

1 Joy Johnson (SBN 251639)  
2 Ayo Omotosho (SBN 279524)  
3 JOHNSON|OMOTOSHO, LLP  
4 8616 La Tijera Blvd. – Suite 502  
5 Los Angeles, CA 90045  
6 Telephone: (323)903-7073  
7 Fax: (323) 967-7073

8 Attorneys for Plaintiff,  
9 Francisco Telemaque

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF LOS ANGELES**

22TRCV00660

10 FRANCISCO TELEMAQUE )  
11 Plaintiff, )  
12 vs. )  
13 Bob’s Discount Furniture, LLC, Vive )  
14 Financial, LLC; and DOES 1 through 20, )  
15 inclusive, )  
16 Defendants. )

**COMPLAINT FOR DAMAGES**  
**1. BREACH OF CONTRACT**  
**2. BREACH OF COVENANT OF**  
**GOOD FAITH AND FAIR**  
**DEALING**  
**3. CALIFORNIA CONSUMER**  
**CREDIT REPORTING ACT**  
**4. NEGLIGENT**  
**MISREPRESENTATION**  
**5. PROMISSORY ESTOPPEL**  
**6. SPECIFIC PERFORMANCE**  
**7. VIOLATION OF CALIFORNIA**  
**BUSINESS AND PROFESSIONS**  
**CODE §17200, ET SEQ**

17 )  
18 )  
19 ) **JURY TRIAL DEMANDED**

20  
21 Plaintiff Francisco Telemaque (“Telemaque”), who complains against Defendant Bob’s  
22 Discount Furniture, LLC (“Defendant Bob’s”); Defendant Vive Financial, LLC (“Defendant  
23 Vive”) and Does 1 through 20 inclusive (collectively “Defendants”) and demands a jury trial of  
24 all issues pertaining to the breach of contract cause of action, alleges:

25 **PARTIES AND JURISDICTION**

- 25 1. At all pertinent times mentioned in the present complaint, Defendant Bob’s is a limited  
26 liability corporation with multiple store locations in the state of California.  
27 2. At all pertinent times mentioned in the present Complaint Defendant Vive is a limited  
28 liability corporation who frequently transacts in the state of California  
3. Both Defendants have multiple business locations in state of California and through their

1 business avail themselves of the laws of the State of California.

2 4. Telemaque is ignorant of the true names and capacities, whether individual, corporate or  
3 otherwise, of Does 1 through 20 inclusive. Those fictitiously named Defendants are sued pursuant  
4 to the provisions of *California Code of Civil Procedure* section 474.

5 5. Telemaque is informed and believes and upon that basis alleges that each fictitiously  
6 named Defendant was in some way responsible for, participated in, or contributed to the matters  
7 and things of which Telemaque complains herein, and, in some fashion, has legal responsibility.  
8 When the exact nature and identity of such fictitiously named Defendants' responsibility for,  
9 participation in, and contribution to the matters and things herein alleged is ascertained by  
10 Telemaque, then Telemaque will seek leave to amend the present Complaint and all proceedings  
11 herein to set forth the same.

12 **FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

13 6. The allegations in the present Complaint which are stated on information and belief are  
14 likely to have evidentiary support after a reasonable opportunity for further investigation or  
15 discovery.

16 7. On December 13, 2019, Plaintiff purchased from Defendant Bob's a Majestic Table and  
17 two chairs at Defendant Bob's location in Torrance, California.

18 8. Plaintiff paid a down payment of a little over \$2,000.00 and financed the remaining  
19 portion of the purchase through Defendant Vive.

20 9. Bob's Discount Furniture, LLC, markets, promotes and sells warranties in connection  
21 with selling furniture.

22 10. The Goof Proof Protection Plan ("Goof Proof") is a warranty sold to customers to protect  
23 against accidental stains and damages.

24 11. The discount nature of the furniture creates extra incentive to purchase the warranty and  
25 Plaintiff purchased Goof Proof on or about December 13th.

26 12. The Goof Proof Protection plan covered the items for 5 years and the customer was  
27 required to submit the proper claim within 30 days of the accident.

28 13. If there was accidental damage or a stain done to purchased furniture, the customer was to  
call Guardian Protection Products ("Guardian") and report a claim.

14. Defendant Bob's and its partners are in the business of collecting premiums and rejecting  
claims submitted for Goof Proof.

15. Upon information and belief, Defendant Bob's receives undisclosed incentives or

1 kickbacks from Guardian for every warranty it sells to consumers.

2 16. Plaintiff submitted a claim to Guardian for damage done to one of the chairs. On or about  
3 May 7, 2021, Plaintiff received notice from Guardian he would need to submit photos of the  
4 damage to continue with the claim.

5 17. On or about May 25, 2021, Plaintiff submitted the requested photos and along with  
6 additional photos of the second chair in the set, which had broken in the time the first claim was  
7 being made.

8 18. On May 27, 2021, Plaintiff was informed by Guardian his claim was being processed and  
9 it would take up to 5 business days for a response

10 19. On May 28, 2021, Plaintiff received notice his claim was being denied because the  
11 damage he reported was not eligible for coverage under the protection plan he purchased from  
12 Defendant Bob's.

13 20. Plaintiff purchased Goof Proof and during the period, in reliance on the representations of  
14 Goof Proof, filed a good faith claim to have his furniture repaired. Defendant Bob failed to honor  
15 the warranty and Plaintiff's claims

16 21. Defendant Bob's actions frustrate the purpose of the warranties they promote and make it  
17 difficult to impossible for customers to have their valid claims honored.

18 22. Defendant Bob's sale of the warranties is misleading because the furniture is poorly made.  
19 This means they can more easily and unfairly attribute any accidental stain or rip to a product  
20 defect, when there might be cause for overlap between what caused the damage. However, when  
21 customers submit a warranty claim for one of the covered reasons, they are denied with the  
22 explanation that the damage or stain was not "accidental," but due to misuse.

23 23. Plaintiff would not have purchased Goof Proof in the absence of Defendant Bob's  
24 misrepresentations and omissions.

25 24. Plaintiff was also under the belief while the claim was disputed and unresolved, no  
26 payments to Defendant Vive would be required.

27 25. On August 2, 2021, Plaintiff received notice from Defendant Vive that his account with  
28 Defendant Bob's was past due.

29 26. On August 20, 2021, Plaintiff received notice from Defendant Vive they received  
30 Plaintiff's complaint and while the charges were in dispute Plaintiff was not required to make  
31 payments on his Defendant Bob's account.

32 27. On September 9, 2021, Defendant Vive informed Plaintiff there was a resolution to the

1 dispute with Defendant Bob's. Defendant Vive claimed Plaintiff failed to participate in the  
2 investigation conducted by Defendant Bob's regarding the damaged furniture.

3 28. However, Plaintiff filed the proper claim with Guardian and when asked to provided  
4 pictures Plaintiff complied and sent the requested photos to Guardian.

5 29. On September 12, 2021, Plaintiff responded to Defendant Bob's that he had complied with  
6 their request.

7 30. Plaintiff was under the belief while the claim was disputed and unresolved no payments  
8 would be required. However, Plaintiff was denied credit by US Bank and California Bank & Trust  
9 due to the negative reporting by Vive Financial and Bob's Discount Furniture.

10 31. As a result of the deceptive practices, the warranty was not honored on a consistent basis  
11 using a typical bad faith playbook to reject valid claims.

12 32. Defendants both denied Plaintiff's claim without viewing or investigating the damage to  
13 the furniture.

14 33. Despite Telemaque's fulfillment of his obligation pursuant to the Goof Proof Protection  
15 Plan, Defendants have failed to fulfill their obligation, namely they have failed to adequately  
16 investigate the damage to the furniture purchased at Bob's Discount Furniture. Defendants'  
17 failure to fulfill their obligation pursuant to the Goof Proof Protection Plan has caused Telemaque  
18 to suffer a diminished credit rating, drastically reduced FICO score, and opportunities to which he  
19 has been denied because of his diminished credit rating.

20 **FIRST CAUSE OF ACTION**

21 **BREACH OF CONTRACT**

22 **Against all Defendants**

23 17. Plaintiff incorporates by reference the factual allegations presented *supra* in Paragraphs 1  
24 through 34.

25 18. As presented *supra*, Telemaque entered into a written agreement with Defendant Bob's to  
26 purchase and use Goof Proof in accordance with its terms and conditions. (Exhibit A)

27 19. Telemaque has fully and fairly performed all the conditions, covenants, and promises on  
28 his part to be performed in accordance with the terms and conditions of Goof Proof, namely filing

1 a claim with Guardian, since there was damage to Plaintiff’s furniture, and providing photos of  
2 the damage.

3 20. Defendant Bob’s unjustifiably failed to perform under the Goof Proof warranty by having  
4 failed and refused, and continue to fail and refuse, to perform the conditions of the warranty on  
5 their part in that they have failed to adequately and diligently investigate an alleged issue with the  
6 furniture they produced and sold.

7 21. As presented *supra*, Telemaque was harmed and suffered damages as a result of  
8 Defendant Bobs’ unjustifiable failure to perform under the Goof Proof warranty. As a result of  
9 Defendant Bobs’ breach of the warranty agreement, Telemaque has suffered damage in an  
10 amount according to proof.

11 **SECOND CAUSE OF ACTION**

12 **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

13 **Against all Defendants**

14 22. Plaintiff incorporates all of the paragraphs above, as though fully set forth herein.

15 23. The “implied covenant of good faith and fair dealing” is implied in law from a contractual  
16 relationship and arises only when there is a valid and existing contract.’ *Grunberg v. Aetna Ins.*  
17 *Co., 9Cal.3d 566, 577-78 (1973).*

18 24. “There is an implied covenant of good faith and fair dealing in every contract that neither  
19 party will do anything which will injure the right of the other to receive the benefits of the  
20 agreement.” *Comunale v. Traders & General Ins. Co., 50 Cal.2d 654, 658 (1958) (internal*  
21 *citation omitted).*

22 25. This covenant protects the benefits of the contract that the parties reasonably  
23 contemplated when they entered into the agreement.

24 26. The aforementioned agreement and representations between Plaintiff and Defendant  
25 Bob’s constituted a contract between the parties that implied a covenant of good faith and fair  
26 dealing which Defendant Bob’s clearly breached by their failure to perform a material term of the  
27 warranty agreement.

28 27. Defendants unjustifiably failed to perform under the Goof Proof warranty agreement by

1 having failed and refused, and continue to fail and refuse, to perform the conditions of the  
2 warranty agreement on their part in that they have failed to perform the conditions of the warranty  
3 on their part in that they have failed to adequately and diligently investigate an alleged issue with  
4 the furniture they produced and sold.

5 28. As presented *supra* Telemaque was harmed and suffered damages as a result of Defendant  
6 Bobs' unjustifiable breach of the covenant of fair dealing and as a result of Defendant Bobs'  
7 breach of the warranty agreement, Telemaque has suffered damages in an amount according to  
8 proof.

9 **THIRD CAUSE OF ACTION**

10 **CALIFORNIA CONSUMER CREDIT REPORTING ACT**

11 **Against Defendant Vive**

12  
13 29. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though  
14 fully set forth herein.

15 30. Under California Civil Code §1785.25(a), A person shall not furnish information on a  
16 specific transaction or experience to any consumer credit reporting agency if the person knows  
17 or should know the information is incomplete or inaccurate

18 31. Defendant Vive violated California Civil Code § 1785.25 (a) because despite having an  
19 understanding with Plaintiff no payments would be due during the investigation, Defendant  
20 Vive continued to furnish information it knew to be **incomplete and/or inaccurate** to a credit  
21 reporting agency.

22 32. Defendant Vive failed to adhere to a material term of the investigation by continuing to  
23 report negative information to credit reporting agencies. Defendant Vive's failure to fulfill  
24 their obligation pursuant to the investigation has caused Telemaque to suffer a diminished  
25 credit rating, drastically reduced FICO score, and opportunities to which he has been denied  
26 because of his diminished credit rating.

27 33. As a result of Defendant Vive's violations of the Consumer Credit Reporting Act,  
28 Plaintiff has suffered damages and should be compensated pursuant to the provisions under the  
law.

34. As a result of Defendant Vives' violations of the Consumer Credit Reporting Act,  
Plaintiff has suffered damages in an amount to be determined at trial.

1 **FOURTH CAUSE OF ACTION**  
2 **NEGLIGENT MISREPRESENTATION**  
3 **Against all Defendants**

4 35. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully  
5 set forth herein.

6 36. Courts typically define the tort of negligent misrepresentation as a false statement that  
7 brings about “a pecuniary loss[] caused by justifiable reliance on those statements.” *Tschimperle*  
8 *v. Aetna Cas. & Sur. Co.*, 529 N.W.2d 421 (Minn. Ct. App. 1995); *Allstate Ins. Co. v. Miller*, 743  
9 *F. Supp.* 723,726 (N.D. Cal.1990) (classifying negligent misrepresentation as a type of fraud and  
10 defining it as “the” assertion as a fact of what which is not true, by one who has no reasonable  
11 ground believing it to be true” and “the suppression of a fact by one who is bound to disclose it or  
12 who gives information of other facts which are likely to mislead for want of communication of  
13 that fact” *Quoting Cal. Civ. Code §§1572 and 1710.*

14 37. Negligent misrepresentation lacks the element of knowledge of the falsity of the  
15 representations. Therefore, “where the defendant makes false statements, honestly believing that  
16 they are true, but without reasonable grounds for such belief, he may be liable for negligent  
17 misrepresentation, a form of deceit.’ *Billy v. Arthur Young & Co* ( 3 Cal.4<sup>th</sup> 370,407-408 quoting  
18 *5 Witkin, Summary of Cal. Law (9thed. 1988) Torts §720,p.819.*

19 38. Despite Telemaque's fulfillment of his obligation pursuant to Goof Proof, Defendant  
20 Bob’s has failed to fulfill their obligation pursuant to Goof Proof, namely they have failed to  
21 adequately investigate the damage to the furniture purchased at Bob’s Discount Furniture.

22 39. Defendant Bob’s made false statements which Plaintiff relied on to his detriment.  
23 Defendant Bob’s had a duty to disclose the true facts about how claims would be denied for reasons  
24 which invert the English language. Even if Defendants had reasonable grounds for such belief,  
25 Defendants are still liable for negligent misrepresentation, a form of deceit.

26 40. The Defendant’s duty is based on defendant’s position, holding itself out as having special  
27 knowledge and experience in the sale of furniture, such that they will understand and honor a  
28 warranty for that furniture.

1 41. Plaintiff adhered to the terms of the Goof Proof warranty, to his detriment. Defendant  
2 Bobs' failure to fulfill their obligation pursuant to the Goof Proof warranty has caused Telemaque  
3 to suffer a diminished credit rating, drastically reduced FICO score, and opportunities to which he  
4 has been denied because of his diminished credit rating.

5 42. As a result of Defendant Bobs' conduct, Plaintiff has suffered damages in an amount to be  
6 determined at trial.

7 **FIFTH CAUSE OF ACTION**

8 **PROMISSORY ESTOPPEL**

9 **Against all Defendants**

10 43. Plaintiff hereby incorporates by this reference all aforementioned paragraphs, as though  
11 fully set forth herein.

12 44. The essential elements of estoppel are representation by the principal, justifiable  
13 reliance thereon by the third party, and change of position or injury resulting from such  
14 reliance.” *Charity Mission Baptist Church, 90 Cal.App.4<sup>th</sup> 1116* (2001).

15 45. Here, the Plaintiff alleges sufficient facts of (1) a representation, (2) justifiable reliance,  
16 and (3) a change of position or injury. Moreover, the plaintiff can plead additional facts to  
17 demonstrate that the Defendants should have reasonably expected or did expect the  
18 representation to induce action or inaction on the part of the Plaintiff.  
19

20 46. In reliance on the validity of the Goof Proof warranty, which was promoted by  
21 Defendant Bob's, Telemaque submitted a claim to Guardian, believing his injuries would be  
22 redressed. However, Defendant Bob's never conducted or oversaw a thorough investigation  
23 into the alleged damage to Plaintiff's furniture, and as a result of an inadequate and unresolved  
24 investigation Defendant Vive reported derogatory and incorrect information on Plaintiff's credit  
25 report.  
26  
27  
28



1 47. Defendants unjustifiably failed to perform under the Goof Proof warranty having failed  
2 and refused, and Defendant Bob's continues to fail and refuses, to perform the conditions of the  
3 Goof Proof warranty. Defendants have failed to investigate the alleged issues with Plaintiff's  
4 furniture, thereby causing him to suffer damages in the form of a diminished credit rating,  
5 drastically reduced FICO score, and missed opportunities due to such diminished credit rating  
6 and drastically reduced FICO score.  
7

8 48. Injustice can be avoided only by enforcement of the promise; by forcing Defendant to  
9 honor the terms of the initial warranty.  
10

11 **SIXTH CAUSE OF ACTION**

12 **SPECIFIC PERFORMANCE**

13 **Against all Defendants**

14 49. Plaintiff hereby incorporates by this reference all aforementioned paragraphs, as though  
15 fully set forth herein.

16 50. As presented *supra*, on or about December 13, 2019, Telemaque and Defendant Bob's  
17 entered into a purchasing agreement which is sufficiently definite and certain in its terms to be  
18 enforced, including the Goof Proof Protection Plan.

19 50. As presented *supra* the Goof Proof Protection plan protected from accidental damages and  
20 stains; however, the customer was required to file the proper claim and participate in the  
21 investigation headed by the appropriate investigating firm. Based upon the foregoing: (1) the  
22 agreement was just and reasonable as to Defendants; and (2) Telemaque's consideration to  
23 Defendants in relation to the agreement was adequate.

24 51. Telemaque has performed all conditions, covenants, and promises required by him on his  
25 part to be performed in accordance with the terms and conditions of the Goof Proof Protection  
26 plan.

27 52. Defendants have failed and refused, and continue to fail and refuse, to perform the  
28 conditions of the warranty agreement on their part in that they have failed to adequately

1 investigate the claim for damages, thereby causing him to suffer damages in the form of a  
2 diminished credit rating, drastically reduced FICO score, and missed opportunities due to such  
3 diminished credit rating and drastically reduced FICO score.

4 53. For the reasons heretofore stated, Telemaque has no adequate legal remedy in those  
5 damages, if awarded, cannot be properly ascertained since there is no fixed market value and  
6 damages will be inadequate to compensate Telemaque for the detriment that he has suffered,  
7 namely his diminished credit rating, drastically reduced FICO score, and opportunities to which  
8 he has been denied because of his diminished credit rating.

9 **SEVENTH CAUSE OF ACTION**  
10 **VIOLATION OF CALIFORNIA BUSINESS AND**  
11 **PROFESSIONS CODE §17200, ET SEQ.**  
12 **Against all Defendants**

13  
14 54. Plaintiff incorporates all of the paragraphs above, as though fully set forth herein.

15 55. The California Unfair Competition Law (“UCL”) prohibits “unfair competition,” which is  
16 defined by Business and Professions Code section 17200 as including “any unlawful, unfair or  
17 fraudulent business act or practice . . . .”

18 56. “Because Business and Professions Code Section 17200 is written in the disjunctive, it  
19 establishes three varieties of unfair competition – acts or practices which are unlawful, or unfair,  
20 or fraudulent.” (Podolsky v. First Healthcare Corp. (1996) 50 Cal.App.4th 632, 647.)

21 57. The UCL is worded broadly, which has lead the California Supreme Court to observe that  
22 it “was intentionally framed in its broad, sweeping language, precisely to enable judicial tribunals  
23 to deal with the innumerable ‘new schemes which the fertility of man’s invention would  
24 contrive.’” (Barquis v. Merchants Collection Association of Oakland, Inc. (1972) 7 Cal.3d 94,  
25 112, quoting American Philatelic Society v. Claibourne (1935) 3 Cal.2d 689, 698.)

26 58. Because it contains no express intent, knowledge, or negligence requirement, the UCL  
27 “imposes strict liability.” (Searle v. Wyndham International, Inc. (2002) 102 Cal.App.4th 1327,  
28 1333; see also Community Assisting Recovery, Inc. v. Aegis Security Insurance Co. (2001) 92  
Cal.App.4th 886; South Bay Chevrolet v. General Motors Acceptance Corp. (1999) 72  
Cal.App.4th 861, 877.) Nor is it “necessary to show that the defendant intended to injure  
anyone.’ [Citation.]” (Hewlett v. Squaw Valley Ski Corp. (1997) 54 Cal.App.4th 499, 520.)

1 59. The UCL has a four-year statute of limitations that commences when the cause of action  
2 accrues. (Business and Professions Code 17208.) The UCL’s four-year statute of limitations  
3 governs even where the predicate law upon which allegations of unlawful business conduct are  
4 based has a different limitations period. (See *Cortez v. Purolator Air Filtration Products Co.*  
5 (2000) 23 Cal.App.4th 163, 178-179.) The continuing violations doctrine permits recovery for  
6 conduct outside of the limitations period if that conduct “constitutes a continuing pattern and  
7 course of conduct as opposed to unrelated discrete acts. If there is a pattern, then the suit is  
8 timely if the action is filed within the statutory period of the most recent violation.” (*Komorava*  
9 *v. National Credit Acceptance, Inc.* (2009) 175 Cal.App.4th 324, 343 (citations omitted).)

10 60. The remedies for a violation of the UCL include injunctive relief and restitution.  
11 (Business and Profession Code section 17203.) The remedies available under the UCL are in  
12 addition to those available under other laws. Business and Professions Code section 17205  
13 declares that, “[u]nless otherwise expressly provided, the remedies or penalties provided by [the  
14 UCL] are cumulative . . . to the remedies or penalties available under all other laws of this state.”  
15 (See also *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, supra, 17 Cal.4th at p. 573; *People v.*  
16 *McKale* (1979) 25 Cal.3d 626, 633.)

17 61. “By defining unfair competition to include any ‘unlawful . . . business act or practice,’ the  
18 UCL permits violations of other laws to be treated as unfair competition that is independently  
19 actionable.” (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949 [italics in original].)

20 62. The unlawful prong of section 17200 “embrac[es] anything that can properly be called a  
21 business practice and that at the same time is forbidden by law.” (*Rubin v. Green* (1993) 4  
22 Cal.4th 1187, 1200 [internal quotation marks omitted].) It “borrows violations of other laws and  
23 treats them as independently actionable.” (*Daugherty v. American Honda Motor Co., Inc.* (2006)  
24 144 Cal.App.4th 824, 837.)

25 63. “Virtually any state, federal or local law can serve as the predicate for an action under  
26 Business and Professions Code section 17200.” (*Podolsky v. First Healthcare Corp.*, supra, 50  
27 Cal.App.4th at p. 647; see also *Ticconi v. Blue Shield of California Life & Health Insurance Co.*  
28 (2008) 160 Cal.App.4th 528, 539; *Smith v. State Farm Mutual Automobile Insurance Co.* (2001)  
93 Cal.App.4th 700, 718.) The UCL thus prohibits “any practices forbidden by law, be it civil or  
criminal, federal, state, or municipal, statutory, regulatory, or court-made.” (*Saunders v. Superior*  
*Court (California Reporting Alliance)* (1994) 27 Cal.App.4th 832, 838-839; see also *Gafcon, Inc.*

1 v. Ponsor & Associates (2002) 98 Cal.App.4th 1388, 1425, fn. 15; South Bay Chevrolet v.  
2 General Motors Acceptance Corp., supra, 72 Cal.App.4th at p. 880.)

3 64. “By defining unfair competition to include also any ‘unfair or fraudulent business act or  
4 practice’ [citation], the UCL sweeps within its scope acts and practices not specifically proscribed  
5 by any other law.” (Kasky v. Nike, Inc., supra, 27 Cal.4th at p. 949 [italics in original].)

6 65. The unfair prong of Section 17200 “provides an independent basis for relief.” (Smith v.  
7 State Farm Mutual Automobile Insurance Co., supra, 93 Cal.App.4th at p. 718.) “It is not  
8 necessary,” therefore, “for a business practice to be ‘unlawful’ in order to be subject to an action  
9 under the unfair competition law.” (Ibid.) “In general the ‘unfairness’ prong ‘has been used to  
10 enjoin deceptive or sharp practices. . . .’ [Citation.]” (South Bay Chevrolet v. General Motors  
11 Acceptance Corp., supra, 72 Cal.App.4th at p. 887.)

12 66. The courts of this state have adopted several tests for determining whether a business act  
13 or practice is unfair:

- 14 a. A business practice is unfair “when that practice ‘offends an established public  
15 policy or when the practice is immoral, unethical, oppressive, unscrupulous or  
16 substantially injurious . . . .’” (*State Farm Fire & Casualty Co. v. Superior Court*  
17 (1996) 45 Cal.App.4th 1093, 1104, quoting *People v. Casa Blanca Convalescent*  
18 *Homes, Inc.* (1984) 159 Cal.App.3d 509, 530.)
- 19 b. Another “test of whether a business practice is unfair involves an examination of  
20 [that practice’s] impact on its alleged victim, balanced against the reasons,  
21 justifications and motives of the alleged wrongdoer. In brief, the court must weigh  
22 the utility of the defendant’s conduct against the gravity of the harm to the alleged  
23 victim . . . .” (*State Farm Fire & Casualty Co. v. Superior Court, supra*, 45  
24 Cal.App.4th at pp. 1103-1104 [citations and internal quotation marks omitted].)
- 25 c. It also is an unfair business practice when the defendant’s conduct “threatens an  
26 incipient violation of [a law], or violates the policy or spirit of [a law] because its  
27 effects are comparable to or the same as a violation of the law, or otherwise  
28 significantly threatens or harms competition.” (*Cel-Tech Communications, Inc. v.*  
*Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 187; *see also Scripps*  
*Clinic v. Superior Court* (2003) 108 Cal.App.4th 917, 939.)
- d. More recently, one Court of Appeal has fashioned a test for determining whether a  
practice is unfair based upon section 5 of the Federal Trade Commission Act

1 (United States Code, title 15, section 41 *et seq.*). Under this test, “[a]n act or  
2 practice is unfair if [1] the consumer injury is substantial, [2] is not outweighed by  
3 any countervailing benefits to consumers or to competition, and [3] is not an injury  
4 the consumers themselves could reasonably have avoided.” (*Daugherty v.*  
5 *American Honda Motor Co., Inc.*, *supra*, 144 Cal.App.4th at p. 839 [bracketed  
6 numbers added]; *see also Camacho v. Automobile Club of Southern California*  
7 (2006) 142 Cal.App.4th 1394, 1403.)

8 67. The fraudulent prong of section 17200 “affords protection against the probability or  
9 likelihood as well as the actuality of deception or confusion.” (*Payne v. United California Bank*  
10 (1972) 23 Cal.App.3d 850, 856.) The test is whether “‘members of the public are likely to be  
11 deceived.’ [Citation.]” (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 312.) As the California  
12 Supreme Court has explained, “our concern with thwarting unfair trade practices has been such  
13 that we have consistently condemned not only those alleged unfair practices which have in fact  
14 deceived the victims, but also those which are likely to deceive them.” (*Fletcher v. Security*  
15 *Pacific National Bank* (1979) 23 Cal.3d 442, 451.)

16 68. A UCL action alleging violations of the fraudulent prong is “distinct from common law  
17 fraud.” (*In re Tobacco II Cases*, *supra*, 46 Cal.4th at 312.) “A fraudulent deception must be  
18 actually false, known to be false by the perpetrator and reasonably relied upon by a victim who  
19 incurs damages. None of these elements are required to state a claim for injunctive relief under  
20 section 17200 . . . .” (*Day v. AT&T Corp.* (1998) 63 Cal.App.4th 325, 332.) “This distinction  
21 reflects the UCL’s focus on the defendant’s conduct, rather than the plaintiff’s damages, in  
22 service of the statute’s larger purpose of protecting the general public against unscrupulous  
23 business practices.” (*In re Tobacco II Cases*, *supra*, 46 Cal.4th at 312.)

24 69. For many years and continuing to the present, Defendants, and each of them, committed  
25 acts of unfair competition as defined by Business and Professions Code section 17200 *et. seq.* by  
26 engaging in unlawful, unfair and fraudulent business acts and practices in the State of California.,  
27 as discussed above.

28 70. Plaintiff alleges that by engaging in the above-described acts, Defendants violated several  
laws including the California Unfair Competition Law and must be required to pay restitution  
related to their unfair, unlawful, and deceptive business practices.

1 71. Defendant Bob encouraged Plaintiff to purchase the warranty, knowing that they would  
2 not honor it, to squeeze more money from the Plaintiff for a warranty which served no purpose or  
3 benefit to Plaintiff.

4 72. Plaintiff alleges Defendants' misconduct described above gave them an unfair advantage  
5 over their competitors and the scheme implemented by Defendants is designed to defraud  
6 California consumers and enrich Defendant.

7 73. Plaintiff alleges Defendants' acts and practices are unfair and the harm caused by their  
8 conduct outweighs any benefit that their conduct may have.

9 74. The foregoing acts and practices have caused substantial harm to California consumers,  
10 including Plaintiff and Defendants have been unjustly enriched.

11 **PRAYER**

12 **PRAYER FOR RELIEF**

13 Wherefore, Plaintiff prays as follows:

- 14 1. For compensatory, special and general damages in an amount according to proof at trial;
- 15 2. For punitive and exemplary damages in an amount to be determined by the Court;
- 16 3. That Defendants be ordered to remove derogatory items from Telemaque's Credit File.
- 17 4. For reasonable attorney fees and costs in this action and such other and further relief as  
18 the Court may deem proper.

19 DATE: July 29, 2022

Respectfully submitted,

JOHNSON|OMOTOSHO, LLP

21  
22 By:   
23 JOY JOHNSON  
24 AYO OMOTOSHO  
25 Attorneys for Plaintiff,  
26 FRANCISCO TELEMAQUE  
27  
28