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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

14 CRYSTAL JOHNSON, individually
15 and on behalf of all others similarly
16 situated,

17 *Plaintiff,*

18 v.

19 EMMA MATTRESS INC.,
20

21 *Defendant.*
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Case No. '23CV1472 RBM WVG

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 **I. Introduction.**

2 1. Advertised “sale” prices are important to consumers. Consumers are
3 more likely to purchase an item if they know that they are getting a good deal.
4 Further, if consumers think that a sale will end soon, they are likely to buy now, rather
5 than wait, comparison shop, and buy something else.

6 2. While there is nothing wrong with a legitimate sale, a fake one—that is,
7 one with made-up regular prices, made-up discounts, and made-up expirations—is
8 deceptive and illegal.

9 3. Section 17500 of California’s False Advertising Law prohibits businesses
10 from making statements they know or should know to be untrue or misleading. Cal.
11 Bus. & Prof. Code § 17500. This includes statements falsely suggesting that a product
12 is on sale, when it actually is not.

13 4. Moreover, Section 17501 of California’s False Advertising Law provides
14 that “[n]o price shall be advertised as a former price ... unless the alleged former price
15 was the prevailing market price ... within three months next immediately preceding”
16 the advertising. Cal. Bus. & Prof. Code § 17501. So, in addition to generally
17 prohibiting untrue and misleading fake discounts, it also specifically prohibits this
18 particular flavor of fake discount (where the advertised former price is not the
19 prevailing price during the specified timeframe).

20 5. In addition, California’s Consumer Legal Remedies Act prohibits
21 “advertising goods or services with the intent not to sell them as advertised” and
22 specifically prohibits “false or misleading statements of fact concerning reasons for,
23 existence of, or amounts of price reductions.” Cal. Civ. Code § 1770(a)(9), (13).

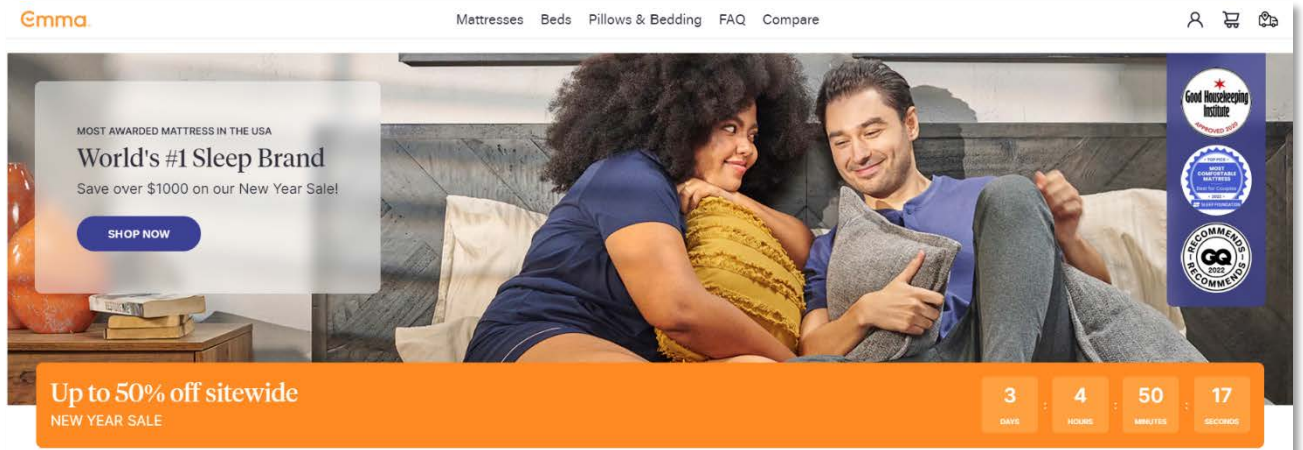
24 6. Moreover, the Federal Trade Commission’s regulations prohibit false or
25 misleading “former price comparisons,” for example, making up “an artificial, inflated
26 price ... for the purpose of enabling the subsequent offer of a large reduction” off that
27 price. 16 C.F.R. § 233.1. They also prohibit false or misleading “retail price
28 comparisons” and “comparable value comparisons,” for example, ones that falsely

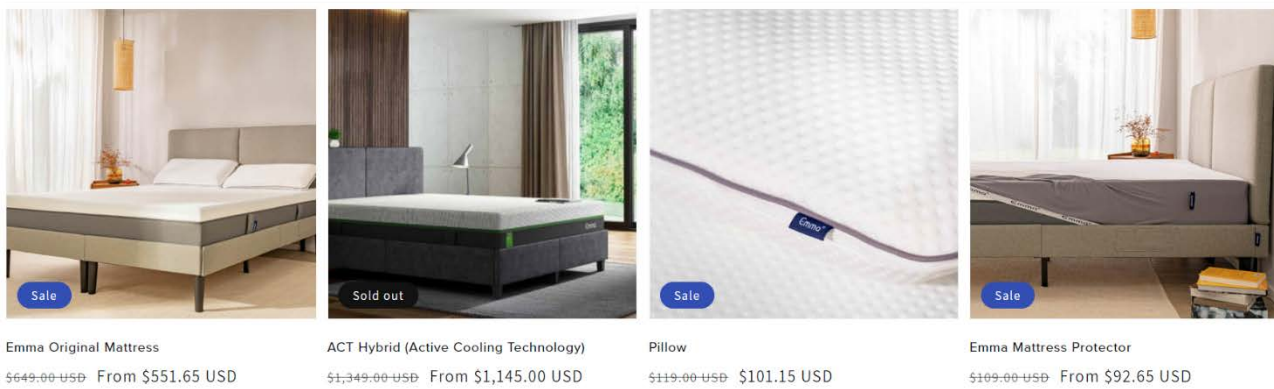
1 suggest that the seller is “offer[ing] goods at prices lower than those being charged by
2 others for the same merchandise” when this is not the case. 16 C.F.R. § 233.1.

3 7. So, as numerous courts have found, fake sales violate these laws. They
4 also violate California’s general prohibition on unlawful, unfair, and deceptive
5 business practices. *See* Cal. Bus. & Prof. Code § 17200.

6 8. Defendant Emma Mattress Inc. (“Defendant” or “Emma”) sells and
7 markets mattresses and other sleep-related products online through the Emma website,
8 www.emma-sleep.com (“Emma Products” or “Products”).

9 9. On its website, Defendant lists purported regular prices and advertises
10 purported limited time discounts from those regular prices. These include discounts
11 offering “up to \$X off” and “up to X% off.” Defendant uses countdown clocks to
12 represent that its sales are on the verge of ending. Defendant also advertises that its
13 Products have a lower discount price as compared to a higher, regular price shown in
14 grey and/or strikethrough font. Examples are shown below:





10. Far from being time-limited, however, Defendant’s discounts are *always* available. As a result, everything about Defendant’s price and purported discount advertising is false. The regular prices Defendant advertises are not actually Defendant’s regular prices, because Defendant’s Products are *always* available for less than that. The purported discounts Defendant advertises are not the true discount the customer is receiving, and are often not a discount at all. Nor are the purported discounts time-limited and expiring after the countdown clock runs out—quite the opposite, they are always available.

11. As described in greater detail below, Ms. Johnson bought an Emma CliMax Hybrid Mattress from Defendant from its website, www.emma-sleep.com. When Ms. Johnson made her purchase, Defendant advertised that a sale was going on, and so Defendant represented that the Product Ms. Johnson purchased was being offered at a steep discount from their purported regular price that Defendant advertised. And based on Defendant’s representations, Ms. Johnson believed that she was purchasing a Product whose regular price and market value were the purported regular price that Defendant advertised, that she was receiving a substantial discount, and that the opportunity to get that discount would end. These reasonable beliefs are what caused Ms. Johnson to buy from Defendant when she did.

12. In truth, however, the representations Ms. Johnson relied on were not true. The purported regular prices were not the true regular prices, the purported “discounts” were not the true discounts, and the discounts were ongoing. Had

1 Defendant been truthful, Ms. Johnson and other consumers like her would not have
2 purchased the Products, or would have paid less for them.

3 13. Plaintiff brings this case for herself and the other customers who
4 purchased Emma Products.

5 **II. Parties**

6 14. Plaintiff Crystal Johnson is domiciled in Ramona, California.

7 15. The proposed class includes citizens of every state.

8 16. Defendant Emma Mattress Inc. is an Delaware Corporation with an
9 address at 1209 Orange Street, Wilmington, Delaware 19801.

10 **III. Jurisdiction and Venue.**

11 17. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2).
12 The amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and
13 the matter is a class action in which one or more members of the proposed class are
14 citizens of a state different from Defendant.

15 18. The Court has personal jurisdiction over Defendant because Defendant
16 sold Emma Products to consumers in California, including to Plaintiff. Defendant
17 does business in California. It advertises and sells its Products in California, and
18 serves a market for its Products in California. Due to Defendant's actions, its
19 Products have been marketed and sold to consumers in California, and harmed
20 consumers in California. Plaintiff's claims arise out of Defendant's contacts with this
21 forum. Due to Defendant's actions, Plaintiff purchased Defendant's Product in
22 California, and was harmed in California.

23 19. Venue is proper under 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1391(d)
24 because Defendant would be subject to personal jurisdiction in this District if this
25 District were a separate state, given that Defendant sold Emma Products to consumers
26 in this District, including Plaintiff. Venue is also proper under 28 U.S.C. § 1391(b)(2)
27 because a substantial part of Defendant's conduct giving rise to the claims occurred in
28 this District, including Defendant's sale to Plaintiff.

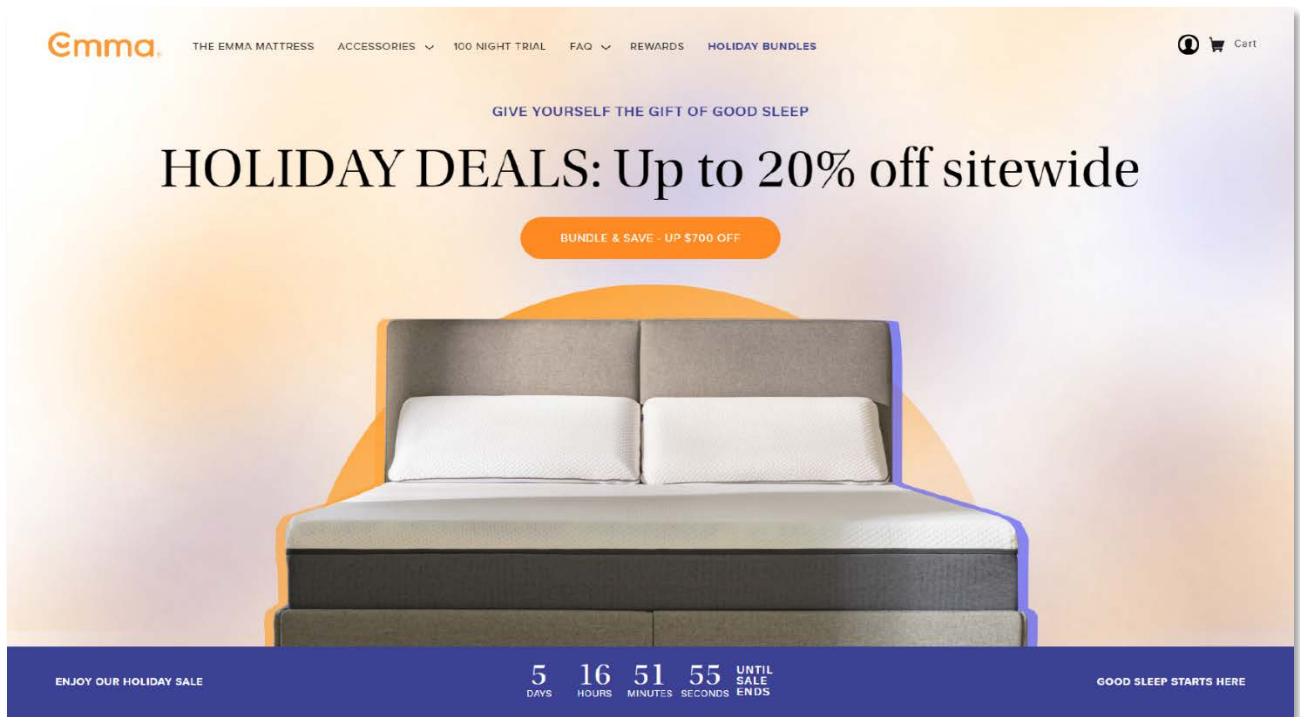
1 **IV. Facts.**

2 **A. Defendant’s fake prices and fake discounts.**

3 20. Defendant Emma Mattress manufactures, distributes, markets, and sells
4 mattresses and bedding products. Defendant sells its Products directly to consumers
5 through its website, www.emma-sleep.com.

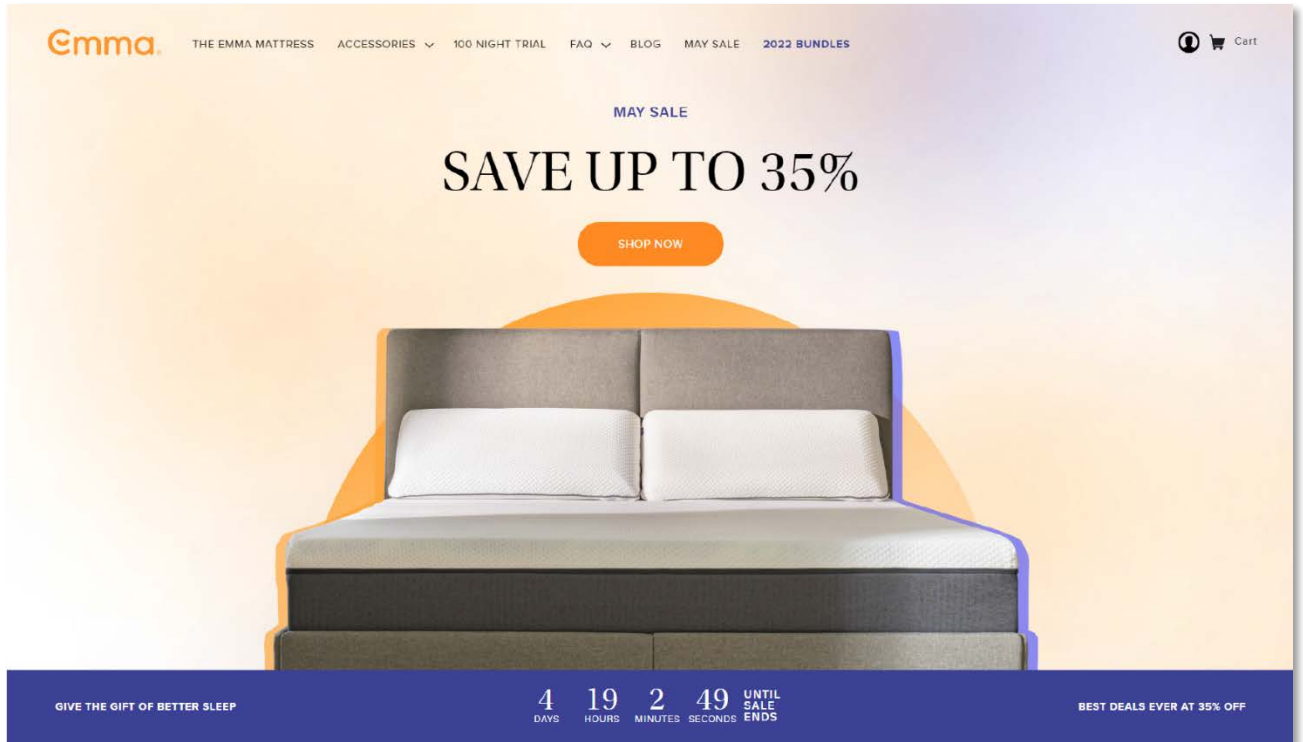
6 21. On its website, Defendant creates the false impression that its Products’
7 regular prices are higher than they truly are.

8 22. At any given time, on its website, Defendant advertises steep discounts
9 on its Products. These discounts always offer “X%” or “\$X” off the regular prices
10 Defendant advertises. Even though in truth these discounts run in perpetuity,
11 Defendant prominently claims that they will end after the countdown clock runs out.
12 And it advertises these discounts extensively: on an attention-grabbing banner at the
13 top of its website; in a large banner image on its homepage; on the products listing
14 pages, next to images of each Product; on the individual product pages for each
15 Product. Example screenshots are provided on the following pages:



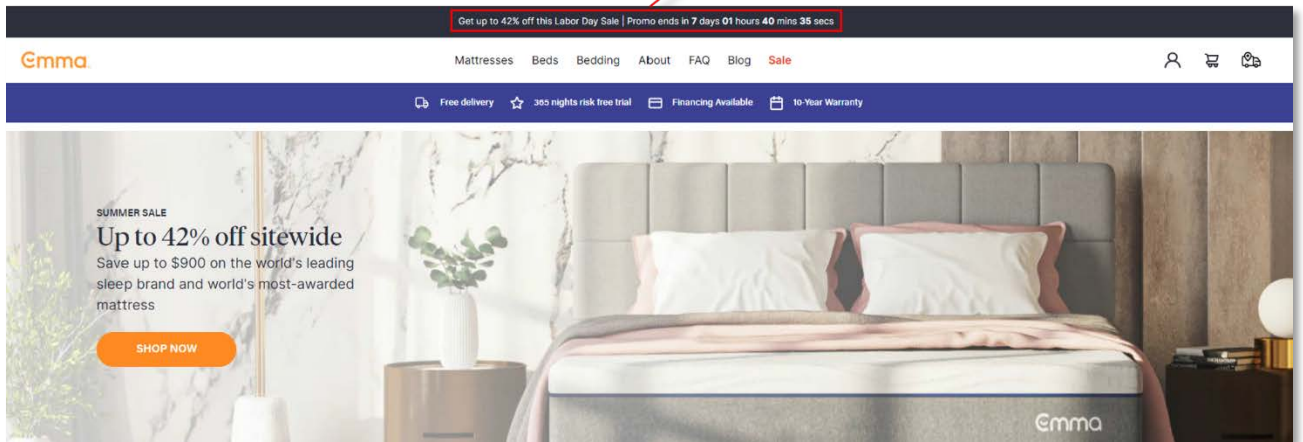
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28 *Captured on January 1, 2022*

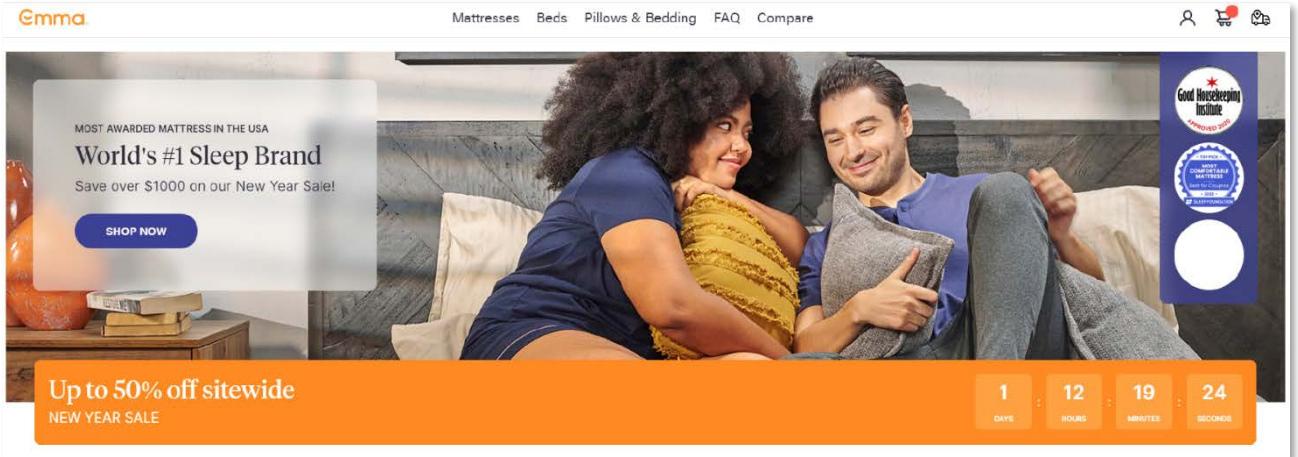


Captured on May 15, 2022

Get up to 42% off this Labor Day Sale | Promo ends in 7 days 01 hours 40 mins 35 secs

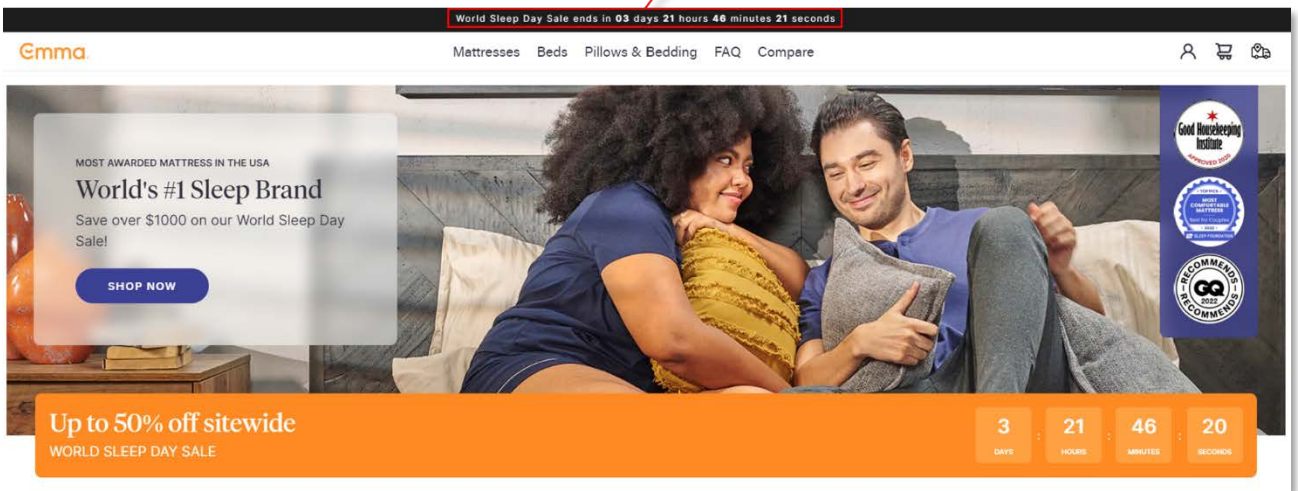


Captured on September 2, 2022



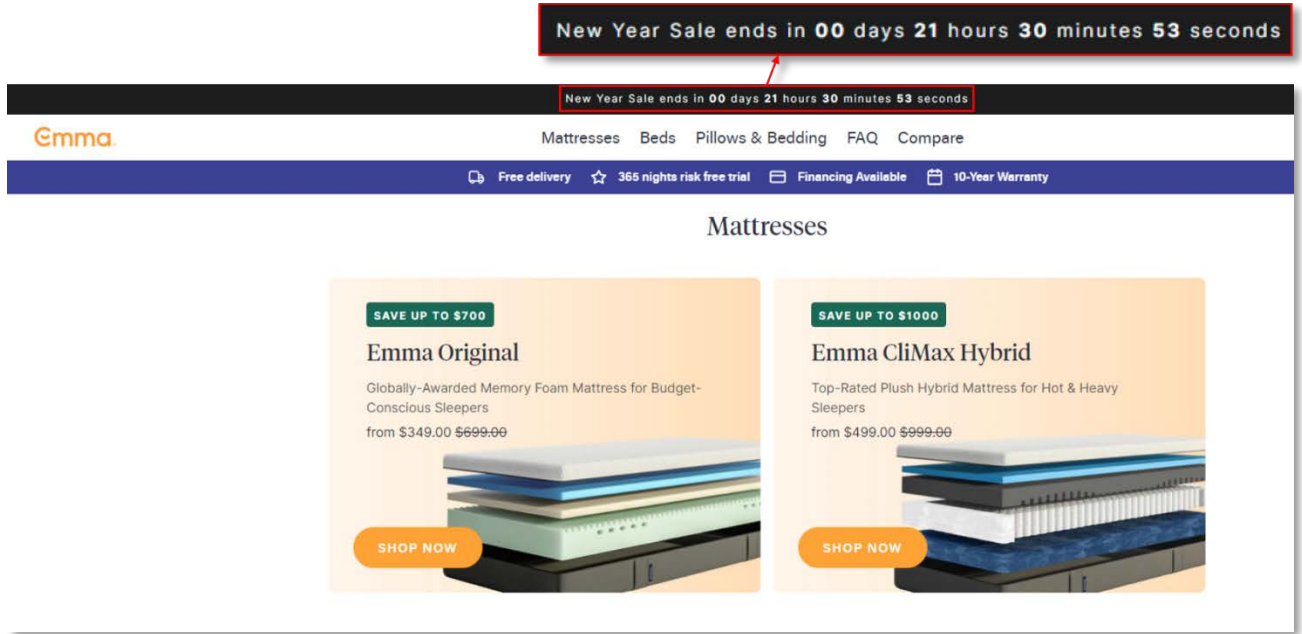
Captured on January 4, 2023

World Sleep Day Sale ends in 03 days 21 hours 46 minutes 21 seconds

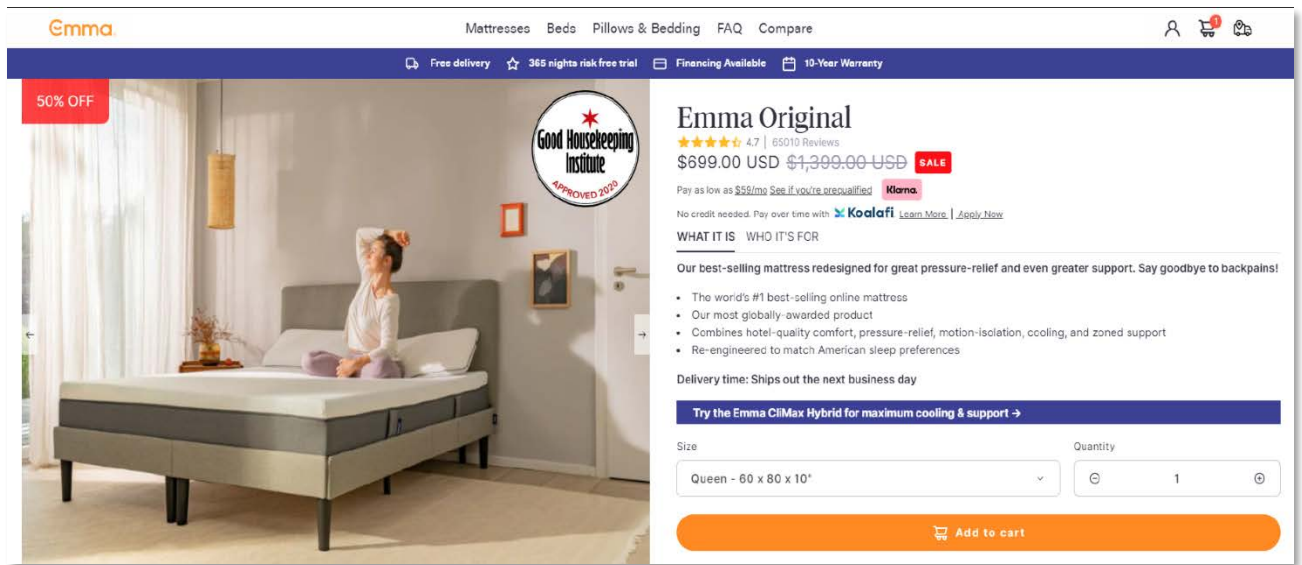


Captured on March 20, 2023

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Captured on January 19, 2023

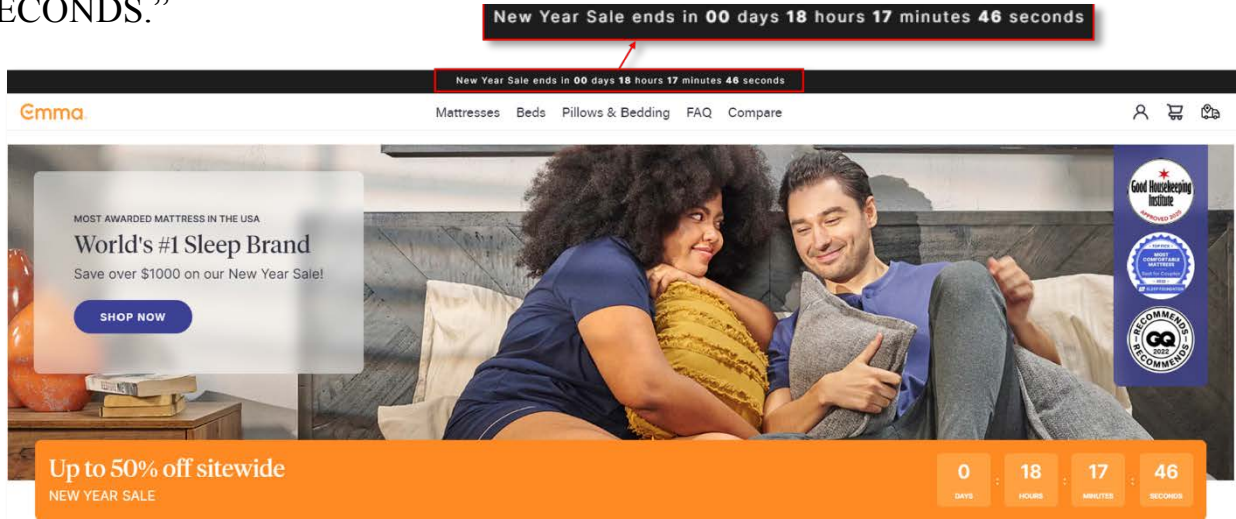


Captured on January 10, 2023

23. Defendant represents that these discounts will only be available for a limited time, but in reality, they continue indefinitely. For example, as depicted below, Defendant represents that its sales expire on a particular date or when the countdown clock expires, for example: “0 DAYS: 18 HOURS: 17 MINUTES: 46 SECONDS.” To reasonable consumers, this means that after the countdown clock

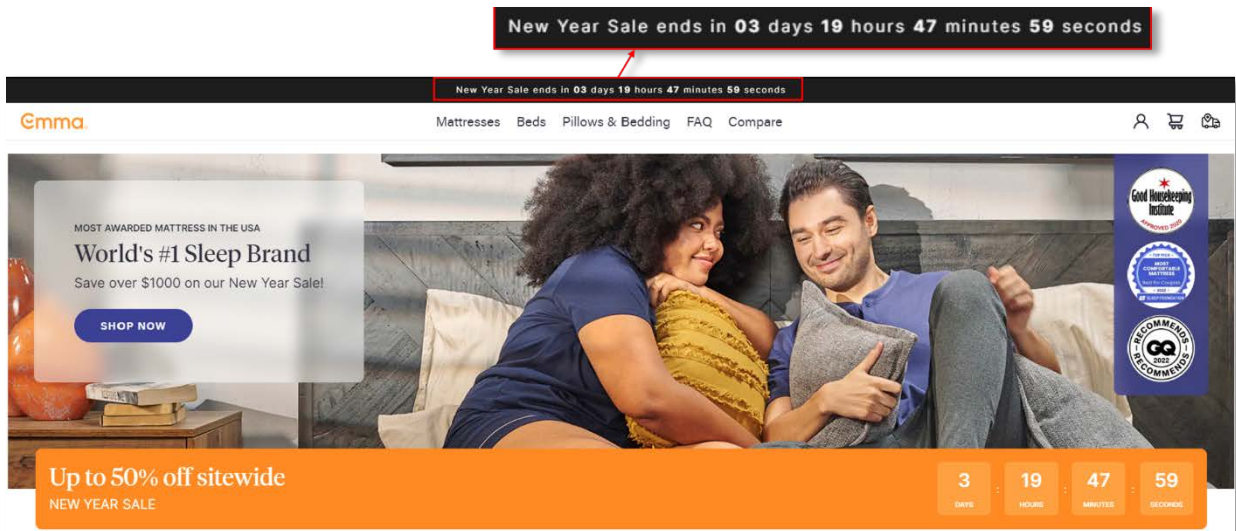
1 runs out, Defendant’s Products will no longer be on sale and will retail at their
2 purported regular price. But immediately after each purportedly time-limited sale
3 ends, Defendant generates another similar discount, with a new expiration date.

4 24. For example, on January 25, 2023, Defendant advertised a purportedly
5 time-limited sale that was set to expire after “0 DAYS: 18 HOURS: 17 MINUTES: 46
6 SECONDS.”



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15 *Captured on January 25, 2023*

16 25. However, on January 26, 2023, the day that the time-limited sale was
17 supposed to have ended, Defendant advertised the same sale with a new expiration
18 date, in another “3 DAYS: 19 HOURS: 47 MINUTES: 59 SECONDS.”



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28 *Captured on January 26, 2023*

1 26. To confirm that Defendant always offers discounts off of purported
2 regular prices, Plaintiff’s counsel performed an investigation of Defendant’s
3 advertising practices using the Internet Archive’s Wayback Machine (available at
4 www.archive.org).¹ Defendant’s sales have persisted continuously since at least
5 December 15, 2021. For example, 30 randomly selected screenshots of Defendant’s
6 website, www.emma-sleep.com, were collected from the Internet Archive’s Wayback
7 Machine, from the 2021-2022 period. In addition, 46 additional screenshots from the
8 www.emma-sleep.com website were captured in 2023 by visiting the website and
9 recording screenshots. One hundred percent of the 76 randomly selected screenshots
10 of Defendant’s website, captured on the Wayback Machine and directly on the
11 website, displayed a purported discount.

12 27. In addition, Defendant’s website lists fake regular prices (that is, prices
13 reflecting the list price or value of an item) and fake discounts.

14 28. For example, on January 25, 2023, Defendant advertised a “SAVE UP
15 TO \$1000” discount on the Emma CliMax Hybrid Mattress. On this day, Defendant
16 offered its Emma CliMax Hybrid Mattress, which has a purported regular price of
17 \$999.00, for a discounted price of \$499.00:



Captured January 25, 2023

27 _____
28 ¹ The Internet Archive, available at archive.org, is a library that archives web pages. <https://archive.org/about/>

1 29. But the truth is, the CliMax Hybrid Mattress’s listed regular price of
2 \$999.00 is not its prevailing price. Instead, it is always at a discount from the
3 purported regular price (e.g., on January 26, 2023, the day that the sale was supposed
4 to have ended, Defendant once again offered a “SAVE UP TO \$1000” discount on the
5 CliMax Hybrid Mattress for a discounted price of \$499.00).

6 30. Using these tactics, Defendant leads reasonable consumers to believe that
7 they will get a discount on the Products they are purchasing if they purchase during
8 the limited-time promotion. In other words, it leads reasonable consumers to believe
9 that if they buy now, they will get a Product worth X at a discounted, lower price Y.
10 This creates a sense of urgency: buy now, and you will receive something worth more
11 than you pay for it; wait, and you will pay more for the same thing later.

12 31. Based on Defendant’s advertisements, reasonable consumers reasonably
13 believe that the regular prices Defendant advertises are Defendant’s former prices
14 (that is, the price at which the goods were actually offered for sale before the limited-
15 time offer went into effect). In other words, reasonable consumers reasonably believe
16 that the regular prices Defendant advertises represent the amount that consumers
17 formerly had to pay for Defendant’s goods, before the limited-time sale began. Said
18 differently, reasonable consumers reasonably believe that, prior to the supposedly
19 time-limited sale, consumers had to pay the regular price to get the item and did not
20 have the opportunity to get a discount from that regular price.

21 32. Reasonable consumers also reasonably believe that the regular prices
22 Defendant advertises represent the true market value of the Products, and are the
23 prevailing prices for those Products; and that they are receiving reductions from those
24 regular prices in the amounts advertised. In truth, however, Defendant *always* offers
25 discounts off the purportedly regular prices it advertises. As a result, everything about
26 Defendant’s price and purported discount advertising is false. The regular prices
27 Defendant advertises are not actually Defendant’s regular or former prices, or the
28 prevailing prices for the Products Defendant sells, and do not represent the true market

1 value for the Products, because Defendant’s Products are *always* available for less
2 than that, and customers did not have to formerly pay that amount to get those items.
3 The purported discounts Defendant advertises are not the true discount the customer is
4 receiving, and are often not a discount at all. Nor will the purported discounts expire
5 after the countdown clocks run out—quite the opposite, they are always available.

6 **B. Defendant’s advertisements are unfair, deceptive, and unlawful.**

7 33. Section 17500 of California’s False Advertising Law prohibits businesses
8 from making statements they know or should know to be untrue or misleading. Cal.
9 Bus. & Prof. Code § 17500. This includes statements falsely suggesting that a product
10 is on sale, when it actually is not.

11 34. Moreover, section 17501 of California’s False Advertising Law
12 specifically provides that “[n]o price shall be advertised as a former price ... unless
13 the alleged former price was the prevailing market price ... within three months next
14 immediately preceding” the advertising. Cal. Bus. & Prof. Code § 17501.

15 35. In addition, California’s Consumer Legal Remedies Act prohibits
16 “advertising goods or services with the intent not to sell them as advertised” and
17 specifically prohibits “false or misleading statements of fact concerning reasons for,
18 existence of, or amounts of price reductions.” Cal. Civ. Code § 1770(a)(9), (13).

19 36. In addition, the Federal Trade Commission’s regulations prohibit false or
20 misleading “former price comparisons,” for example, making up “an artificial, inflated
21 price ... for the purpose of enabling the subsequent offer of a large reduction” off that
22 price. 16 C.F.R. § 233.1. They also prohibit false or misleading “retail price
23 comparisons” and “comparable value comparisons,” for example ones that falsely
24 suggest that the seller is “offer[ing] goods at prices lower than those being charged by
25 others for the same merchandise” when this is not the case. 16 C.F.R. § 233.1.

26 37. And finally, California’s unfair competition law bans unlawful, unfair,
27 and deceptive business practices. *See* Cal. Bus. & Prof. Code § 17200.

28

1 38. Here, as described in detail above, Defendant makes untrue and
2 misleading statements about its prices. Defendant advertises regular prices that are
3 not its true regular prices, or its former prices, and were not the prevailing market
4 price in the three months immediately preceding the advertisement. In addition,
5 Defendant advertised goods or services with the intent not to sell them as advertised,
6 for example, by advertising goods having certain former prices and/or market values
7 without the intent to sell goods having those former prices and/or market values.
8 Defendant made false or misleading statements of fact concerning the reasons for,
9 existence of, and amounts of price reductions, including the existence of steep
10 discounts, and the amounts of price reductions resulting from those discounts. And
11 Defendant engaged in unlawful, unfair, and deceptive business practices.

12 **C. Defendant’s advertisements harm consumers.**

13 39. Based on Defendant’s advertisements, reasonable consumers would
14 expect that the listed regular prices are the regular prices at which Defendant usually
15 sells its Products; that these are former prices that Defendant sold its Products at
16 before the time-limited discount was introduced.

17 40. Reasonable consumers would also expect that, if they purchase during
18 the sale, they will receive an item whose regular price and/or market value is the
19 advertised regular price and that they will receive the advertised discount from the
20 regular purchase price.

21 41. In addition, consumers are more likely to buy the product if they believe
22 that the product is on sale and that they are getting a product with a higher regular
23 price and/or market value at a substantial discount.

24 42. Consumers that are presented with discounts are substantially more likely
25 to make the purchase. “Nearly two-thirds of consumers surveyed admitted that a
26 promotion or a coupon often closes the deal, if they are wavering or are undecided on
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28

1 making a purchase.”² And, “two-thirds of consumers have made a purchase they
 2 weren’t originally planning to make solely based on finding a coupon or discount,”
 3 while “80% [of consumers] said they feel encouraged to make a first-time purchase
 4 with a brand that is new to them if they found an offer or discount.”³

5 43. Similarly, when consumers believe that an offer is expiring soon, the
 6 sense of urgency makes them more likely to buy a product.⁴

7 44. Thus, Defendant’s advertisements harm consumers by inducing them to
 8 make purchases based on false information. In addition, by this same mechanism,
 9 Defendant’s advertisements artificially increase consumer demand for Defendant’s
 10 Products. This puts upward pressure on the prices that Defendant can charge for its
 11 Products. As a result, Defendant can charge a price premium for its Products, that it
 12 would not be able to charge absent the misrepresentations described above. So, due to
 13 Defendant’s misrepresentations, Plaintiff and the class paid more for the Products they
 14 bought than they otherwise would have.

15 **D. Plaintiff was misled by Defendant’s misrepresentations.**

16 45. On May 27, 2023, Ms. Johnson purchased a California King-Sized
 17 Emma CliMax Hybrid Mattress from Defendant’s website, www.emma-sleep.com.
 18 She made this purchase while living in Ramona, California. On its website,
 19 Defendant represented that a sale was running and that it applied to the Product that
 20 Ms. Johnson purchased. In the email order confirmation that Defendant sent to Ms.
 21 Johnson, Defendant represented the Emma CliMax Hybrid Mattress had a discounted
 22 price of \$799. Defendant represented on its website that the Product had a certain

23 ² [https://www.invespcro.com/blog/how-discounts-affect-online-consumer-](https://www.invespcro.com/blog/how-discounts-affect-online-consumer-buying-behavior/)
 24 [buying-behavior/](https://www.invespcro.com/blog/how-discounts-affect-online-consumer-buying-behavior/).

25 ³ RetailMeNot Survey: Deals and Promotional Offers Drive Incremental
 26 Purchases Online, Especially Among Millennial Buyers (prnewswire.com).

27 ⁴ <https://cxl.com/blog/creating-urgency/> (addition of a countdown timer
 28 increased conversion rates from 3.4%-10%); Dynamic email content leads to 400%
 increase in conversions for Black Friday email | Adestra (uplandsoftware.com) (400%
 higher conversation rate for ad with countdown timer).

1 regular price and that Ms. Johnson was receiving a substantial discount for the item
2 that she purchased.

3 46. Ms. Johnson read and relied on Defendant's representations on the
4 website, specifically that the Product was being offered at a discount for a limited time
5 and had the regular price. Based on Defendant's representations described above, Ms.
6 Johnson reasonably understood that the Product she was purchasing regularly (and
7 before the promotion Defendant was advertising) retailed at the published regular
8 price, that this regular price was the market value of the Product that she was buying,
9 that she was receiving the advertised discount as compared to the regular price, and
10 that advertised discount was only available for a limited time (during the limited time
11 promotion). She would not have made the purchase if she had known that the Product
12 was not discounted as advertised, and that she was not receiving the advertised
13 discount.

14 47. Plaintiff faces an imminent threat of future harm. Plaintiff would
15 purchase Products from Defendant again in the future if she could feel sure that
16 Defendant's regular prices accurately reflected Defendant's former prices and the
17 market value of the Products, and that its discounts were truthful. But without an
18 injunction, Plaintiff has no realistic way to know which—if any—of Defendant's
19 regular prices, discounts, and sales are not false or deceptive. Accordingly, Plaintiff is
20 unable to rely on Defendant's advertising in the future, and so cannot purchase
21 Products she would like to purchase.

22 **E. Defendant breached its contract.**

23 48. When Ms. Johnson purchased and paid for the Emma Product she bought
24 as described above, she accepted offers that Defendant made, and thus, a contract was
25 formed at the time that she made a purchase. The offer was to provide a Product
26 having a particular listed regular price and market value, and to provide that Product
27 at the discounted price advertised on the website.
28

1 49. Defendant’s website listed the market value of the item that Defendant
2 promised to provide. Defendant agreed to provide a discount equal to the difference
3 between the regular price listed by Defendant, and the price paid by Ms. Johnson. For
4 example, Defendant offered to provide the Emma CliMax Hybrid Mattress for a
5 discounted price of \$799.

6 50. The regular price and market value of the items Ms. Johnson would
7 receive, and the amount of the discount she would be provided off the regular price of
8 those items, were specific and material terms of the contract.

9 51. Ms. Johnson performed her obligations under the contract by paying for
10 the item she purchased.

11 52. Defendant breached its contract by failing to provide Ms. Johnson with a
12 Product that has a regular price and market value equal to the regular price displayed,
13 and by failing to provide the discount it promised.

14 **F. No adequate remedy at law.**

15 53. Plaintiff seeks damages and, in the alternative, restitution. Plaintiff is
16 permitted to seek equitable remedies in the alternative because she has no adequate
17 remedy at law.

18 54. A legal remedy is not adequate if it is not as certain as an equitable
19 remedy. The elements of Plaintiff’s equitable claims are different and do not require
20 the same showings as Plaintiff’s legal claims. For example, Plaintiff’s FAL claim
21 under Section 17501 (an equitable claim) is predicated on a specific statutory
22 provision, which prohibits advertising merchandise using a former price if that price
23 was not the prevailing market price within the past three months. Cal. Bus. & Prof.
24 Code § 17501. Plaintiff may be able to prove these more straightforward factual
25 elements, and thus prevail under the FAL, while not being able to prove one or more
26 elements of her legal claims.

1 55. In addition, the remedies at law available to Plaintiff are not equally
2 prompt or otherwise efficient. The need to schedule a jury trial may result in delay.
3 And a jury trial will take longer, and be more expensive, than a bench trial.

4 **V. Class action allegations.**

5 56. Plaintiff brings the asserted claims on behalf of the proposed class of:

- 6 • Nationwide Class: all persons who, within the applicable statute of
7 limitations period, purchased one or more Emma Products advertised at a
8 discount on Defendant's website.
- 9 • California Subclass: all persons who, while in the state of California and
10 within the applicable statute of limitations period, purchased one or more
11 Emma Products advertised at a discount on Defendant's website.

12 57. The following people are excluded from the class: (1) any Judge or
13 Magistrate Judge presiding over this action and the members of their family; (2)
14 Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity
15 in which the Defendant or its parents have a controlling interest and their current
16 employees, officers, and directors; (3) persons who properly execute and file a timely
17 request for exclusion from the class; (4) persons whose claims in this matter have been
18 finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and
19 Defendant's counsel, and their experts and consultants; and (6) the legal
20 representatives, successors, and assigns of any such excluded persons.

21 ***Numerosity & Ascertainability***

22 58. The proposed class contains members so numerous that separate joinder
23 of each member of the class is impractical. There are tens or hundreds of thousands of
24 class members.

25 59. Class members can be identified through Defendant's sales records and
26 public notice.

1 65. Defendant has violated Sections 17500 and 17501 of the Business and
2 Professions Code.

3 66. Defendant has violated, and continues to violate, Section 17500 of the
4 Business and Professions Code by disseminating untrue and misleading
5 advertisements to Plaintiff and subclass members.

6 67. As alleged more fully above, Defendant advertises former prices along
7 with discounts. Defendant does this, for example, by crossing out a higher price (e.g.,
8 ~~\$999.00~~) and displaying it next to a lower, discounted price. Reasonable consumers
9 would understand prices listed as regular prices from which time-limited discounts are
10 calculated to denote “former” prices, i.e., the prices that Defendant charged before the
11 time-limited discount went into effect.

12 68. The prices advertised by Defendant are not Defendant’s regular prices.
13 In fact, those prices are never Defendant’s regular prices (i.e., the price you usually
14 have to pay to get the product in question), because there is always a heavily-
15 advertised promotion ongoing entitling consumers to a discount. Moreover, for the
16 same reasons, those prices were not the former prices of the Products. Accordingly,
17 Defendant’s statements about the former prices of its Products, and its statements
18 about its discounts from those former prices, were untrue and misleading. In addition,
19 Defendant’s statements that its discounts will end soon are false and misleading too.

20 69. In addition, Defendant has violated, and continues to violate, Section
21 17501 of the Business and Professions Code by advertising former prices that were
22 not the prevailing market price within three months next immediately preceding the
23 advertising. As explained above, Defendant’s advertised regular prices, which
24 reasonable consumers would understand to denote former prices, were not the
25 prevailing market prices for the Products within three months preceding publication of
26 the advertisement. And Defendant’s former price advertisements do not state clearly,
27 exactly, and conspicuously when, if ever, the former prices prevailed. Defendant’s
28

1 advertisements do not indicate whether or when the purported former prices were
2 offered at all.

3 70. Defendant’s misrepresentations were intended to induce reliance, and
4 Plaintiff saw, read, and reasonably relied on the statements when purchasing Emma
5 Products. Defendant’s misrepresentations were a substantial factor in Plaintiff’s
6 purchase decision.

7 71. In addition, subclass-wide reliance can be inferred because Defendant’s
8 misrepresentations were material, i.e., a reasonable consumer would consider them
9 important in deciding whether to buy the Emma Products.

10 72. Defendant’s misrepresentations were a substantial factor and proximate
11 cause in causing damages and losses to Plaintiff and the subclass.

12 73. Plaintiff and the subclass were injured as a direct and proximate result of
13 Defendant’s conduct because (a) they would not have purchased Emma Products if
14 they had known the truth, and/or (b) they overpaid for the Products because the Emma
15 Products were sold at a price premium due to the misrepresentation.

16 **Second Cause of Action:**

17 **Violation of California’s Consumer Legal Remedies Act**

18 **(by Plaintiff and the California Subclass)**

19 74. Plaintiff incorporates each and every factual allegation set forth above.

20 75. Plaintiff brings this cause of action on behalf of herself and members of
21 the California Subclass.

22 76. Plaintiff and the subclass are “consumers,” as the term is defined by
23 California Civil Code § 1761(d).

24 77. Plaintiff and the subclass have engaged in “transactions” with Defendant
25 as that term is defined by California Civil Code § 1761(e).

26 78. The conduct alleged in this Complaint constitutes unfair methods of
27 competition and unfair and deceptive acts and practices for the purpose of the CLRA,
28

1 and the conduct was undertaken by Defendant in transactions intended to result in, and
2 which did result in, the sale of goods to consumers.

3 79. As alleged more fully above, Defendant made and disseminated untrue
4 and misleading statements of facts in its advertisements to subclass members.
5 Defendant did this by using fake regular prices, i.e., regular prices that are not the
6 prevailing prices, and by advertising fake discounts.

7 80. Defendant violated, and continues to violate, section 1770 of the
8 California Civil Code.

9 81. Defendant violated, and continues to violate, section 1770(a)(5) of the
10 California Civil Code by representing that Products offered for sale have
11 characteristics or benefits that they do not have. Defendant represents that the value
12 of its Products is greater than it actually is by advertising inflated regular prices and
13 fake discounts for Products.

14 82. Defendant violated, and continues to violate, section 1770(a)(9) of the
15 California Civil Code. Defendant violates this by advertising its Products as being
16 offered at a discount, when in fact Defendant does not intend to sell the Products at a
17 discount.

18 83. And Defendant violated, and continues to violate section 1770(a)(13) by
19 making false or misleading statements of fact concerning reasons for, existence of, or
20 amounts of, price reductions on its website, including by (1) misrepresenting the
21 regular price of Products on its website, (2) advertising discounts and savings that are
22 exaggerated or nonexistent, (3) misrepresenting that the discounts and savings are
23 unusually large, when in fact they are regularly available (4) misrepresenting the
24 reason for the sale (e.g., “World Sleep Day Sale,” when in fact the sale is ongoing and
25 not limited to “World Sleep Day”).

26 84. Defendant’s representations were likely to deceive, and did deceive,
27 Plaintiff and reasonable consumers. Defendant knew, or should have known through
28 the exercise of reasonable care, that these statements were inaccurate and misleading.

1 85. Defendant’s misrepresentations were intended to induce reliance, and
2 Plaintiff saw, read, and reasonably relied on them when purchasing the Emma
3 Product. Defendant’s misrepresentations were a substantial factor in Plaintiff’s
4 purchase decision.

5 86. In addition, subclass-wide reliance can be inferred because Defendant’s
6 misrepresentations were material, i.e., a reasonable consumer would consider them
7 important in deciding whether to buy the Emma Products.

8 87. Defendant’s misrepresentations were a substantial factor and proximate
9 cause in causing damages and losses to Plaintiff and the subclass.

10 88. Plaintiff and the subclass were injured as a direct and proximate result of
11 Defendant’s conduct because (a) they would not have purchased Emma Products if
12 they had known the discounts and/or regular prices were not real, (b) they overpaid for
13 the Products because the Products were sold at a price premium due to the
14 misrepresentation, and/or (c) they received products with market values lower than the
15 promised market values.

16 89. Accordingly, pursuant to California Civil Code § 1780(a)(2), Ms.
17 Johnson, on behalf of herself and all other members of the subclass, seeks injunctive
18 relief.

19 90. CLRA § 1782 NOTICE. On August 1, 2023, a CLRA demand letter was
20 sent to Defendant’s registered agent via certified mail (return receipt requested), that
21 provided notice of Defendant’s violations of the CLRA and demanded that Defendant
22 correct the unlawful, unfair, false and/or deceptive practices alleged here. Defendant
23 does not have a California headquarters. If Defendant does not fully correct the
24 problem for Plaintiff and for each member of the California Subclass within 30 days
25 of receipt, Plaintiff and the California Subclass will seek all monetary relief allowed
26 under the CLRA.

27 91. A CLRA venue declaration is attached.
28

1 **Third Cause of Action:**

2 **Violation of California’s Unfair Competition Law**

3 **(by Plaintiff and the California Subclass)**

4 92. Plaintiff incorporates each and every factual allegation set forth above.

5 93. Plaintiff brings this cause of action on behalf of herself and members of
6 the California Subclass.

7 94. Defendant has violated California’s Unfair Competition Law (UCL) by
8 engaging in unlawful, fraudulent, and unfair conduct (i.e., violating each of the three
9 prongs of the UCL).

10
11 ***The Unlawful Prong***

12 95. Defendant engaged in unlawful conduct by violating the CLRA and FAL,
13 as alleged above and incorporated here. In addition, Defendant engaged in unlawful
14 conduct by violating the FTCA. The FTCA prohibits “unfair or deceptive acts or
15 practices in or affecting commerce” and prohibits the dissemination of false
16 advertisements. 15 U.S.C. § 45(a)(1), 15 U.S.C. § 52(a). As the FTC’s regulations
17 make clear, Defendant’s false pricing schemes violate the FTCA. 16 C.F.R. § 233.1,
18 § 233.2.

19 ***The Deceptive Prong***

20 96. As alleged in detail above, Defendant’s representations that its Products
21 were on sale, that the sale was limited in time, that the Products had a specific regular
22 price, and that the customers were receiving discounts were false and misleading.

23 97. Defendant’s representations were misleading to Plaintiff and other
24 reasonable consumers.

25 98. Plaintiff relied upon Defendant’s misleading representations and
26 omissions, as detailed above.

1 107. Plaintiff and the subclass were injured as a direct and proximate result of
2 Defendant's conduct because (a) they would not have purchased the Emma Products if
3 they had known that they were not discounted, and/or (b) they overpaid for the
4 Products because the Products were sold at the regular price and not at a discount.

5 **Fourth Cause of Action:**

6 **Breach of Contract**

7 **(by Plaintiff and the Nationwide Class)**

8 108. Plaintiff incorporates each and every factual allegation set forth above.

9 109. Plaintiff brings this cause of action on behalf of herself and the
10 Nationwide Class. In the alternative, Plaintiff brings this cause of action on behalf of
11 herself and the California Subclass.

12 110. Plaintiff and class members entered into contracts with Defendant when
13 they placed orders to purchase Products on Defendant's website.

14 111. The contracts provided that Plaintiff and class members would pay
15 Defendant for the Products purchased.

16 112. The contracts further required that Defendant provides Plaintiff and class
17 members with Products that have a market value equal to the regular prices displayed
18 on the website. They also required that Defendant provide Plaintiff and class
19 members with a discount equal to the difference between the price paid, and the
20 regular prices advertised. These were specific and material terms of the contract.

21 113. The specific discounts were a specific and material term of each contract.

22 114. Plaintiff and class members paid Defendant for the Products they
23 purchased, and satisfied all other conditions of their contracts.

24 115. Defendant breached its contracts with Plaintiff and class members by
25 failing to provide Products that had a regular price, former price, and/or prevailing
26 market value equal to the regular price displayed on its website, and by failing to
27 provide the promised discount. Defendant did not provide the discount that it had
28 promised.

1 116. As a direct and proximate result of Defendant’s breaches, Plaintiff and
2 class members were deprived of the benefit of their bargained-for exchange, and have
3 suffered damages in an amount to be established at trial.

4 **Fifth Cause of Action:**

5 **Breach of Express Warranty**

6 **(by Plaintiff and the California Subclass)**

7 117. Plaintiff incorporates each and every factual allegation set forth above.

8 118. Plaintiff brings this cause of action on behalf of herself and members of
9 the California Subclass.

10 119. Defendant, as the manufacturer, marketer, distributor, supplier, and/or
11 seller of the Emma Products, issued material, written warranties by advertising that
12 the Products had a prevailing market value equal to the regular price displayed on
13 Defendant’s website. This was an affirmation of fact about the Products (i.e., a
14 representation about the market value) and a promise relating to the goods.

15 120. This warranty was part of the basis of the bargain and Plaintiff and
16 members of the subclass relied on this warranty.

17 121. In fact, the Emma Products’ stated market value was not the prevailing
18 market value. Thus, the warranty was breached.

19 122. Plaintiff provided Defendant with notice of this breach of warranty, by
20 mailing a notice letter to Defendant’s registered agent, on August 1, 2023.

21 123. Plaintiff and the subclass were injured as a direct and proximate result of
22 Defendant’s breach, and this breach was a substantial factor in causing harm, because
23 (a) they would not have purchased Emma Products if they had known that the
24 warranty was false, or (b) they overpaid for the Products because the Products were
25 sold at a price premium due to the warranty.

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Sixth Cause of Action:
Breach of Implied Warranty
(by Plaintiff and the California Subclass)

124. Plaintiff incorporates each and every factual allegation set forth above.

125. Plaintiff brings this cause of action on behalf of herself and members of the California Subclass.

126. As described in greater detail above, Defendant impliedly warranted that the Emma Products had a market value equal to the regular price displayed on Defendant’s website.

127. This warranty was part of the basis of the bargain and Plaintiff and members of the subclass relied on this warranty.

128. In fact, the Emma Products did not have a market value equal to the regular price displayed. Thus, the warranty was breached.

129. Plaintiff provided Defendant with notice of this breach of warranty, by mailing a notice letter to Defendant’s registered agent, on August 1, 2023.

130. Plaintiff and the subclass were injured as a direct and proximate result of Defendant’s breach, and this breach was a substantial factor in causing harm, because (a) they would not have purchased Emma Products if they had known the truth, or (b) they overpaid for the Products because the Products were sold at a price premium due to the warranty.

Seventh Cause of Action:
Quasi-Contract/Unjust Enrichment
(by Plaintiff and the Nationwide Class)

131. Plaintiff incorporates each and every factual allegation in paragraphs 1-47, 53-62 above.

132. Plaintiff brings this cause of action in the alternative to her Breach of Contract claim (Count II), on behalf of herself and the Nationwide Class. In the alternative, Plaintiff brings this claim on behalf of herself and the California Subclass.

1 133. As alleged in detail above, Defendant's false and misleading advertising
2 caused Plaintiff and the class to purchase Emma Products and to pay a price premium
3 for these Products.

4 134. In this way, Defendant received a direct and unjust benefit, at Plaintiff's
5 expense.

6 135. (In the alternative only), due to Defendant's misrepresentations, its
7 contracts with Plaintiff are void or voidable.

8 136. Plaintiff and the class seek restitution.

9 **Eighth Cause of Action:**

10 **Negligent Misrepresentation**

11 **(by Plaintiff and the California Subclass)**

12 137. Plaintiff incorporates each and every factual allegation set forth above.

13 138. Plaintiff brings this cause of action on behalf of herself and members of
14 the California Subclass.

15 139. As alleged more fully above, Defendant made false representations and
16 material omissions of fact to Plaintiff and subclass members concerning the existence
17 and/or nature of the discounts and savings advertised.

18 140. These representations were false.

19 141. When Defendant made these misrepresentations, it knew or should have
20 known that they were false. Defendant had no reasonable grounds for believing that
21 these representations were true when made.

22 142. Defendant intended that Plaintiff and subclass members rely on these
23 representations and Plaintiff and subclass members read and reasonably relied on
24 them.

25 143. In addition, subclass-wide reliance can be inferred because Defendant's
26 misrepresentations were material, i.e., a reasonable consumer would consider them
27 important in deciding whether to buy the Emma Products.

28

1 144. Defendant's misrepresentations were a substantial factor and proximate
2 cause in causing damages and losses to Plaintiff and subclass members.

3 145. Plaintiff and subclass members were injured as a direct and proximate
4 result of Defendant's conduct because (a) they would not have purchased Emma
5 Products if they had known that the representations were false, and/or (b) they
6 overpaid for the Products because the Products were sold at a price premium due to
7 the misrepresentation.

8 **Ninth Cause of Action:**

9 **Intentional Misrepresentation**

10 **(by Plaintiff and the California Subclass)**

11 146. Plaintiff incorporates each and every factual allegation set forth above.

12 147. Plaintiff brings this cause of action on behalf of herself and members of
13 the California Subclass.

14 148. As alleged more fully above, Defendant made false representations and
15 material omissions of fact to Plaintiff and subclass members concerning the existence
16 and/or nature of the discounts and savings advertised.

17 149. These representations were false.

18 150. When Defendant made these misrepresentations, it knew that they were
19 false at the time that it made them and/or acted recklessly in making the
20 misrepresentations.

21 151. Defendant intended that Plaintiff and subclass members rely on these
22 representations and Plaintiff and subclass members read and reasonably relied on
23 them.

24 152. In addition, subclass-wide reliance can be inferred because Defendant's
25 misrepresentations were material, i.e., a reasonable consumer would consider them
26 important in deciding whether to buy the Emma Products.

27 153. Defendant's misrepresentations were a substantial factor and proximate
28 cause in causing damages and losses to Plaintiff and subclass members.

1 154. Plaintiff and subclass members were injured as a direct and proximate
2 result of Defendant's conduct because (a) they would not have purchased Emma
3 Products if they had known that the representations were false, and/or (b) they
4 overpaid for the Products because the Products were sold at a price premium due to
5 the misrepresentation.

6 **VII. Relief.**

7 155. Plaintiff seeks the following relief for herself and the proposed class:

- 8 • An order certifying the asserted claims, or issues raised, as a class action;
- 9 • A judgment in favor of Plaintiff and the proposed class;
- 10 • Damages, treble damages, and punitive damages where applicable;
- 11 • Restitution;
- 12 • Disgorgement, and other just equitable relief;
- 13 • Pre- and post-judgment interest;
- 14 • An injunction prohibiting Defendant's deceptive conduct, as allowed by
15 law;
- 16 • Reasonable attorneys' fees and costs, as allowed by law;
- 17 • Any additional relief that the Court deems reasonable and just.

18 **VIII. Demand for Jury Trial.**

19 156. Plaintiff demands the right to a jury trial on all claims so triable.
20

21 Dated: August 11, 2023

Respectfully submitted,

22 By: /s/ Christin Cho

23 Christin Cho (Cal. Bar No. 238173)

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Attorneys for Plaintiff

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Crystal Johnson

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

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

See attachment.

DEFENDANTS

Emma Mattress Inc.

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

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

Attorneys (If Known)

'23CV1472 RBM WVG

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 210 Land Condemnation, 310 Airplane, 440 Other Civil Rights, 625 Drug Related Seizure, 710 Fair Labor Standards Act, 820 Copyrights, 870 Taxes (U.S. Plaintiff or Defendant).

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Diversity jurisdiction exists under 28 U.S. Code § 1332(d) Brief description of cause: Consumer protection laws

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE Aug 11, 2023 SIGNATURE OF ATTORNEY OF RECORD /s/ Christin Cho

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE