’ “40% off” and “\$200 off” offers fail to satisfy the
9 principles set forth in the FTCA for several reasons. For example, their sale offer is
10 predicated on “an artificial, inflated price” that Defendants “established for the purpose
11 of enabling the subsequent offer of a large reduction” in price, 16 C.F.R. §233.1(a), so
12 their “bargain offer” is not “genuine and truthful,” 16 C.F.R. §233.5.

13 31. Like the FTC, the California legislature has specifically forbidden false or
14 misleading price comparison schemes. By statute, California law states that retailers
15 may not advertise a “former price of any advertised thing” unless it was “the prevailing
16 market price . . . within three months next immediately preceding the publication of the
17 advertisement”:

18 For the purpose of this article the worth or value of anything advertised
19 is the prevailing market price, wholesale if the offer is at wholesale,
20 retail if the offer is at retail, at the time of publication of such
21 advertisement in the locality wherein the advertisement is published.
22 No price shall be advertised as a former price of any advertised thing,
23 unless the alleged former price was the prevailing market price as above
24 defined within three months next immediately preceding the
25 publication of the advertisement or unless the date when the alleged
26 former price did prevail is clearly, exactly and conspicuously stated in
27 the advertisement.
28

1 Cal. Bus. & Prof. Code §17501. Under California law, false or misleading statements
2 of fact concerning the existence of or amounts of price reductions made by any person
3 in a transaction that results in the sale or lease of goods or services to any consumers
4 are unlawful:

5 The following unfair methods of competition and unfair or deceptive
6 acts or practices undertaken by any person in a transaction intended to
7 result or that results in the sale or lease of goods or services to any
8 consumer are unlawful: . . . Making false or misleading statements of
9 fact concerning reasons for, existence of, or amounts of price
10 reductions.

11 Cal. Civ. Code §1770(a)(13). Defendants' "40% off" and "\$200 off" offers violate Cal.
12 Bus. & Prof. Code §17501, because their undiscounted reference prices are not
13 "prevailing market" prices. Similarly, Defendants' sale offers are "unlawful" within the
14 meaning of Cal. Civ. Code §1770(a)(13) because they falsely convey the "existence of"
15 and "amounts of" price discounts.

16 **C. Defendants Exercised Exclusive Control Over Closets By Design**
17 **Advertising**

18 32. Despite the franchise business model, control over the Closets By Design
19 advertising campaign is centralized with and tightly controlled by Defendants from their
20 corporate headquarters in California. Accordingly, Defendants knew or should have
21 known that Closets By Design advertising conveyed (and continues to convey) false
22 information to consumers, including Plaintiff and Class members, about the true price,
23 worth, perceived value, and resale value of their home organizer systems.

24 33. That Closets By Design advertising is "corporate run" is stated explicitly
25 on Defendants' Website:

- We have more than a 30-year history of success and a strong brand identity. Customers know our name and the quality that comes with owning a Closets by Design solution.
- Our established business and sales model has proven to be successful time and time again.
- Our extensive support team will provide initial training to get you started and offers ongoing support for continued business expansion.
- **Our Franchisees have proven that Closets by Design Franchises are an Excellent Cash Flow Business** with high gross margins and yet they maintain low inventory.
- **The corporate run, highly effective national advertising and marketing programs generate leads and customer awareness.**
- Our custom customer relationship management system assists with daily operations.
- We offer exclusive, prime territories.

Closets By Design, *About Closets by Design*, <https://franchise.closetsbydesign.com/about-closets-by-design/> (annotated). This statement is repeated again elsewhere on the Website. See Closets By Design, *FAQ's*, <https://franchise.closetsbydesign.com/faqs/> (“Why should I franchise with Closets By Design? . . . The *corporate run*, highly effective national advertising and marketing programs generate leads and customer awareness.”) (emphasis added).

34. Defendants’ control over advertising is also embodied in materials they provide their franchisees. A “Franchise Disclosure Document” filed with the State of California states that Defendants operate a “National Promotion and Protection Fund,” which they used for the national promotion, enhancement, and protection of the Closets By Design system and which is funded by franchisees’ monthly contributions of 2.25% of their monthly gross revenues:

National Promotion and Protection Fund ¹	National Fund Contribution of 2.25% of monthly Gross Revenues This fee is included in the Required Advertising Expenditures described above and in footnote 3 below	On or before the 5th day of each calendar month after the calendar month in which Gross Revenues were received While the final National Fund Contribution is calculated monthly, we will make weekly withdrawals from your account in an amount we estimate to be that week's portion of the monthly National Fund Contribution	These fees are used for the national promotion, enhancement and protection (including if necessary attorneys fees) of the Closets By Design system, the trademarks, goodwill and reputation of CBDF They are not used for new franchise sales expenses See Item 11
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(Franchise Disclosure Documents are prepared under the Federal Trade Commission’s Franchise Rule, 16 CFR §§ 436, *et seq.*, to give prospective purchasers of franchises the

1 material information they need in order to weigh the risks and benefits of such an
2 investment.)

3 35. Defendants' rights with respect to controlling Closets By Design
4 advertising are not, however, limited to promoting and protecting the brand. The
5 Franchise Disclosure Document provides Defendants with virtually unlimited control
6 over nearly every aspect of the national advertising scheme, including "the cost, form
7 or media, content, format, production and timing . . . and *all* other matters involving
8 advertising" (emphasis added):

9 CBDF will determine the cost, form or media, content, format, production and timing,
10 including regional or local concentration and seasonal exposure, location and all other
11 matters involving advertising, public relations and promotional campaigns (see section 10 04
12 of the Franchise Agreement) We intend to use the following advertising media direct mail,
13 print media and electronic media where appropriate and cost effective The media coverage
14 may be local, regional or national We will be using in-house advertising personnel, but we
also intend to engage the services of advertising and public relations firms to assist in our
advertising program We may but are not obligated to spend any National Promotion and
Protection Funds in the territory where you are located

15 The Franchise Disclosure Document permits franchisee operators to develop their own
16 advertising (at their own cost), but prevents them from using such materials without
17 Defendants' prior written approval as to the content of the advertising and the medium
18 of dissemination:

19 You may develop advertising materials for your
own use, at your own cost But we must approve the advertising materials in advance and in
writing You may not, without our prior written consent, advertise in any medium we have
20 not previously approved in writing or use any advertising outlet through which we maintain
a system-wide advertising program (e g Val Pak, Money Mailer and other outlets we
21 identify from time to time)

22 36. Defendants' broad control over Closets By Design advertising is also
23 reflected in the most recent sample Franchise Agreement filed with the State of
24 California. Like the Franchise Disclosure Document, Defendants' Franchise Agreement
25 states that franchisees can only use advertising materials "either furnished or approved
26 in writing in advance" by Defendants:

27 You may only use advertising which we have either furnished or approved in writing in advance, as
28 provided in Section 10 02 below Neither the fact that we furnish the material, approve of the material, nor the
material itself, will directly or indirectly require us to pay for any advertising, identification or promotion

1 The Franchise Agreement provides further that Defendants will “direct all [national]
2 advertising programs” and exercise “sole control” over them:

3 We will direct all advertising programs with sole control over the creative concepts, materials
4 and media used in the programs and the placement and allocation of advertising

5 Accordingly, the wrongful advertising scheme alleged herein is attributable exclusively
6 to Defendants, and not to any independent franchise owners.

7 **V. CLASS ALLEGATIONS**

8 37. Plaintiff brings this action as a class action pursuant to Rules 23(a),
9 23(b)(2) and/or 23(b)(3) of the Federal Rule of Civil Procedure for the following Class
10 of persons:

11 All consumers who, while residing within the United States, purchased Closets
12 by Design goods subject to a purported “40% off” or “\$200 off” discount within
13 the applicable statutes of limitations period preceding the filing of this action
14 (“Class Period”).

15 Excluded from the Class are (1) consumers who received a complete refund of their
16 purchase or a credit equal to the total amount of their purchase, to the extent any such
17 consumers exist; (2) Defendants, any of their parent companies, subsidiaries, or
18 affiliates, and their officers, directors, and managerial employees; and (3) any judge,
19 justice, or judicial officer presiding over this matter. Plaintiff reserves the right to amend
20 the Class definition if further investigation or discovery indicate that the Class definition
21 should be narrowed, expanded, or otherwise modified.

22 38. This action is brought and may properly be maintained as a class action
23 pursuant to Federal Rule of Civil Procedure 23. This action satisfies the numerosity,
24 typicality, adequacy, predominance, and superiority requirements of those provisions.

25 39. The Class is so numerous that the individual joinder of all its members is
26 impracticable. Due to the nature of the trade and commerce involved, Plaintiff believes
27 that the total number of Class members is in the thousands and that members of the
28 Class are geographically dispersed across the United States. While the exact number

1 and identities of the Class members are unknown at this time, such information can be
2 ascertained through appropriate investigation and discovery.

3 40. Common questions of law and fact exist as to all members of the Class,
4 and these common questions predominate over any questions affecting only individual
5 members of the Class. These common legal and factual questions, which do not vary
6 from Class member to Class member, and which may be determined without reference
7 to the individual circumstances of any Class member include, but are not limited to, the
8 following:

- 9 a. whether Defendants violated provisions of the FTCA and federal
10 regulations through the pricing, advertising, and marketing of their
11 merchandise;
- 12 b. whether Defendants' pricing, advertising, and marketing of their
13 merchandise was false and misleading;
- 14 c. whether Defendants' conduct constitutes an unlawful, or fraudulent
15 business practice in violation of California's unfair competition law
16 (Cal. Bus. & Prof. Code §17200, *et seq.*);
- 17 d. whether Defendants' conduct constitutes a violation of California's
18 false advertising law (Cal. Bus. & Prof. Code §17500, *et seq.*);
- 19 e. whether Defendants' conduct constitutes a violation of the
20 Consumers Legal Remedies Act (Cal. Civ. Code §1750, *et seq.*);
- 21 f. whether Defendants' conduct constitutes violation of the consumer
22 protection laws of states other than California;
- 23 g. whether Defendants were unjustly enrichment by their conduct;
- 24 h. whether Defendants breached their contracts with Plaintiff and Class
25 members;
- 26 i. whether Defendants' "sale" offers constitute express or written
27 warranties;
- 28

- j. whether Defendants breached such warranties in violation of common law or the Manguson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*;
- k. whether Plaintiff and the Class are entitled to compensatory damages, and, if so, the nature and amount of such damages;
- l. whether Plaintiff and the Class are entitled to restitution, and, if so, the nature and amount of such relief;
- m. whether Plaintiff and the Class are entitled to rescission; and
- n. whether Plaintiff and the Class are entitled to injunctive and declaratory relief.

41. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by Defendants' common course of conduct concerning Closets by Design merchandise and services.

42. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in handling complex class action litigation. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class.

43. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the Class is impracticable. Even if individual members of the Class had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendants' common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and efficient handling of all Class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system

1 and protects the rights of the Class. Furthermore, for many, if not most, a class action
2 is the only feasible mechanism that allows an opportunity for legal redress and justice.

3 44. This action is maintainable as a class action under Federal Rule of Civil
4 Procedure 23(b)(2) because Defendants have acted or refused to act on grounds
5 generally applicable to the Class, thereby making appropriate final injunctive relief
6 respecting the Class as a whole.

7 45. This action is maintainable as a class action under Federal Rule of Civil
8 Procedure 23(b)(3) because the common questions of law and fact identified above,
9 without limitation, predominate over any questions affecting only individual members,
10 and a class action is superior to other available methods for the fair and efficient
11 adjudication of this controversy.

12 **VI. CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION** 14 **Violation of California's Unfair Competition Law ("UCL")** 15 **California Business and Professions Code § 17200, *et seq.***

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

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

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

24 ***"Fraudulent" Prong***

25 49. A business act or practice is "fraudulent" under the UCL if it is likely to
26 deceive members of the consuming public.

27 50. Defendants' acts and practices alleged above constitute fraudulent
28 business acts or practices as they have deceived Plaintiff and are highly likely to deceive
members of the consuming public. Plaintiff relied on Defendants' fraudulent and

1 deceptive representations regarding its “reference” prices for Closets By Design
 2 products and services. These misrepresentations played a substantial role in Plaintiff’s
 3 decision to purchase those products at steep “discounts,” and Plaintiff would not have
 4 purchased those products without Defendants’ misrepresentations.

5 ***“Unlawful” Prong***

6 51. A business act or practice is “unlawful” under the UCL if it violates any
 7 other law or regulation.

8 52. Defendants’ acts and practices alleged above constitute unlawful business
 9 acts or practices as they have violated state and federal law in connection with their
 10 deceptive pricing scheme. The FTCA prohibits “unfair or deceptive acts or practices in
 11 or affecting commerce,” 15 U.S.C. § 45(a)(1), and prohibits the dissemination of any
 12 false advertisements, 15 U.S.C. § 52(a). According to the FTC, false former pricing
 13 schemes, similar to the one implemented by Defendants, are described as deceptive
 14 practices that would violate the FTCA:

15 (a) One of the most commonly used forms of bargain advertising is to
 16 offer a reduction from the advertiser’s own former price for an article.
 17 If the former priced is the actual, bona fide price at which the article
 18 was offered to the public on a regular basis for a reasonably substantial
 19 period of time, it provides a legitimate basis for the advertising of a
 20 price comparison. Where the former price is genuine, the bargain being
 21 advertised is a true one. If, on the other hand, the former price being
 22 advertised is not bona fide but fictitious – for example, where an
 23 artificial, inflated price was established for the purpose of enabling the
 24 subsequent offer of a large reduction – the “bargain” being advertised
 25 is a false one; the purchaser is not receiving the unusual value he
 26 expects. In such a case, the “reduced” price is, in reality, probably just
 27 the seller’s regular price.
 28

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

9 16 C.F.R. § 233.1(a) and (b).

10 53. In addition to federal law, California law also expressly prohibits false
11 former pricing schemes. California’s False Advertising Law, Bus. & Prof. Code
12 §17501, (“FAL”), entitled “Worth or value; statements as to former price,” states:

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

17
18 No price shall be advertised as a former price of any advertised thing,
19 unless the alleged former price was the prevailing market price as above
20 defined within three months next immediately preceding the
21 publication of the advertisement or unless the date when the alleged
22 former price did prevail is clearly, exactly and conspicuously stated in
23 the advertisement.

24 Cal. Bus. & Prof. Code § 17501.

25 54. As detailed in Plaintiff’s Third Cause of Action below, the Consumer
26 Legal Remedies Act, Cal. Civ. Code § 1770(a)(9) (“CLRA”), prohibits a business from
27 “[a]dvertising goods or services with intent not to sell them as advertised,” and
28

1 subsection (a)(13) prohibits a business from “[m]aking false or misleading statements
2 of fact concerning reasons for, existence of, or amounts of price reductions.”

3 55. The violation of these statutes constitute “unlawful” business practice
4 under the UCL.

5 56. As detailed herein, the acts and practices alleged were intended to or did
6 result in violations of the FTCA, the FAL, and the CLRA.

7 57. Defendants’ practices, as set forth above, misled Plaintiff, the have a high
8 likelihood of deceiving reasonable consumers and the general public in the past and will
9 continue to do so in the future. Consequently, Defendants’ practices constitute an
10 unlawful and fraudulent business practices within the meaning of the UCL.

11 58. Defendants’ violation of the UCL, through its unlawful and fraudulent
12 business practices, are ongoing and present a continuing threat that Class members and
13 the public will be deceived into purchasing products based on price comparisons of
14 arbitrary and inflated “reference” prices and substantially discounted sale prices. These
15 false comparisons created phantom markdowns and lead to financial damage for
16 consumers like Plaintiff and the Class.

17 59. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent
18 injunctive relief and an order that Defendants cease this unfair competition, as well as
19 disgorgement and restitution to Plaintiff and the Class of all Defendants’ revenues
20 associated with its unfair competition, or such portion of those revenues as the Court
21 may find equitable.

22 **SECOND CAUSE OF ACTION**
23 **Violation of California’s False Advertising Law (“FAL”)**
24 **California Business & Professions Code § 17500, *et seq.***

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

27 61. Cal. Bus. & Prof. Code § 17500 provides:
28

1 It is unlawful for any . . . corporation . . . with intent . . . to dispose of
2 . . . personal property . . . to induce the public to enter into any
3 obligation relating thereto, to make or disseminate or cause to be made
4 or disseminated . . . from this state before the public in any state, in any
5 newspaper or other publication, or any advertising device, or by public
6 outcry or proclamation, or in any other manner or means whatever,
7 including over the Internet, any statement . . . which is untrue or
8 misleading, and which is known, or which by the exercise of reasonable
9 care should be known, to be untrue or misleading[.]”

10 62. The “intent” required by Section 17500 is the intent to dispose of property,
11 and not the intent to mislead the public in the disposition of such property.

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

17 64. Defendants’ routine of advertising discounted prices from false
18 “reference” prices, which were never the prevailing market prices of those products and
19 were materially greater than the true prevailing prices, was a false, misleading and
20 unlawful business practice. This deceptive marketing practice gave Plaintiff the false
21 impression that the products he purchased were regularly sold on the market for a
22 substantially higher price than they actually were; therefore, leading to the false
23 impression that the Closets By Design home organizer systems were worth more than
24 they actually were.

25 65. Pursuant to the FAL, Plaintiff is entitled to preliminary and permanent
26 injunctive relief and an order that Defendants cease this unfair competition, as well as
27 disgorgement and restitution to Plaintiff and the Class of all Defendants’ revenues
28

1 associated with its unfair competition, or such portion of those revenues as the Court
2 may find equitable.

3 **THIRD CAUSE OF ACTION**
4 **Violation of California's Consumers Legal Remedies Act ("CLRA"),**
5 **California Civil Code § 1750, *et seq.***

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

8 67. This cause of action is brought pursuant to the CLRA, Cal. Civ. Code §
9 1750, *et seq.* Plaintiff and each member of the proposed Class are "consumers" as
10 defined by Cal. Civ. Code § 1761(d). The sale of Closets By Design services and
11 merchandise to Plaintiff and the Class were "transactions" within the meaning of Cal.
12 Civ. Code § 1761(e). The products purchased by Plaintiff and the Class are "goods" and
13 "services" within the meaning of Cal. Civ. Code § 1761(a).

14 68. Defendants violated and continue to violate the CLRA by engaging in the
15 following practices proscribed by Cal. Civ. Code § 1770(a) in transactions with Plaintiff
16 and the Class which were intended to result in, and did result in, the sale of its
17 merchandise and services: Advertising goods or services with intent not to sell them as
18 advertised; (a)(9); and Making false or misleading statements of fact concerning reasons
19 for, existence of, or amounts of price reductions; (a)(13).

20 69. Pursuant to § 1782(a) of the CLRA, on March 27, 2019, Plaintiff's counsel
21 notified Defendants in writing by certified mail of the particular violations of § 1770 of
22 the CLRA and demanded that it rectify the problems associated with the actions detailed
23 above and give notice to all affected consumers of Defendants' intent to act.

24 70. Defendants failed to respond to Plaintiff's CLRA Notice, failed to agree to
25 rectify the problems associated with the actions detailed above, and failed to give notice
26 to all affected consumers within 30 days of the date of the Notice, as proscribed by
27 Section 1782 of the California Civil Code. Plaintiff hereby claims for actual, punitive,
28 and statutory damages, as appropriate against Defendants.

FOURTH CAUSE OF ACTION
Violations of the Consumer Protection Laws on Behalf of Classes
in States with Similar Laws

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

72. Plaintiff brings this Count individually under the laws of California and on behalf of all other persons who have purchased merchandise in states having similar laws regarding deceptive trade practices.

73. Plaintiff and a majority of the other members of the Classes are consumers, purchasers, or other persons entitled to the protection of the consumer protection laws of the state in which they purchased merchandise from Defendants.

74. The consumer protection laws of the states in which Plaintiff and a majority of the other members of the Classes purchased Defendants' merchandise declare that unfair or deceptive acts or practices, in the conduct of trade or commerce, are unlawful.

75. Forty states and the District of Columbia have enacted statutes designed to protect consumers against unfair, deceptive, fraudulent, and unconscionable trade, business practices, and false advertising that allow consumers to bring private and/or class actions.

76. The relevant statutes are found at:

- a. Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-1, *et seq.*;
- b. Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101, *et seq.*;
- c. California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*;
- d. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101, *et seq.*;

- e. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a, *et seq.*;
- f. Delaware Deceptive Trade Practices Act, Del. Code tit. 6 § 2511, *et seq.*;
- g. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
- h. Georgia Fair Business Practices Act, Ga. Code Ann. § 10-1-390, *et seq.*;
- i. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480-1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Haw. Rev. Stat. § 481A-1, *et seq.*;
- j. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. Ann. 505/1, *et seq.*;
- k. Kansas Consumer Protection Act, Kan. Stat. Ann. § 50-626, *et seq.*;
- l. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann. § 365.020, *et seq.*;
- m. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § 51:1401, *et seq.*;
- n. Maine Unfair Trade Practices Act, Me. Rev. Stat. tit. 5 § 205A, *et seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. Tit. 10, § 1211, *et seq.*;
- o. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
- p. Michigan Consumer Protection Act, Mich. Comp. Laws § 445.901, *et seq.*;

1 q. Minnesota Prevention of Consumer Fraud Act, Minn. Stat. Ann. §
2 325F.68, *et seq.*, and Minnesota Uniform Deceptive Trade Practices Act, Minn.
3 Stat. § 325D.43, *et seq.*;

4 r. Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1,
5 *et seq.*;

6 s. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et*
7 *seq.*;

8 t. Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-160, *et*
9 *seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. §
10 87-301, *et seq.*;

11 u. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §
12 598.0903, *et seq.*;

13 v. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-
14 A: 1, *et seq.*;

15 w. New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8 1, *et seq.*;

16 x. New Jersey Truth In Consumer Contract, Warranty, and Notice Act,
17 N.J. Stat. Ann. § 56:12-14, *et seq.*;

18 y. New Mexico Unfair Practices Act, N.M. Stat. Ann. § 57 12 1, *et seq.*;

19 z. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §
20 349, *et seq.*;

21 aa. Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann. §
22 1345.02 and 1345.03; Ohio Admin. Code § 109:4-3-02, 109:4-3-03, and 109:4-3-
23 10;

24 bb. Oklahoma Consumer Protection Act, Okla. Stat. tit. 15 § 751, *et*
25 *seq.*;

26 cc. Oregon Unfair Trade Practices Act, Ore. Rev. Stat. § 646.608(e) &
27 (g);
28

1 dd. South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-
2 10, *et seq.*;

3 ee. South Dakota's Deceptive Trade Practices and Consumer Protection
4 Law, S.D. Codified Laws §§ 37 24 1, *et seq.*;

5 ff. Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101,
6 *et seq.*;

7 gg. Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et*
8 *seq.*; and

9 hh. Wisconsin Deceptive Trade Practices Act, Wis. Stat. § 100.18, *et*
10 *seq.*

11 77. Closets By Design merchandise constitutes products to which these
12 consumer protection laws apply.

13 78. In the conduct of trade or commerce regarding the pricing, advertising,
14 marketing, and sale of its merchandise, Defendants engaged in one or more deceptive
15 acts or practices, including but not limited to, uniformly representing to Plaintiff and
16 each member of the Class by means of the pricing and advertising of its merchandise
17 that it was, among other things, being offered at a discount, as described herein.

18 79. Defendants' representations and omissions were false, untrue, misleading,
19 deceptive, and/or likely to deceive.

20 80. Defendants knew, or should have known, that their representations and
21 omissions were false, untrue misleading, deceptive, or likely to deceive.

22 81. Defendants used or employed such deceptive and unlawful acts or
23 practices with the intent that Plaintiff and members of the Classes rely thereon.

24 82. Plaintiff did so rely, and it was reasonable for similarly situated consumers
25 to have relied on Defendants' representations and omissions as a matter of law.

26 83. Plaintiff purchased merchandise and services in reliance on Defendants'
27 misrepresentations about the existence and magnitude of price discounts offered for the
28

merchandise, and it was reasonable for similarly situated consumers to have relied on Defendants' representations and omissions as a matter of law.

84. Plaintiff would not have purchased such merchandise and services but for Defendants' deceptive and unlawful acts, and reasonable similarly situated consumers would not have purchased Defendants' merchandise and services had they known Defendants' discounts were fictitious as described herein.

85. As a result of Defendants' conduct, Plaintiff and the other members of the Class sustained damages in amounts to be proven at trial.

86. Defendants' conduct showed complete indifference to, or conscious disregard for, the rights of others such that an award of punitive or statutory damages is appropriate under the consumer protection laws of those states that permit such damages to be sought and recovered.

FIFTH CAUSE OF ACTION
Unjust Enrichment

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

88. At all times relevant hereto, Defendants deceptively priced, marketed, advertised, and sold merchandise to Plaintiff and the Class.

89. Plaintiff and members of the Class conferred upon Defendants non-gratuitous payments for merchandise that they would not have if not for Defendants' deceptive pricing, advertising, and marketing. Defendants accepted or retained the non-gratuitous benefits conferred by Plaintiff and members of the Class, with full knowledge and awareness that, as a result of Defendants' deception, Plaintiff and members of the Class were not receiving the discount, reduction, and/or value that had been represented by Defendants and reasonable consumers would have expected.

90. Defendants have been unjustly enriched in retaining the revenues derived from purchases of merchandise and services by Plaintiff and members of the Class, which retention under these circumstances is unjust and inequitable because Defendants

1 misrepresented, among other things, that its merchandise was being offered at a
2 significant discount, which caused injuries to Plaintiff and members of the Class
3 because they paid for, or paid a price premium due to the misleading pricing and
4 advertising.

5 91. Retaining the non-gratuitous benefits conferred upon Defendants by
6 Plaintiff and members of the Class under these circumstances made Defendants'
7 retention of the non-gratuitous benefits unjust and inequitable. Thus, Defendants must
8 pay restitution to Plaintiff and members of the Class for unjust enrichment, as ordered
9 by the Court.

10 **SIXTH CAUSE OF ACTION**
11 **Breach of Contract**

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

14 93. Plaintiff and Class members entered into contracts with Defendants.

15 94. The contracts provided that Plaintiff and Class members would pay
16 Defendants for their products.

17 95. The contracts further provided that Defendants would provide Plaintiff and
18 Class members a liquidated discount on the price of their purchases. This specified
19 discount was a definite and material term of each contract.

20 96. Plaintiff and Class members paid Defendants for the products they
21 purchased, and satisfied all other conditions of the contracts.

22 97. Defendants breached the contracts with Plaintiff and Class members by
23 failing to comply with the material term of providing the promised discount, and instead
24 charged Plaintiff and Class members the full price of the products they purchased.

25 98. As a direct and proximate result of Defendants' breach, Plaintiff and Class
26 members have been injured and have suffered actual damages in an amount to be
27 established at trial.
28

99. Plaintiff notified Defendants in writing of his claims and that the Plaintiff is acting on behalf of the Class. **Exhibits 6–8.**

SEVENTH CAUSE OF ACTION

Fraud in the Inducement

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

101. Since 2014, Defendants have intentionally disseminated and continue to intentionally disseminate uniform advertising on a nationwide basis that they know or should reasonably know is false and misleading. This conduct includes, without limitation, continuously and without interruption advertising “40% off” and “\$200 off” discounts for Closets By Design products that have not ever, or generally do not, sell at the full price indicated by Defendants. To the contrary, the supposedly discounted prices are actually the regular price for Closets By Design products and the advertised “sale” does not represent any actual savings.

102. By committing the acts alleged in this Complaint, Defendants have knowingly disseminated untrue or misleading statements through fraudulent advertising in order to sell Closets By Design products and services and induce Plaintiff and Class members to purchase same.

103. The price of a consumer product is a material term of any transaction because it directly affects a consumer's choice of, or conduct regarding, whether to purchase a product. Any deception or fraud related to the price of a consumer product is materially misleading as a matter of law.

104. The misrepresentation of the price of a product, the existence of a discount, or a product's particular worth, perceived value, or resale value is likely to mislead a reasonable consumer who is acting reasonably under the circumstances.

105. Defendants knew or should have known of the falsity of the “40% off” and “\$200 off” representations because, among other reasons, Defendants made these representations continuously over a period of years without deviating from the “sale”

1 price to account for regional or temporal fluctuations in their own actual sale prices or
2 fluctuations in the market prices of Closets By Design products and services.

3 106. Defendants intended that its misrepresentations would induce Plaintiff and
4 Class members to rely and act based on those false representations, and Plaintiff did so
5 rely, and it was reasonable for similarly situated consumers to have relied on
6 Defendants' representations as a matter of law.

7 107. Plaintiff and Class members were all charged monies as a direct and
8 proximate result of Defendants' false and misleading statements. Accordingly, Plaintiff
9 and Class members suffered injury in fact and lost money as a direct and proximate
10 result of Defendants' false and misleading representations of material fact.

11 108. As a direct and proximate result of Defendants' fraudulent inducement,
12 Plaintiff and Class members have been injured and have suffered actual damages in an
13 amount to be established at trial.

14 **EIGHTH CAUSE OF ACTION**
15 **Breach of Express Warranty**

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

18 110. Plaintiff and Class members formed contracts with Defendants at the time
19 they purchased items from Defendants' or their agents. The terms of such contracts
20 included the promises and affirmations of fact made by Defendants through their
21 marketing campaign, as alleged herein, including, but not limited to, representing that
22 Defendants' products were heavily discounted and had a particular worth, perceived
23 value, or resale value.

24 111. This product advertising constitutes express warranties, became part of the
25 basis of the bargain, and is part of the contracts between Defendants and Plaintiff and
26 Class members.

27 112. The affirmations of fact made by Defendants were made to induce Plaintiff
28 and Class members to purchase items from Defendants' or their agents.

1 113. All conditions precedent to Defendants' liability under these express
2 warranties have been fulfilled by Plaintiff and Class members in terms of paying for the
3 goods at issue, or have been waived.

4 114. Defendants breached the terms of the express warranty because the items
5 purchased by Plaintiff and Class members did not conform to the description provided
6 by Defendants – that they were being sold at a discounted price and had a particular
7 worth, perceived value, or resale value. In fact, they were not being sold at a discount
8 and did not have the higher worth, perceived value, or resale value indicated by the
9 purported discount.

10 115. As a direct and proximate result of Defendants' breach of express
11 warranty, Plaintiff and Class members have been injured and have suffered actual
12 damages in an amount to be established at trial.

13 116. Plaintiff notified Defendants in writing of his claims and that the Plaintiff
14 is acting on behalf of the Class. **Exhibits 6–8.**

15 **NINTH CAUSE OF ACTION**
16 **Violation of Magnuson-Moss Warranty Act**
17 **15 U.S.C. § § 2301, *et seq.***

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

20 118. Plaintiff brings his claim individually and on behalf of the members of the
21 Class.

22 119. Plaintiff and the Class assert state law warranty claims arising under the
23 laws of the State of California, as allowed under Section 2310(d) of the MMWA.

24 120. In addition, Defendants' home organizer systems are consumer products
25 as defined in 15 U.S.C. § 2301(1).

26 121. Plaintiff and the other Class members are consumers as defined in 15
27 U.S.C. § 2301(3).

28 122. Defendants are suppliers and warrantors as defined in 15 U.S.C. §§
2301(4) and (5).

123. In connection with the sale of Closets By Design products, Defendants issued written warranties as defined in 15 U.S.C. § 2301(6), which warranted that Closets By Design products had a particular worth, perceived value, or resale value when, in fact, they do not. Defendants' warranties include, among others, "40% off" and "\$200 off."

124. By breaching the express written warranties as described herein, Defendants violated the statutory rights of Plaintiff and Class members pursuant to the Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*, thereby damaging Plaintiff and other Class members.

125. Plaintiff notified Defendants in writing of his claims and that the Plaintiff is acting on behalf of the Class. **Exhibits 6–8.**

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

A. That the Court certify the Class under Rule 23 of the Federal Rules of Civil Procedure and appoint Plaintiff as Class Representative and his attorneys as Class Counsel to represent the members of the Class;

B. That the Court declare that Defendants' conduct violates the statutes referenced herein;

C. That the Court preliminarily and permanently enjoin Defendants from conducting business through the unlawful, unfair, or fraudulent business acts or practices, untrue and misleading marketing, and other violations of law described in this Complaint;

D. That the Court order Defendants to conduct a corrective advertising and information campaign advising consumers that their merchandise does not have the characteristics, uses, benefits, and quality Defendants have claimed;

E. That the Court order Defendants to implement whatever measures are necessary to remedy the unlawful, unfair, or fraudulent business acts or practices, untrue and misleading advertising, and other violations of law described in this Complaint;

1 F. That the Court order Defendants to notify each and every individual and/or
2 business who purchased their merchandise of the pendency of the claims in this action
3 in order to give such individuals and businesses an opportunity to obtain restitution from
4 Defendants;

5 G. That the Court order Defendants to pay restitution to restore to all affected
6 persons all funds acquired by means of any act or practice declared by this Court to be
7 an unlawful, or fraudulent business act or practice, untrue or misleading labeling,
8 advertising, and marketing, plus pre- and post-judgment interest thereon;

9 H. That the Court order Defendants to disgorge all monies wrongfully
10 obtained and all revenues and profits derived by Defendants as a result of their acts or
11 practices as alleged in this Complaint;

12 I. That the Court award expectation and other actual damages to Plaintiff and
13 the Class;

14 J. That the Court enter an Order awarding costs, expenses, and reasonable
15 attorneys' fees;

16 K. That the Court grant such other and further relief as may be just and proper.

17 **VIII. JURY TRIAL DEMAND**

18 Plaintiff demands a trial by jury for all claims asserted in this Complaint so
19 triable.

20 Dated May 3, 2019

Respectfully submitted,

21 THE RESTIS LAW FIRM, P.C.

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