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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LORIANN STAPLES, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SIMMONS BEDDING COMPANY, LLC,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Loriann Staples brings this action on behalf of herself and all others similarly
2 situated against Defendant Simmons Bedding Company, LLC.

3 **NATURE OF THE ACTION**

4 1. This is a putative class action lawsuit on behalf of purchasers of Defendant’s 1000
5 thread count bedding and linen products (the “Beautyrest Products”). Defendant designs, markets,
6 manufactures, distributes, and sells the Beautyrest Products as having higher thread counts (the
7 “Thread Count Claims”) than they actually have and, as such were of better quality, more durable,
8 longer lasting, softer, and more comfortable for sleeping than products with lesser thread counts.
9 However, every package of the Beautyrest Products falsely and misleadingly represents that the
10 products contain a higher thread count than the Beautyrest Products actually have. In purchasing
11 Defendant’s bedding and linen products, Plaintiff and the Class received less than what was
12 promised by Defendant due to the inflated thread counts represented on the advertisements and
13 labels of the Products.

14 2. However, independent testing has revealed that, contrary to Defendant’s
15 representation that its products are made with a thread count of 1000, the Beautyrest Products are
16 actually made with a thread count of 216.¹

17 3. Defendant’s false and misleading representations of the Beautyrest Products are
18 reasonably likely to deceive the public. The false and misleading representation of the thread count
19 deceives and misleads consumers into believing that they are purchasing a product which is of
20 higher quality, durability, longevity, softness, or better for sleeping than products with a lower
21 thread count.

22 4. Plaintiff and Class Members purchased the Beautyrest Products, which are
23 designed, marketed, manufactured, distributed, and sold by Defendant. Further, Plaintiff and Class
24 Members relied to their detriment on Defendant’s false representation that the Beautyrest Products
25 were high thread count. Plaintiff and Class Members would not have purchased Defendant’s
26 Beautyrest Products – or would not have paid as much as they did to purchase them – had they

27 _____
28 ¹ See Exhibit A.

1 known that they were not in fact the thread count represented. Plaintiff and Class Members thus
2 suffered monetary damages as a result of Defendant’s deceptive and false representations.

3 **PARTIES**

4 5. Plaintiff Loriann Staples is domiciled in California, residing in Fremont, California.
5 In, or around, November 2021, Plaintiff Staples purchased a pack of Beautyrest 1000 thread count
6 bed sheets from a Target in Fremont, California. Prior to her purchase of her Beautyrest Product,
7 Plaintiff Staples reviewed the product’s labeling and packaging and saw that the product was
8 labeled and marketed as “1000 thread count bed sheets.” Plaintiff Staples relied on that labeling
9 and packaging to choose her Beautyrest Products over comparable products. Plaintiff Staples saw
10 these representations prior to, and at the time of purchase, and understood them as representations
11 and warranties that her Beautyrest Product would be of a “1000 thread count.” Plaintiff Staples
12 relied on these representations and warranties in deciding to purchase her Beautyrest Product.
13 Accordingly, those representations and warranties were part of the basis of the bargain, in that she
14 would not have purchased her Beautyrest Product on the same terms had she known those
15 representations were not true. However, Plaintiff Staples did not receive the benefit of her bargain
16 because her Beautyrest Product was not, in fact, of a 1000 thread count.

17 6. Further, had Plaintiff known that the Beautyrest Products were misbranded, she
18 would not have purchased them or would have paid a lower amount for them.

19 7. In making her purchases, Plaintiff and putative class members paid a substantial
20 price premium due to the false and misleading Thread Count Claims.

21 8. Simmons Bedding Company, LLC (“Simmons”) is a corporation incorporated in the
22 state of Delaware with its principal executive office located in Atlanta, Georgia. Simmons
23 manufactures, sells, and/or distributes Beautyrest-brand products, and is responsible for the
24 advertising, marketing, trade dress, and packaging of the Beautyrest Products. Simmons
25 manufactured, marketed, and sold the Beautyrest Products during the class period.

26 **JURISDICTION AND VENUE**

27 9. This Court has subject matter jurisdiction pursuant to 28 U.S.C § 1332(d)(2)(a)
28 because this case is a class action where the aggregate claims of all members of the proposed class

1 are in excess of \$5,000,000.00, exclusive of interest and costs, there are over 100 members of the
2 putative class, and Plaintiff, as well as most members of the proposed class, are citizens of states
3 different from Defendant.

4 10. This Court has personal jurisdiction over Defendant because Defendant has
5 purposefully availed itself of the laws and benefits of doing business in California, and Plaintiff
6 Staples's claims arise out of each of the Defendants' forum-related activities including the sale,
7 marketing, and advertising of the Beautyrest Products.

8 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant
9 does substantial business in this District and a substantial part of the events giving rise to Plaintiff
10 Staples's claims took place within this District.

11 **PRE-SUIT NOTICE**

12 12. On April 7, 2023, Plaintiff Staples sent a pre-suit notice via certified mail notifying
13 Defendant that it violated Cal. Civ. Code §§ 1750, et. seq., including specifically subsections
14 1770(a)(5), (7), and (9), and had breached express and implied warranties. The notice letter was
15 sent on behalf Plaintiff Staples and all individuals in the United States who purchased Beautyrest
16 Products. The letter provided notice that the labeling and advertising for all Beautyrest branded
17 products falsely claimed that the products had a thread count of 1000, when in fact they have a
18 thread count closer to 216.

19 13. As of the date of this complaint, Defendant has been given ample opportunity to
20 investigate and settle claims on behalf of Plaintiff Staples and the putative classes yet failed to take
21 any remedial action.

22 **FACTUAL ALLEGATIONS**

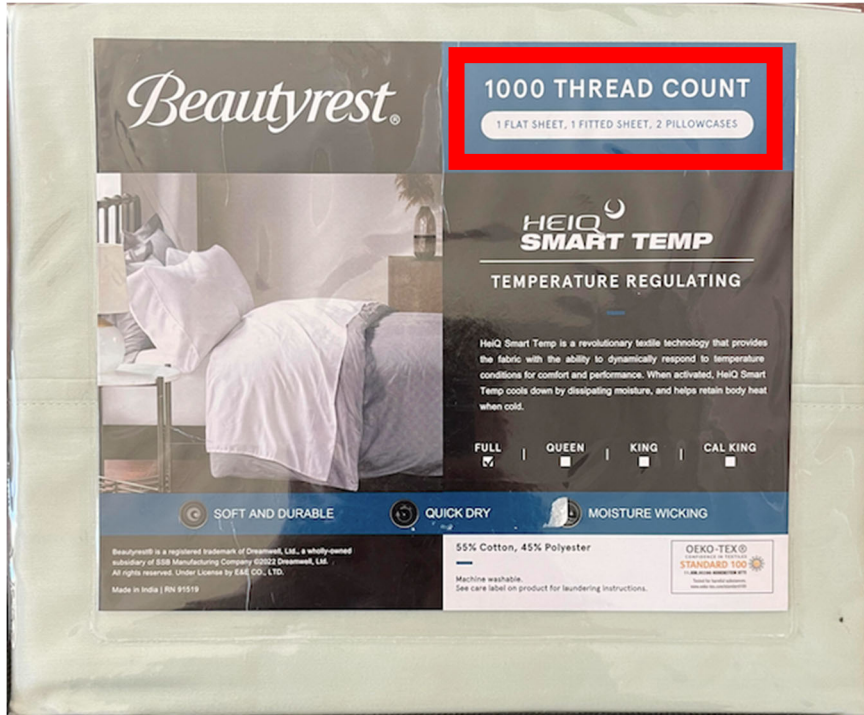
23 **A. Defendant's Misrepresentations Regarding Beautyrest Products**

24 14. **Products at issue:** Defendant manufactures, distributes, advertises, and sells
25 Beautyrest branded 1000 thread count sheets and pillowcases.

26 15. Defendant distributes, markets, and sells the Beautyrest Products. Through an
27 extensive and widespread nationwide marketing campaign, including on the product packaging,
28 Defendant claims that the Beautyrest Products are made with a 1000 thread count.

1 16. **Relevant time period:** All misrepresentation at issue here were consistently made
2 at all times during the last four years, at least.

3 17. **Misrepresentation at issue:** Defendant misrepresents the Beautyrest Products as
4 having a thread count of 1000:



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10 18. There have been no material changes to the product packaging during the relevant
11 time period. In particular, the Beautyrest Products have consistently been labeled and advertised
12 with the words “1000 THREAD COUNT” prominently displayed.

13 19. Defendant intends that consumers will read and rely on the Thread Count Claims
14 made in Defendant’s advertising and labeling, and Plaintiff and putative class members did read
15 and rely on those claims to their detriment.

16 20. Each consumer who has purchased the Beautyrest Products has been exposed to
17 Defendant’s misleading advertising. For example, the front panel of Beautyrest Products’ labels
18 states in all capital letters that the product has a “1000 THREAD COUNT.” The Thread Count
19 Claims are material to consumers, who purchase Beautyrest Products to obtain the higher
20 advertised thread count which the Beautyrest Products do not provide.
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1 **B. Why/How the statements at issue here have the tendency or capacity to deceive**
2 **or confuse reasonable consumers:**

3 21. Consumers purchasing bedding and linens use a product’s thread count as an
4 indication of fabric quality and durability.² This then becomes a basis on which they make
5 purchasing decisions.³ Generally, the higher the thread count, the higher the price for that product
6 will be.

7 22. Industry participants, including Defendant, know that consumers will pay higher
8 prices for bedding and linen products with a higher thread count because of the purported higher
9 quality. Therefore, industry participants increase product pricing as the thread count on the
10 products increase. This includes industry participants such as Simmons.

11 23. Thread count is the number of vertical and horizontal threads (warp and [filling]) in
12 one square inch of fabric. The industry standard for measuring thread counts is based on the
13 American Society for Testing and Materials’ (“ASTM”) Standard Test Method for Warp (End)
14 Count and Filling (Pick) Count of Woven Fabric, Designation: D3775 (applicable to all woven
15 fabrics). This standard requires that individual warp ends and filling picks are counted as “single
16 units regardless of whether they are comprised of single or plied components” per D3775.

17 24. The decade-long industry practice in the United States for thread counting has been
18 to “count the number of threads in both the warp and filling directions” and to count plied yarns as
19 “one yarn, regardless of whether the yarn was a single ply or multi-ply yarn. (A multi-ply yarn is
20 one yarn that has been created by twisting two or more yarns together.)”⁴

21 25. However, some manufacturers, including Defendant, have departed from the
22 industry standard for measuring thread count by “counting plied yarns individually.”⁵ This results

23 _____
24 ² ABC News, *Are Shoppers Short-Sheeted by Thread Count?*,
<https://abcnews.go.com/GMA/story?id=125380&page=1>

25 ³ *Id.*

26 ⁴ Letter from James Kohm, Assoc. Dir. for Enf’t Bureau of Consumer Prot., FTC, to E. Linwood
27 Wright, III, Chairman of the Textile Bedding Comm. of the Nat’l Textile Ass’n (Aug. 2, 2005)
[https://www.ftc.gov/sites/default/files/documents/advisory_opinions/national-textile-](https://www.ftc.gov/sites/default/files/documents/advisory_opinions/national-textile-association/natltextileassn.pdf)
[association/natltextileassn.pdf](https://www.ftc.gov/sites/default/files/documents/advisory_opinions/national-textile-association/natltextileassn.pdf)

28 ⁵ *Id.*

1 in a thread count inflation of double or triple (or higher) the thread count as would be measured
2 using traditional industry standards.⁶

3 26. In a letter to the National Textiles Association (“NTA”), the Federal Trade
4 Commission (“FTC”) stated that this non-traditional practice of measuring thread count “created
5 confusion in the marketplace and has caused consumers to compare thread counts that may have
6 been calculated in two dramatically different ways.”⁷ The FTC also stated that “consumers could
7 be deceived or misled by the practice of stating an inflated thread count, achieved by multiplying
8 the actual count by the number of plies within the yarn.”⁸

9 27. The practice of counting the plies that make up each thread was also condemned by
10 the American Textile Manufacturer’s Institute (“ATMI”). In a letter sent to the FTC on January
11 31, 2002, Exhibit B, ATMI addressed marketing of bed sheets and pillowcases to consumers with
12 claims of extremely high yarn or thread count claims, stating that:

13
14 Labeling these products based on a count that includes each ply in plied yarns
15 deceives the customer into believing that bedding products with higher counts are
16 better, when, in fact, they might be inferior because of the method used to determine
17 the count.

18 ...

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

23 ATMI believes this method of labeling products based on counting each individual
24 yarn in plies to be a deceptive practice, which misleads the American public into
25 making purchasing decisions to purchase items, based on false and misleading
26 information.

27 ASTM method D 3775-96 (Standard Test Method for Fabric Count of Woven
28 Fabric) [a prior version of D3775-12] the long-accepted industry standard for
determining count. This method has been in use in this country for many years and
serves as the industry’s standard way to report the count of many woven textile

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

1 fabrics, including sheeting. It is based on the number of yarns in the warp direction
2 and filling direction, regardless of ply, and has become an important parameter used
3 by consumers to judge the quality of sheeting products, since the higher the count,
the more luxurious the product.

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

8 28. Despite knowing the long-standing industry standards, Defendant deviated from the
9 traditional thread counting standards to mislead consumers. Defendant’s Beautyrest Products were
10 manufactured, marketed, advertised, sold, and/or distributed with inflated thread counts.

11 29. When Defendant’s Beautyrest Products were measured according to industry
12 standards by an independent lab, the thread counts were significantly less than claimed by
13 Defendant. Plaintiff’s counsel commissioned independent laboratory testing of Defendant’s
14 products, which show that the Beautyrest Products do not have the thread count promised.
15 Specifically, independent testing of Defendant’s 1000 thread count sheets found the sheets had a
16 thread count of 216 based on traditional industry standards as compared to the 1000 thread count
17 claimed by Defendant.⁹

18 30. Defendant knew or should have known that its method of calculating the thread
19 count was misleading. By representing that its products had higher thread counts than the
20 Beautyrest Products had, Defendant unjustly profited from the sale of such bedding and linen
21 products to consumers. Because of Defendant’s inflated thread counts, Plaintiff and other Class
22 Members purchased products they would not have otherwise purchased, or that they would have
23 paid a lower price for had they know the actual thread counts at the time of purchase.

24 **CLASS ALLEGATIONS**

25 31. Plaintiff seeks to represent a class defined as all people in the United States who
26 purchased any Beautyrest Product that represents the product as having a thread count of 1000
27 during the applicable statute of limitations (the “Class”). Specifically excluded from the Class are

28 ⁹ See Exhibit A.

1 Defendant, Defendant’s officers, directors, agents, trustees, parents, children, corporations, trusts,
2 representatives, employees, principals, servants, partners, joint ventures, or entities controlled by
3 Defendant, and its heirs, successors, assigns, or other persons or entities related to or affiliated with
4 Defendant and/or Defendant’s officers and/or directors, the judge assigned to this action, and any
5 member of the judge’s immediate family.

6 32. Plaintiff also seeks to represent a subclass consisting of Class Members who reside
7 in California (the “California Subclass”).

8 33. Subject to additional information obtained through further investigation and
9 discovery, the foregoing definitions of the Class and Subclasses may be expanded or narrowed by
10 amendment or amended complaint, including through the use of multi-state subclasses to account
11 for material differences in state law, if any.

12 34. **Numerosity.** The Class and Subclass Members are geographically dispersed
13 throughout the United States and are so numerous that individual joinder is impracticable. Upon
14 information and belief, Plaintiff reasonably estimate that there are hundreds of thousands of
15 Members in the Class and in the Subclass. Although the precise number of Class and Subclass
16 Members is unknown to Plaintiff, it is known by Defendant and may be determined through
17 discovery.

18 35. **Existence and predominance of common questions of law and fact.** Common
19 questions of law and fact exist as to all Members of the Class and Subclasses and predominate over
20 any questions affecting only individual Class or Subclass members. These common legal and
21 factual questions include, but are not limited to, the following:

- 22 (a) Whether Defendant made false and/or misleading statements to the consuming
23 public concerning the Thread Count Claims on the Beautyrest Products;
24 (b) Whether Defendant omitted material information to the consuming public
25 concerning the Thread Count Claims on the Beautyrest Products;
26 (c) Whether Defendant’s labeling and packaging for the Beautyrest Products is
27 misleading and/or deceptive;
28

- (d) Whether Defendant engaged in unfair, fraudulent, or unlawful business practices with respect to the advertising and sale of the Beautyrest Products;
- (e) Whether Defendant's representations concerning the Beautyrest Products were likely to deceive a reasonable consumer;
- (f) Whether Defendant's omissions concerning the Beautyrest Products were likely to deceive a reasonable consumer;
- (g) Whether Defendant represented to consumers that the Beautyrest Products have characteristics or qualities they do not have;
- (h) Whether Defendant advertised the Beautyrest Products with the intent to sell it not as advertised;
- (i) Whether Defendant made and breached express and/or implied warranties to Plaintiff and Class and Subclass Members about the Beautyrest Products;
- (j) Whether Defendant's representations, omissions, and/or breaches caused injury to Plaintiff and Class and Subclass Members; and
- (k) Whether Plaintiff and Class and Subclass Members are entitled to damages.

36. **Typicality.** Plaintiff's claims are typical of the claims of the other Members of the Class and Subclasses in that, among other things, all Class and Subclass Members were deceived (or reasonably likely to be deceived) in the same way by Defendant's false and misleading claims about the purported thread count of the Beautyrest Products. All Class and Subclass Members were comparably injured by Defendant's wrongful conduct as set forth herein. Further, there are no defenses available to Defendant that are unique to Plaintiff.

37. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests of the Members of the Class and Subclasses. Plaintiff retained counsel that is highly experienced in complex consumer class action litigation, and Plaintiff intends to vigorously prosecute this action on behalf of the Class and Subclasses. Furthermore, Plaintiff has no interests that are antagonistic to those of the Class or Subclasses.

38. **Superiority.** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by

1 individual Class and Subclass Members are relatively small compared to the burden and expense of
2 individual litigation of their claims against Defendant. It would, thus, be virtually impossible for
3 Class or Subclass Members to obtain effective redress on an individual basis for the wrongs
4 committed against them. Even if Class or Subclass Members could afford such individualized
5 litigation, the court system could not. Individualized litigation would create the danger of
6 inconsistent or contradictory judgments arising from the same set of facts. It would also increase
7 the delay and expense to all parties and the court system from the issues raised by this action. The
8 class action device provides the benefits of adjudication of these issues in a single proceeding,
9 economies of scale, and comprehensive supervision by a single court, and presents no unusual
10 management difficulties under the circumstances.

11 39. In the alternative, the Class and Subclasses may also be certified because:

- 12 (a) the prosecution of separate actions by individual Class and Subclass Members
13 would create a risk of inconsistent or varying adjudications with respect to
14 individual Class or Subclass Members that would establish incompatible
15 standards of conduct for Defendant;
- 16 (b) the prosecution of separate actions by individual Class and Subclass Members
17 would create a risk of adjudications with respect to them that would, as a
18 practical matter, be dispositive of the interests of other Class and Subclass
19 Members not parties to the adjudications, or substantially impair or impede their
20 ability to protect their interests; and/or Defendant has acted or refused to act on
21 grounds generally applicable to the Class and to the Subclass as a whole, thereby
22 making appropriate final declaratory and/or injunctive relief with respect to the
23 Members of the Class and to the Members of the Subclass as a whole.

24 **COUNT I**

25 **Breach Of Express Warranty**
26 **(On Behalf Of The Class And The Subclasses)**

27 40. Plaintiff hereby incorporates by reference the allegations contained in all preceding
28 paragraphs of this complaint.

1 41. Plaintiff brings this Count individually and on behalf of the members of the
2 proposed Class and the Subclasses against Defendant.

3 42. This claim is brought under the law of California.

4 43. As the designer, manufacturer, marketer, distributor, and/or seller of the Beautyrest
5 Products, Defendant issued an express warranty by representing to consumers at the point of
6 purchase that the Beautyrest Products had a thread count of 1000.

7 44. Plaintiff and the Class reasonably relied on Defendant's misrepresentations,
8 descriptions and specifications regarding the products' thread count, quality, durability, and fitness
9 of the products.

10 45. Defendant's representations were part of the description of the goods and the
11 bargain upon which the goods were offered for sale and purchased by Plaintiff and Members of the
12 Class and the Subclasses.

13 46. In fact, the Beautyrest Products do not conform to Defendant's representations
14 about the thread count because the Beautyrest Products have a lower thread count. By falsely
15 representing the Beautyrest Products in this way, Defendant breached express warranties.

16 47. On April 7, 2023, prior to the filing of this Complaint, Plaintiff's counsel sent
17 Defendant a warranty notice letter that complied in all respects with U.C.C. 2-607. The letter
18 provided notice of breach of express and implied warranties. The letter was sent via certified mail,
19 return receipt requested, advising Defendant that it was in violation of the U.C.C. 2-607 and state
20 consumer protection laws and demanding that it cease and desist from such violations and make
21 full restitution by refunding the monies received therefrom. The letter stated that it was sent on
22 behalf of Plaintiff Staples and all other similarly situated purchasers.

23 48. As a direct and proximate result of Defendant's breach, Plaintiff and Members of
24 the Class and Subclasses were injured because they: (1) paid money for the Beautyrest Products
25 that were not what Defendant represented; (2) were deprived of the benefit of the bargain because
26 the Beautyrest Products they purchased were different than Defendant advertised; and (3) were
27 deprived of the benefit of the bargain because the Beautyrest Products they purchased had less
28 value than if Defendant's representations about the characteristics of the Beautyrest Products were

1 truthful. Had Defendant not breached the express warranty by making the false representations
2 alleged herein, Plaintiff and Class and Subclass Members would not have purchased the Beautyrest
3 Products or would not have paid as much as they did for them.

4 **COUNT II**

5 **Breach of Implied Warranty of Merchantability**
6 **(On Behalf Of The Class And California Subclass)**

7 49. Plaintiff hereby incorporates by reference the allegations contained in all preceding
8 paragraphs of this complaint.

9 50. Plaintiff Staples brings this Count individually and on behalf of the members of the
10 proposed Class and the California Subclass against Defendant.

11 51. This claim is brought under the law of the State of California.

12 52. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller,
13 impliedly warranted that the Beautyrest Products would have a thread count of 1000.

14 53. Defendant, through its acts and omissions set forth herein, in its sale, marketing, and
15 promotion of Beautyrest Products, made implied representations to Plaintiff and the Class that their
16 Beautyrest Products had a thread count of 1000.

17 54. Defendant's Products had an entirely different thread count based on industry
18 standards. The Products were not of fair and average quality within Defendants' description. The
19 Products were also not labeled as required because the Product packaging contains
20 misrepresentations. The Products do not conform with the promises on their labels.

21 55. Defendant breached its implied warranties because the Beautyrest Products did not
22 have a thread count of 1000 and instead had a much lower thread count of approximately 216. As
23 a result of Defendant's conduct, Plaintiff and the Class did not receive the goods as impliedly
24 warranted by Defendant.

25 56. Plaintiff and the Class have sustained damages as a proximate result of the
26 foregoing breach of implied warranty in an amount to be determined at trial.
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COUNT III

**Unjust Enrichment
(On Behalf Of The Class And The California Subclass)**

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3 57. Plaintiff hereby incorporates by reference the allegations contained in all proceeding
4 paragraphs of this complaint.

5 58. Plaintiff Staples brings this claim individually and on behalf of members of the
6 Class and California Subclass against Defendant.

7 59. This claim is brought under the laws of the State of California.

8 60. Plaintiff Staples and Class and California Subclass members conferred benefits on
9 Defendant by purchasing the Products.

10 61. Defendant has knowledge of such benefits.

11 62. Defendant has been unjustly enriched in retaining the revenues derived from
12 Plaintiff Staples' and Class and California Subclass members' purchases of the Beautyrest
13 Products. Retention of monies under these circumstances is unjust and inequitable because
14 Defendant misrepresented that the Products contained a thread count of 1000 and failed to disclose
15 that the Beautyrest Products had a much lower thread count, and charged a price premium based on
16 those representations and omissions.

17 63. Putative class members have suffered an injury in fact and have lost money as a
18 result of Defendant's unjust conduct. Putative class members lack and adequate remedy at law
19 with respect to this claim and are entitled to non-restitutionary disgorgement of the financial profits
20 that Defendant obtained as a result of its unjust conduct.

21 **COUNT IV**

**Fraud
(On Behalf Of The Class And Subclasses)**

22
23 64. Plaintiff hereby incorporates by reference the allegations contained in all preceding
24 paragraphs of this complaint.

25 65. Plaintiff brings this claim individually and on behalf of members of the Class and
26 putative Subclasses.
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1 undertaken by Defendant in transactions intended to result in, and which did result in, the sale of
2 goods to consumers.

3 77. As alleged more fully above, Defendant has violated the CLRA by marketing that
4 the Products would have a thread count of 1000 when they do not, in fact, have this thread count.

5 78. As a result of engaging in such conduct, Defendant has violated California Civil
6 Code § 1770(a)(5), (a)(7), and (a)(9).

7 79. The CLRA was enacted to protect consumers against such practices. The CLRA
8 applies to Defendant's conduct because the statute covers all sales of goods to consumers.

9 80. As a direct and proximate result of Defendant's unfair and deceptive business
10 practices, as alleged above and herein, Plaintiff Staples and other Members of the California
11 Subclass suffered injury.

12 81. On information and belief, Defendant's unfair and deceptive business practices, as
13 alleged above and herein, were willful, wanton, and fraudulent.

14 82. On information and belief, Defendant's officers, directors, and/or managing agents
15 authorized the use of the false and misleading statements regarding the Beautyrest Products' thread
16 counts, as alleged above and herein.

17 83. Plaintiff Staples and the members of the California Subclass have suffered harm as a
18 result of these violations of the CLRA because they have paid monies for the Beautyrest Products
19 that they otherwise would not have incurred or paid.

20 84. Plaintiff Staples and the California Subclass Members seek compensatory damages,
21 punitive damages, injunctive relief, attorneys' fees, and restitution of any ill-gotten gains due to
22 Defendant's acts and practices in violation of the CLRA.

23 **COUNT VI**

24 **Violation of California's False Advertising Law ("FAL"),
25 Business & Professions Code § 17500 *et seq.***

26 85. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
27 above as though fully set forth herein.
28

1 86. Plaintiff Staples brings this claim individually and on behalf of the members of the
2 proposed Class and California Subclass.

3 87. Defendant violated Business & Professions Code § 17500 by publicly disseminating
4 false, misleading, and deceptive advertisements regarding the Beautyrest Products by advertising
5 that the Beautyrest Products contained a thread count of 1000 when they do not, in fact, have a
6 thread count of 1000.

7 88. Defendant's false and misleading advertisements were disseminated to increase the
8 sales of Beautyrest Products. Defendant knew or should have known that its advertisements for the
9 Beautyrest Products were false, misleading, and deceptive.

10 89. Plaintiff Staples and the members of the Class and California Subclass have suffered
11 harm as a result of these violations of the FAL because they have incurred charges and/or paid
12 monies for Products that they otherwise would not have incurred or paid.

13 90. Plaintiff and the members of the Class have suffered an injury in fact resulting in the
14 loss of money and/or property as a proximate result of the violations of law and wrongful conduct
15 of Defendant alleged herein, and they lack an adequate remedy at law to address the unfair conduct
16 at issue here. Legal remedies available to Plaintiff and class members are inadequate because they
17 are not equally prompt and certain and in other ways efficient as equitable relief. Damages are not
18 equally certain as restitution because the standard that governs restitution is different than the
19 standard that governs damages. Hence, the Court may award restitution even if it determines that
20 Plaintiff fail to sufficiently adduce evidence to support an award of damages. Damages and
21 restitution are not the same amount. Unlike damages, restitution is not limited to the amount of
22 money defendant wrongfully acquired plus the legal rate of interest. Equitable relief, including
23 restitution, entitles the plaintiff to recover all profits from the wrongdoing, even where the original
24 funds taken have grown far greater than the legal rate of interest would recognize. Legal claims for
25 damages are not equally certain as restitution because claims under the FAL entail few elements.
26 In short, significant differences in proof and certainty establish that any potential legal claim
27 cannot serve as an adequate remedy at law.

28 91. Plaintiff Staples seeks all available relief under the FAL.

COUNT VII

**Unlawful Business Practices In Violation of
California’s Unfair Competition Law (“UCL”),
Business & Professions Code §§ 17200 *et seq.* (Unlawful Practices)**

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4 92. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
5 above as though fully set forth herein.

6 93. Plaintiff Staples brings this claim individually and on behalf of the members of the
7 proposed Class and on behalf of the California Subclass.

8 By committing the acts and practices alleged herein, Defendant has violated California’s Unfair
9 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200-17210 by engaging in unlawful,
10 fraudulent, and unfair conduct.

11 94. Defendant has violated the UCL’s proscription against engaging in unlawful
12 conduct as a result of its violations of the CLRA, Cal. Civ. Code § 1770(a)(5), (a)(7), and (a)(9) as
13 alleged above. Defendant has also violated the unlawful prong under FCTA § 5(A) because its
14 business practices are “likely to cause substantial injury to consumers which is not reasonably
15 avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or
16 to competition.” 15 U.S.C. § 45(n).

17 95. Defendant’s business practices are deceptive because they include affirmative
18 representations and omissions and are likely to mislead reasonable consumers under the
19 circumstances.

20 96. Defendant’s business practices are further unlawful under the CLRA and under
21 UCL § 17000, *et seq.*, as alleged herein.

22 97. Defendant’s business practices are also unlawful pursuant to the FTCA by way of
23 the Textile Fiber Products Identification Act, 15 U.S.C. §§ 70a(a), 70a(b), and/or § 70a(c). These
24 sections make it unlawful, under 15 U.S.C. §§ 41 *et seq.*, to sell, transport, deliver, or advertise
25 “any textile fiber product . . . which is misbranded or deceptively advertised.”

26 98. Plaintiff and the members of the Class have suffered an injury in fact resulting in the
27 loss of money and/or property as a proximate result of the violations of law and wrongful conduct
28 of Defendant alleged herein, and they lack an adequate remedy at law to address the unfair conduct

1 at issue here. Legal remedies available to Plaintiff and class members are inadequate because they
2 are not equally prompt and certain and in other ways efficient as equitable relief. Damages are not
3 equally certain as restitution because the standard that governs restitution is different than the
4 standard that governs damages. Hence, the Court may award restitution even if it determines that
5 Plaintiff fails to sufficiently adduce evidence to support an award of damages. Damages and
6 restitution are not the same amount. Unlike damages, restitution is not limited to the amount of
7 money defendant wrongfully acquired plus the legal rate of interest. Equitable relief, including
8 restitution, entitles the plaintiff to recover all profits from the wrongdoing, even where the original
9 funds taken have grown far greater than the legal rate of interest would recognize. Legal claims for
10 damages are not equally certain as restitution because claims under the UCL entail few elements.
11 In short, significant differences in proof and certainty establish that any potential legal claim
12 cannot serve as an adequate remedy at law.

13 99. As a result of Defendant's unlawful business practices, Plaintiff and Class Members
14 have been harmed and are entitled to injunctive relief against the continuation of Defendant's
15 practices, as well as the restitution of payments made for Defendant's bedding and linen products,
16 including other equitable relief, costs, and attorneys' fees as recoverable by law, pursuant to UCL §
17 1720.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks
20 judgment against Defendant, as follows:

- 21 (a) For an order certifying the Class and the Subclasses under Rule 23 of the Federal Rules of
22 Civil Procedure, naming Plaintiff as the representative of the Class, Plaintiff Staples
23 representative of the California Subclass, and Plaintiff's attorneys as Class Counsel to
24 represent the Class and Subclass members;
- 25 (b) For an order declaring the Defendant's conduct violates the statutes referenced herein;
- 26 (c) For an order finding in favor of Plaintiff, the Class, and the Subclasses on all counts asserted
27 herein;
- 28

- 1 (d) For compensatory, statutory, and punitive damages in amounts to be determined by the
2 Court and/or jury;
- 3 (e) For prejudgment interest in all amounts awarded;
- 4 (f) For an order of restitution and all other forms of equitable monetary relief, including non-
5 restitutionary disgorgement;
- 6 (g) For an order awarding Plaintiff and the Class and Subclasses their reasonable attorney's fees
7 and expenses and costs of suit.

8 **JURY TRIAL DEMANDED**

9 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any and
10 all issues in this action so triable of right.

11
12 Dated: May 17, 2023

BURSOR & FISHER, P.A.

13 By: /s/ Joel D. Smith
14 Joel D. Smith

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