

1 Christin Cho (Cal. Bar No. 238173)  
 christin@dovel.com  
 2 Simon Franzini (Cal. Bar No. 287631)  
 simon@dovel.com  
 3 Grace Bennett (Cal. Bar No. 345948)  
 grace@dovel.com  
 4 DOVEL & LUNER, LLP  
 5 201 Santa Monica Blvd., Suite 600  
 Santa Monica, California 90401  
 6 Telephone: (310) 656-7066  
 7 Facsimile: (310) 656-7069

8 *Attorneys for Plaintiff*

9  
 10 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
 11

12 SEAN PHILLIPS, individually  
 and on behalf of all others similarly  
 13 situated,

14 *Plaintiff,*

15 v.

16 BROOKLYN BEDDING LLC,

17 *Defendant.*  
 18  
 19

Case No. 3:23-cv-03781

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

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

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

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

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

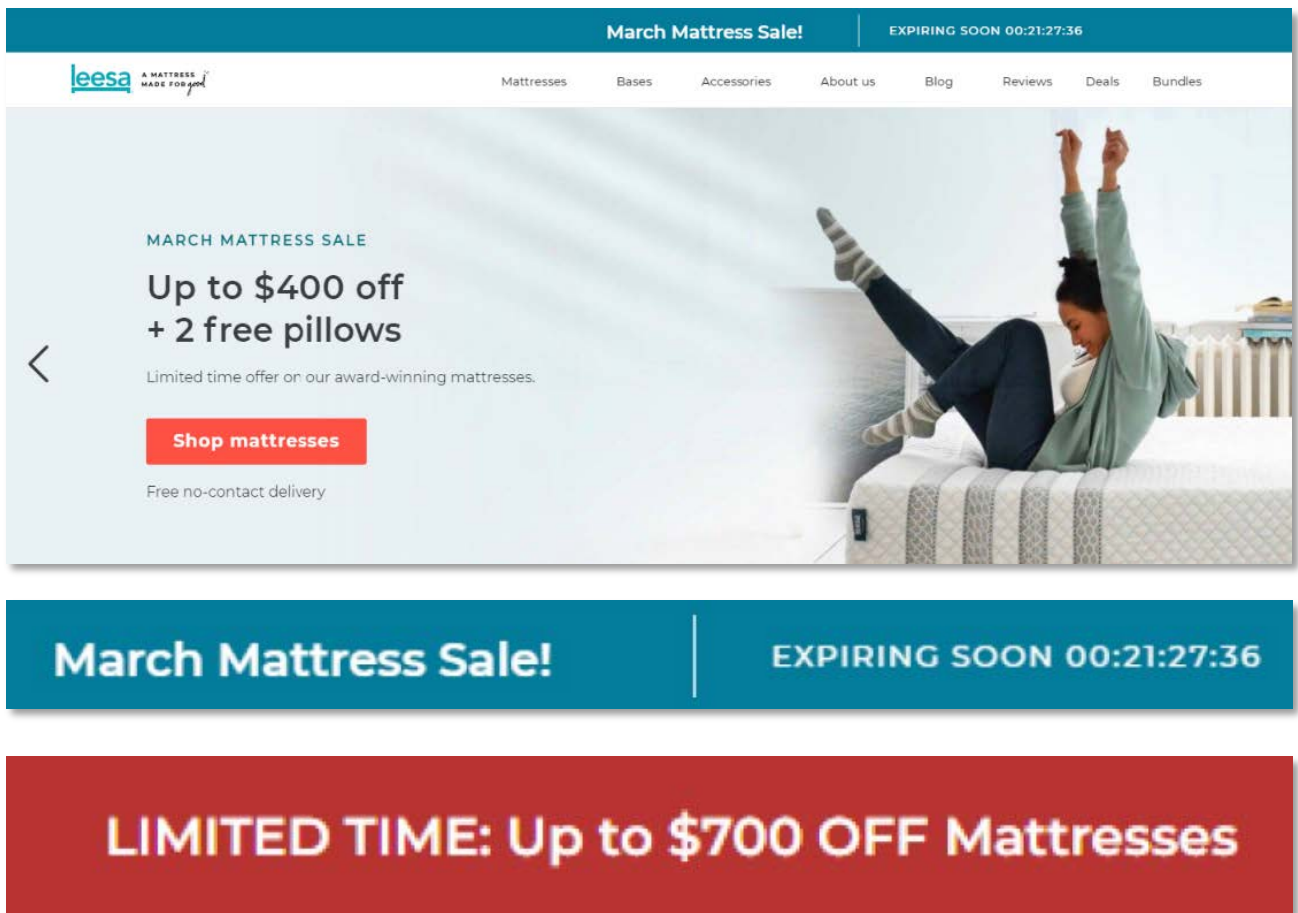
22 6. Moreover, the Federal Trade Commission’s regulations prohibit false or misleading  
23 “former price comparisons,” for example, making up “an artificial, inflated price ... for the purpose  
24 of enabling the subsequent offer of a large reduction” off that price. 16 C.F.R. § 233.1. They also 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

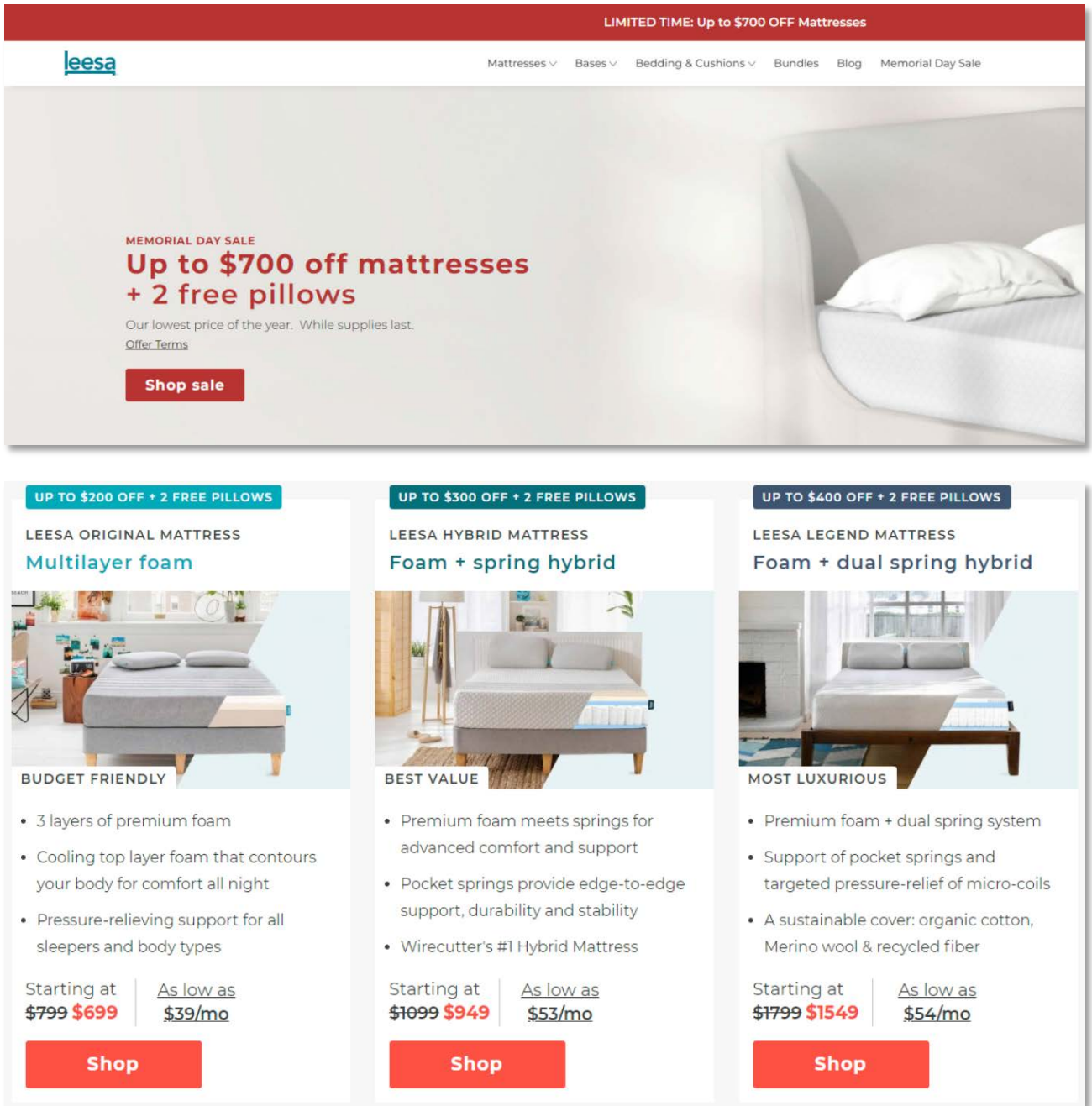
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1 7. So, as numerous courts have found, fake sales violate these laws. They also violate  
2 California’s general prohibition on unlawful, unfair, and deceptive business practices. *See* Cal. Bus.  
3 & Prof. Code § 17200.

4 8. Defendant Brooklyn Bedding LLC (“Defendant” or “Leesa”) sells and markets  
5 mattresses and bedding products online through the Leesa brand and website, [www.leesa.com](http://www.leesa.com)  
6 (“Leesa Products” or “Products”).

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

1 are the purported discounts “LIMITED TIME” or “EXPIRING SOON”—quite the opposite, they are  
2 always available.

3 11. As described in greater detail below, Mr. Phillips bought items from Defendant from  
4 its website, www.leesa.com. When Mr. Phillips made his purchase, Defendant advertised that a sale  
5 was going on, and so Defendant represented that the Products Mr. Phillips purchased were being  
6 offered at a steep discount from their purported “regular” prices that Defendant advertised. And  
7 based on Defendant’s representations, Mr. Phillips believed that he was purchasing Products whose  
8 regular price and market value were the purported “regular” price that Defendant advertised, that he  
9 was receiving a substantial discount, and that the opportunity to get that discount was time-limited.  
10 These reasonable beliefs are what caused Mr. Phillips to buy from Defendant when he did.

11 12. In truth, however, the representations Mr. Phillips relied on were not true. The  
12 purported “regular” prices were not the true regular prices, the purported “discounts” were not the  
13 true discounts, and the discounts were ongoing—not time-limited. Had Defendant been truthful, Mr.  
14 Phillips and other consumers like him would not have purchased the Products, or would have paid  
15 less for them.

16 13. Plaintiff brings this case for himself and the other customers who purchased Leesa  
17 Products.

## 18 **II. Parties**

19 14. Plaintiff Sean Phillips is domiciled in San Francisco, California.

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

21 16. Defendant Brooklyn Bedding LLC is an Arizona limited liability company with its  
22 principal place of business at 5301 W Bethany Home Road, Glendale, Arizona 85301.

## 23 **III. Jurisdiction and Venue.**

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

27 18. The Court has personal jurisdiction over Defendant because Defendant sold Leesa  
28 Products to consumers in California, including to Plaintiff.

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

6           20.     Divisional Assignment. This case should be assigned to the San Francisco/Oakland  
7 division. *See* L.R. 3-2(c). A substantial part of the events giving rise to the claims occurred in San  
8 Francisco, California.

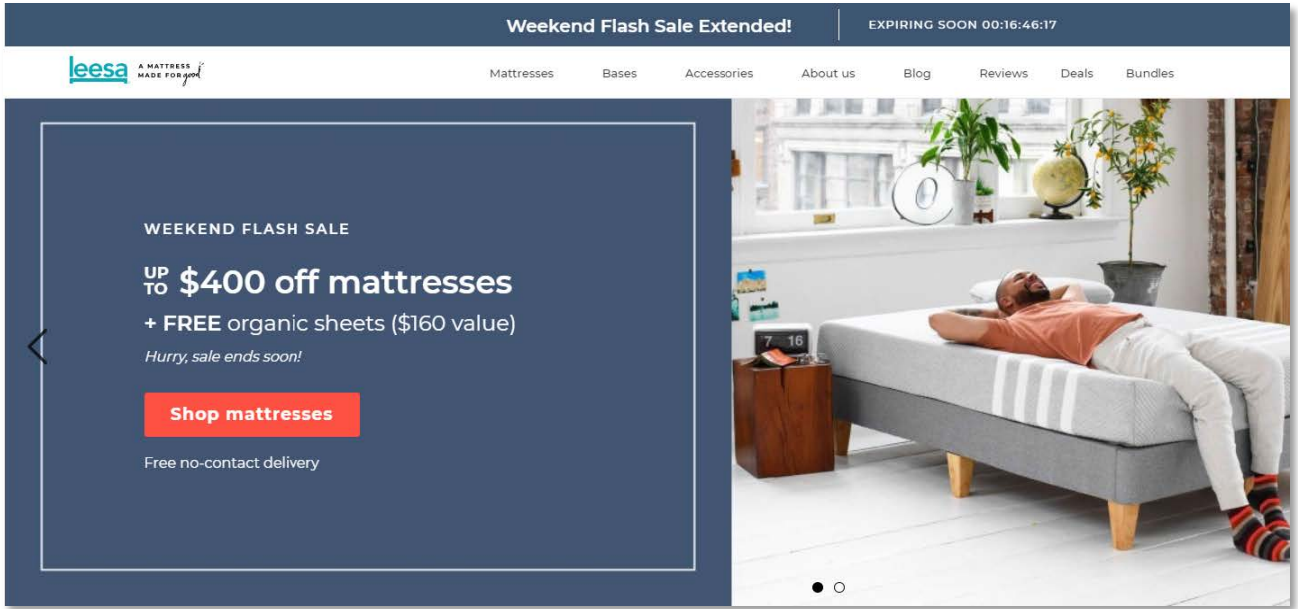
9 **IV.    Facts.**

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

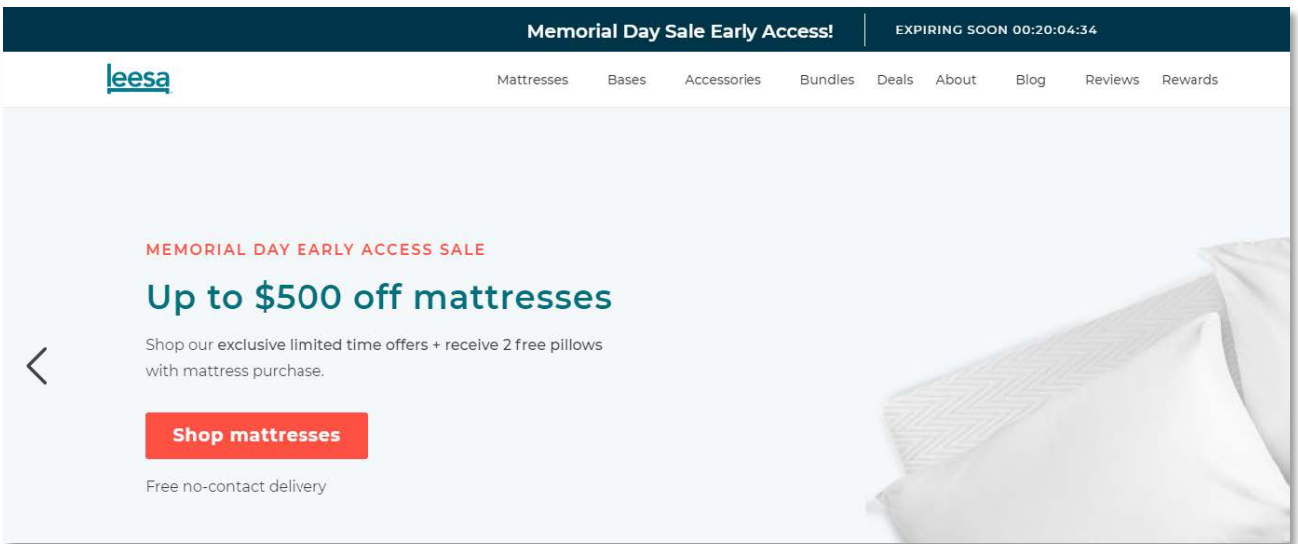
11           21.     Defendant Brooklyn Bedding manufactures, distributes, markets, and sells mattresses  
12 and bedding products. Defendant sells its Products directly to consumers through its website,  
13 www.leesa.com.

14           22.     On its website, Defendant creates the false impression that its Products’ “regular”  
15 prices are higher than they truly are.

16           23.     At any given time, on its website, Defendant advertises steep discounts on its  
17 Products. These discounts always offer “X%” or “\$X” off the “regular” prices Defendant advertises.  
18 Even though in truth these discounts run in perpetuity, Defendant prominently claims they are  
19 “LIMITED TIME” or “EXPIRING SOON.” And it advertises these discounts extensively: on an  
20 attention-grabbing banner on every webpage of its website; in a large banner image on its homepage;  
21 on the products listing pages, next to images of each Product; on the individual product pages for  
22 each Product. Example screenshots are provided on the following pages:



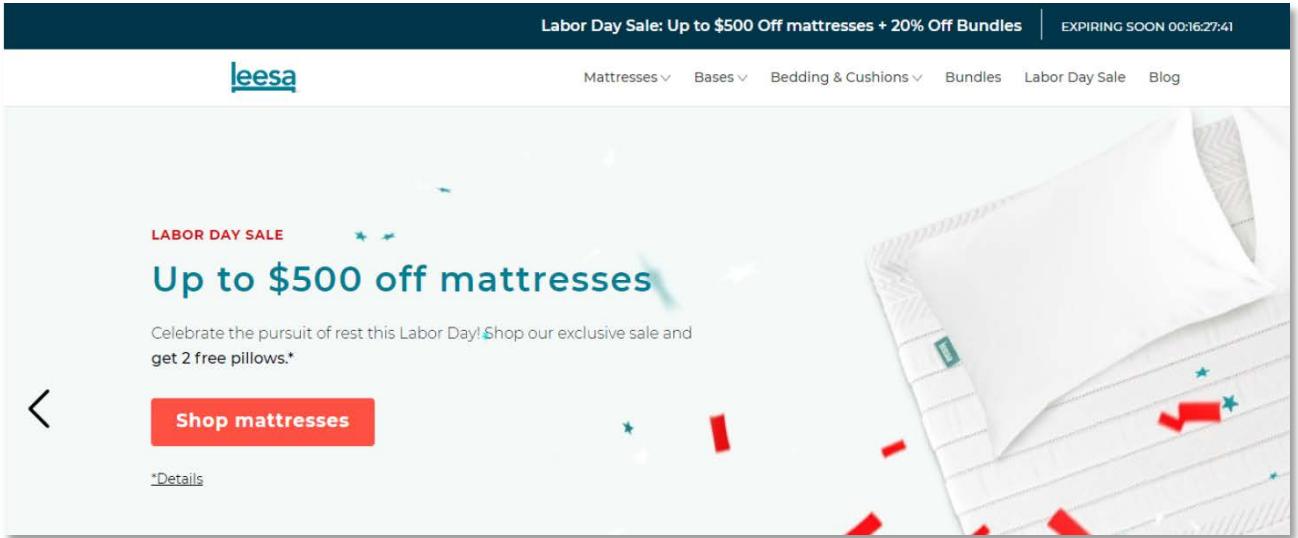
Captured on January 19, 2021



Captured on May 15, 2021

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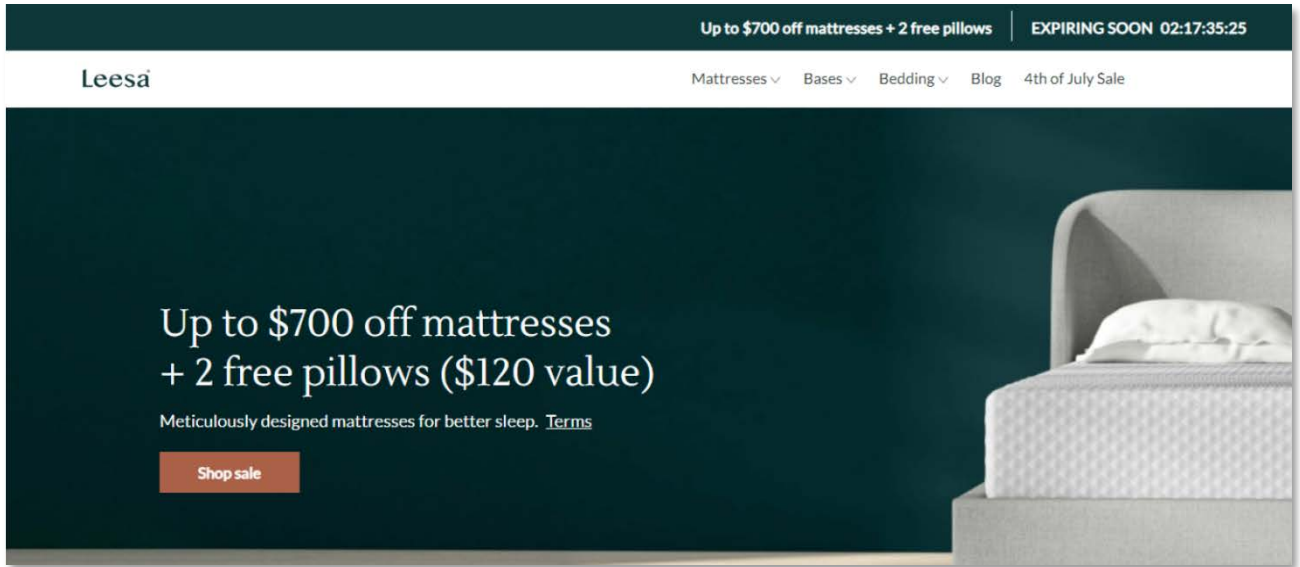




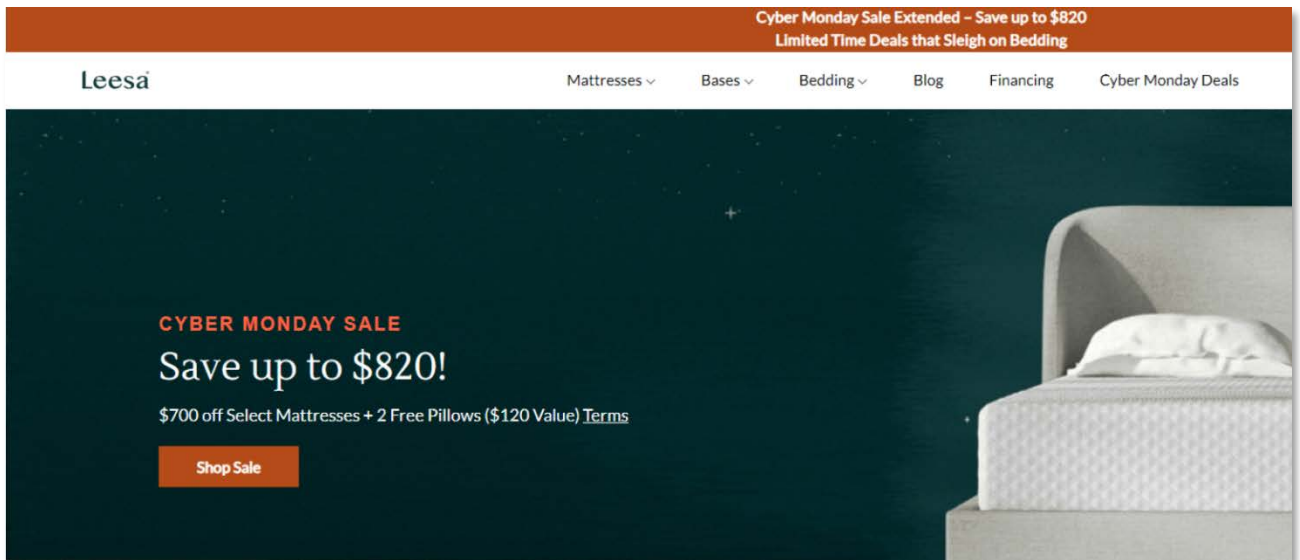
Captured on September 4, 2021



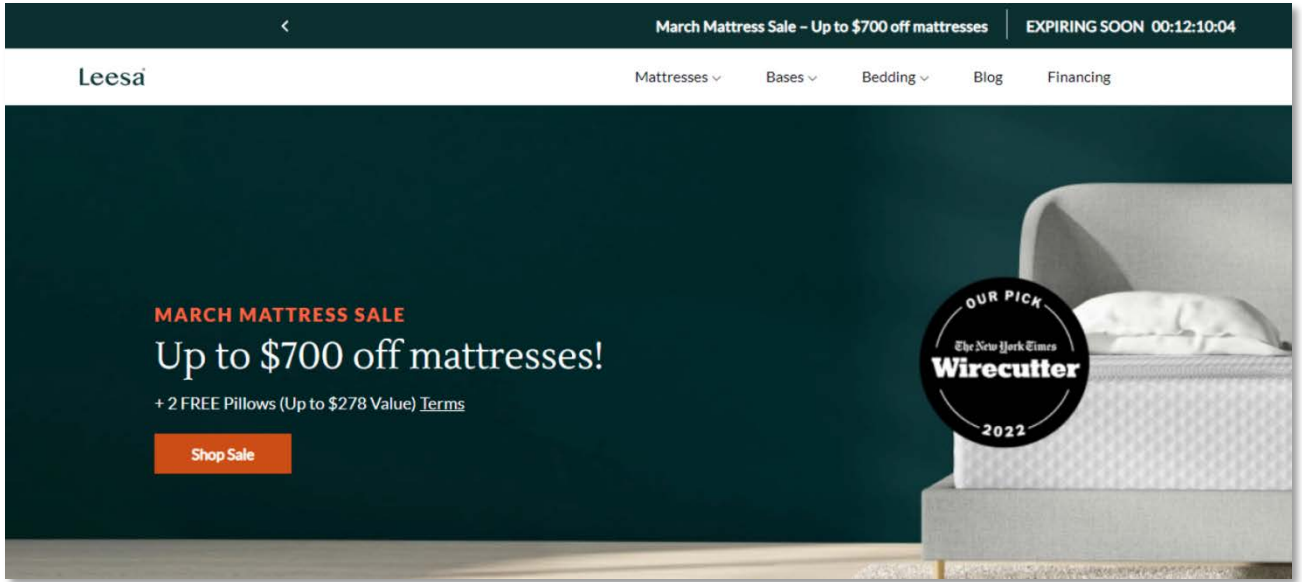
Captured on February 25, 2022



11 *Captured on June 17, 2022*



22 *Captured on December 1, 2022*



Captured on March 27, 2023



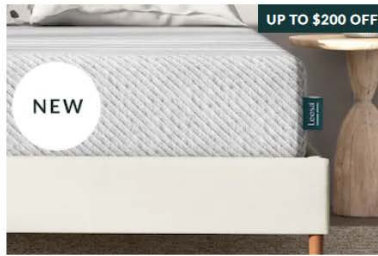
Original

FAN-FAVORITE

Exclusive stay-cool foam meets memory foam that hugs all the right spots. A customer favorite that's described as a "miracle" when it comes to comfort.

From: ~~\$849~~ **\$749**  
As low as \$24/mo

Shop Sale



Original Hybrid

VALUE HYBRID

Get that just-right Goldilocks feel with premium foams and 789+ pocket springs. Soft but firm, a little hug while staying cool and free to move.

From: ~~\$1049~~ **\$949**  
As low as \$30/mo

Shop Sale



Sapira Hybrid

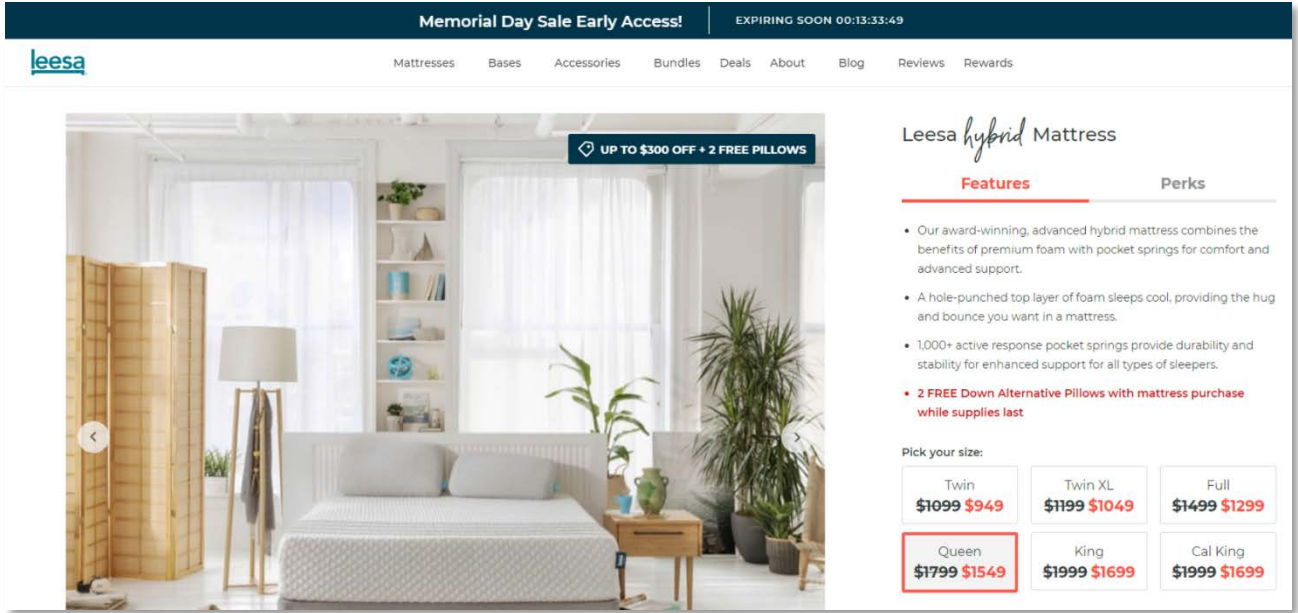
BEST-SELLER

A winning combination of extra special foam layers and 1,000+ pocket springs for supremely un-disturbing support and cool comfort.

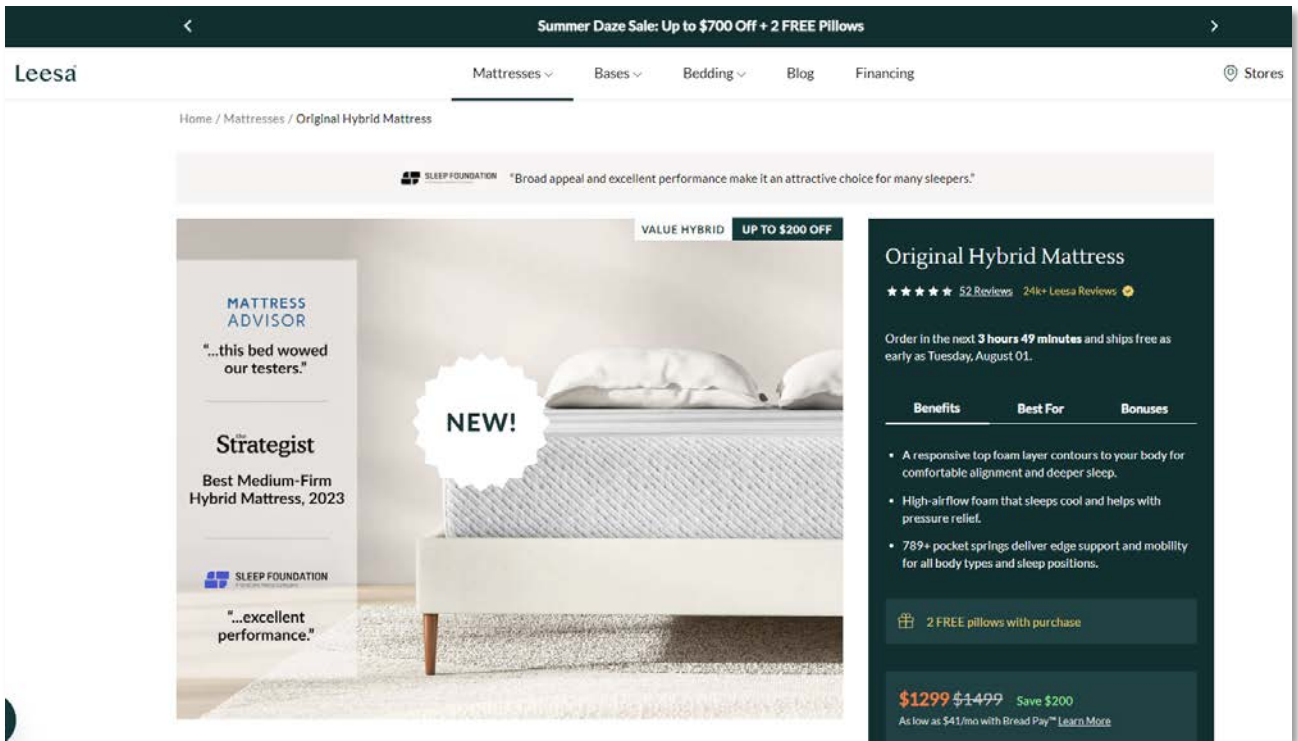
From: ~~\$1349~~ **\$1199**  
As low as \$38/mo

Shop Sale

Captured on July 25, 2023



Captured on May 21, 2021



Captured on July 25, 2023

24. 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: “Offer valid 4/4/23 at 8:00 AM ET – 5/2/23 8:00 AM ET.” To reasonable consumers, this means that after the

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

4 25. For example, on April 19, 2023, Defendant advertised a purportedly time-limited sale  
5 that was “valid 4/4/23 at 8:00 AM ET – 5/2/23 8:00 AM ET.”

6 **Spring Refresh Sale Offer Terms**

7 Offer valid 4/4/23 at 8:00 AM ET – 5/2/23 8:00 AM ET

8 **Up to \$700 Off Select Mattresses + 2 Free Pillows (Up to \$120 Value)**

9 Discount automatically applied to the Studio, Original, Original Hybrid, Sapira  
10 Hybrid, and Legend Hybrid mattresses. Two free Down Alternative Pillows will be  
11 added to your cart; however, these items are not eligible for free returns or  
warranty claims. Excludes Bundles, Youth, Kids, and Trundle mattresses.

12 **Up to 20% Off Select Bedding**

13 Discount automatically applied to bedding.

14 *Captured on April 19, 2023*

15 26. However, on May 3, 2023, the day that the time-limited sale was supposed to have  
16 ended, Defendant advertised the same sale with a new expiration date, 6/6/23.

17 **Memorial Day Sale Offer Terms**

18 Offer valid 5/2/23 at 8:00 AM ET – 6/6/23 8:00 AM ET

19 **Save up to \$820: Up to \$700 Off Mattresses + 2 Free Pillows (Up to \$120 Value)**

20 Discount automatically applied to the Studio, Original, Original Hybrid, Sapira  
21 Hybrid, and Legend Hybrid mattresses. Two free Down Alternative Pillows will be  
22 added to your cart; however, these items are not eligible for free returns or  
warranty claims. Excludes Bundles, Youth, Kids, and Trundle mattresses.

23 **Up to 20% Off Select Bedding**

24 Discount automatically applied to bedding.

25 *Captured on May 3, 2023*

1           27. To confirm that Defendant always offers discounts off of purported regular prices,  
2 Plaintiff's counsel performed an investigation of Defendant's advertising practices using the Internet  
3 Archive's Wayback Machine (available at [www.archive.org](http://www.archive.org)).<sup>1</sup> Defendant's sales have persisted  
4 continuously since at least January 1, 2020. For example, 54 randomly selected screenshots of  
5 Defendant's website, [www.leesa.com](http://www.leesa.com), were collected from the Internet Archive's Wayback  
6 Machine, from the 2020-2022 period. In addition, 46 additional screenshots from the  
7 [www.leesa.com](http://www.leesa.com) website were captured in 2023 by visiting the website and recording screenshots.  
8 One hundred percent of the 100 randomly selected screenshots of Defendant's website, captured on  
9 the Wayback Machine and directly on the website, displayed a purportedly time-limited discount.

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

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

24           30. Reasonable consumers also reasonably believe that the "regular" prices Defendant  
25 advertises represent the true market value of the Products, and are the prevailing prices for those  
26 Products; and that they are receiving reductions from those "regular" prices in the amounts  
27 advertised. In truth, however, Defendant *always* offers discounts off the purportedly "regular" prices

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<sup>1</sup> The Internet Archive, available at [archive.org](https://archive.org), is a library that archives web pages.  
<https://archive.org/about/>

1 it advertises. As a result, everything about Defendant’s price and purported discount advertising is  
2 false. The “regular” prices Defendant advertises are not actually Defendant’s “regular” or former  
3 prices, or the prevailing prices for the Products Defendant sells, and do not represent the true market  
4 value for the Products, because Defendant’s Products are *always* available for less than that, and  
5 customers did not have to formerly pay that amount to get those items. The purported discounts  
6 Defendant advertises are not the true discount the customer is receiving, and are often not a discount  
7 at all. Nor are the purported discounts “LIMITED TIME” or “EXPIRING SOON”—quite the  
8 opposite, they are always available.

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

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

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

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

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

28

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

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

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

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

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

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

24           40.     Consumers that are presented with discounts are substantially more likely to make the  
25 purchase. “Nearly two-thirds of consumers surveyed admitted that a promotion or a coupon often  
26 closes the deal, if they are wavering or are undecided on making a purchase.”<sup>2</sup> And, “two-thirds of  
27 consumers have made a purchase they weren’t originally planning to make solely based on finding a  
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<sup>2</sup> <https://www.invespro.com/blog/how-discounts-affect-online-consumer-buying-behavior/>.



1 coupon or discount,” while “80% [of consumers] said they feel encouraged to make a first-time  
2 purchase with a brand that is new to them if they found an offer or discount.”<sup>3</sup>

3 41. Similarly, when consumers believe that an offer is expiring soon, the sense of  
4 urgency makes them more likely to buy a product.<sup>4</sup>

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

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

13 43. On May 27, 2021, Mr. Phillips purchased a Leesa Hybrid Mattress and a Two-Pack  
14 of Down Alternative Pillows from Defendant’s website. He made this purchase while living in San  
15 Francisco, California. In the email order confirmation that Defendant sent to Mr. Phillips, Defendant  
16 represented the Leesa Hybrid Mattress had a regular price of \$1,799, and that Mr. Phillips was  
17 receiving a discount of \$359.80. Defendant also represented that the pillows had a regular price of  
18 \$29, and that Mr. Phillips was receiving a discount of \$29. Defendant represented that the Products  
19 had a certain regular price and that Mr. Phillips was receiving a substantial discount for the items  
20 that he purchased.<sup>5</sup>

21 44. Mr. Phillips read and relied on Defendant’s representations on the website and email  
22 confirmation, specifically that the Products were being offered at a discount for a limited time and  
23 had the “regular” prices listed above. Based on Defendant’s representations described and shown  
24

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

26 <sup>4</sup> <https://cxl.com/blog/creating-urgency/> (addition of a countdown timer increased conversion  
27 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  
28 timer).

<sup>5</sup> In addition to the advertised discount on Defendant’s website, Mr. Phillips also applied  
coupon code from Wirecutter for his purchase.

1 above, Mr. Phillips reasonably understood that the Products he was purchasing regularly (and before  
2 the promotion Defendant was advertising) retailed at the published “regular” price, that this  
3 “regular” price was the market value of the Products that he was buying, that he was receiving the  
4 advertised discount as compared to the regular price, and that advertised discount was only available  
5 for a limited time (during the limited time promotion). He would not have made the purchase if he  
6 had known that the Products were not discounted as advertised, and that he was not receiving the  
7 advertised discount.

8 45. Plaintiff faces an imminent threat of future harm. Plaintiff would purchase Products  
9 from Defendant again in the future if he could feel sure that Defendant’s “regular” prices accurately  
10 reflected Defendant’s former prices and the market value of the Products, and that its discounts were  
11 truthful. But without an injunction, Plaintiff has no realistic way to know which—if any—of  
12 Defendant’s “regular” prices, discounts, and sales are not false or deceptive. Accordingly, Plaintiff  
13 is unable to rely on Defendant’s advertising in the future, and so cannot purchase Products he would  
14 like to purchase.

15 **E. Defendant breached its contract.**

16 46. When Mr. Phillips purchased and paid for the Leesa Products he bought as described  
17 above, he accepted offers that Defendant made, and thus, a contract was formed at the time that he  
18 made a purchase. The offer was to provide Products having a particular listed regular price and  
19 market value, and to provide that Product at the discounted price advertised on the website.

20 47. Defendant’s website and email confirmations list the market value of the items that  
21 Defendant promised to provide (which are shown above). Defendant agreed to provide a discount  
22 equal to the difference between the regular prices listed by Defendant, and the prices paid by Mr.  
23 Phillips (also shown above). For example, Defendant offered to provide (among other things) the  
24 Leesa Hybrid Mattress with a market value of \$1,799, for a discounted price of \$1,439.20; and to  
25 provide a discount of \$359.80.

26 48. The regular price and market value of the items Mr. Phillips would receive, and the  
27 amount of the discount he would be provided off the regular price of those items, were specific and  
28 material terms of the contract.

1           49.     Mr. Phillips performed his obligations under the contract by paying for the items he  
2 purchased.

3           50.     Defendant breached its contract by failing to provide Mr. Phillips with Products that  
4 have a regular price and market value equal to the regular price displayed, and by failing to provide  
5 the discount it promised.

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

7           51.     Plaintiff seeks damages and, in the alternative, restitution. Plaintiff is permitted to  
8 seek equitable remedies in the alternative because he has no adequate remedy at law.

9           52.     A legal remedy is not adequate if it is not as certain as an equitable remedy. The  
10 elements of Plaintiff's equitable claims are different and do not require the same showings as  
11 Plaintiff's legal claims. For example, Plaintiff's FAL claim under Section 17501 (an equitable  
12 claim) is predicated on a specific statutory provision, which prohibits advertising merchandise using  
13 a former price if that price was not the prevailing market price within the past three months. Cal.  
14 Bus. & Prof. Code § 17501. Plaintiff may be able to prove these more straightforward factual  
15 elements, and thus prevail under the FAL, while not being able to prove one or more elements of his  
16 legal claims. As a second example, to obtain damages under the CLRA, a plaintiff must show that  
17 they complied with the CLRA's notice requirement for damages. No such requirements exist to  
18 obtain restitution. Because a plaintiff must make this additional showing to obtain damages, rather  
19 than restitution, the legal remedies are more uncertain.

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

23           **IV.    Class action allegations.**

24           54.     Plaintiff brings the asserted claims on behalf of the proposed class of:

- 25           • Nationwide Class: all persons who, within the applicable statute of limitations period,  
26           purchased one or more Leesa Products advertised at a discount on Defendant's  
27           website.

- California Subclass: all persons who, while in the state of California and within the applicable statute of limitations period, purchased one or more Leesa Products advertised at a discount on Defendant's website.

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

***Numerosity & Ascertainability***

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

57. Class members can be identified through Defendant's sales records and public notice.

***Predominance of Common Questions***

58. There are questions of law and fact common to the proposed class. Common questions of law and fact include, without limitation:

- (1) whether Defendant made false or misleading statements of fact in its advertisements;
- (2) whether Defendant violated California's consumer protection statutes;
- (3) whether Defendant committed a breach of contract;
- (4) whether Defendant committed a breach of an express or implied warranty;
- (5) damages needed to reasonably compensate Plaintiff and the proposed class.

***Typicality & Adequacy***

59. Plaintiff's claims are typical of the proposed class. Like the proposed class, Plaintiff purchased the Leesa Products advertised at a discount from Defendant. There are no conflicts of interest between Plaintiff and the class.



1 Defendant's statements that its discounts are "limited time" and only "valid" for a certain time  
2 period are false and misleading too.

3 67. In addition, Defendant has violated, and continues to violate, Section 17501 of the  
4 Business and Professions Code by advertising former prices that were not the prevailing market  
5 price within three months next immediately preceding the advertising. As explained above,  
6 Defendant's advertised "regular" prices, which reasonable consumers would understand to denote  
7 former prices, were not the prevailing market prices for the Products within three months preceding  
8 publication of the advertisement. And Defendant's former price advertisements do not state clearly,  
9 exactly, and conspicuously when, if ever, the former prices prevailed. Defendant's advertisements  
10 do not indicate whether or when the purported former prices were offered at all.

11 68. Defendant's misrepresentations were intended to induce reliance, and Plaintiff saw,  
12 read, and reasonably relied on the statements when purchasing Leesa Products. Defendant's  
13 misrepresentations were a substantial factor in Plaintiff's purchase decision.

14 69. In addition, subclass-wide reliance can be inferred because Defendant's  
15 misrepresentations were material, i.e., a reasonable consumer would consider them important in  
16 deciding whether to buy the Leesa Products.

17 70. Defendant's misrepresentations were a substantial factor and proximate cause in  
18 causing damages and losses to Plaintiff and the subclass.

19 71. Plaintiff and the subclass were injured as a direct and proximate result of Defendant's  
20 conduct because (a) they would not have purchased Leesa Products if they had known the truth,  
21 and/or (b) they overpaid for the Products because the Leesa Products were sold at a price premium  
22 due to the misrepresentation.

23 **Second Cause of Action:**

24 **Violation of California's Consumer Legal Remedies Act**

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

26 72. Plaintiff incorporates each and every factual allegation set forth above.

27 73. Plaintiff brings this cause of action on behalf of himself and members of the  
28 California Subclass.

1           74. Plaintiff and the subclass are “consumers,” as the term is defined by California Civil  
2 Code § 1761(d).

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

5           76. The conduct alleged in this Complaint constitutes unfair methods of competition and  
6 unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was  
7 undertaken by Defendant in transactions intended to result in, and which did result in, the sale of  
8 goods to consumers.

9           77. As alleged more fully above, Defendant made and disseminated untrue and  
10 misleading statements of facts in its advertisements to subclass members. Defendant did this by  
11 using fake regular prices, i.e., regular prices that are not the prevailing prices, and by advertising  
12 fake discounts.

13           78. Defendant violated, and continues to violate, section 1770 of the California Civil  
14 Code.

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

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

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

1           82. Defendant's representations were likely to deceive, and did deceive, Plaintiff and  
2 reasonable consumers. Defendant knew, or should have known through the exercise of reasonable  
3 care, that these statements were inaccurate and misleading.

4           83. Defendant's misrepresentations were intended to induce reliance, and Plaintiff saw,  
5 read, and reasonably relied on them when purchasing Leesa Products. Defendant's  
6 misrepresentations were a substantial factor in Plaintiff's purchase decision.

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

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

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

17           87. Accordingly, pursuant to California Civil Code § 1780(a)(2), Mr. Phillips, on behalf  
18 of himself and all other members of the subclass, seeks injunctive relief.

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

26           89. A CLRA venue declaration is attached.  
27  
28



**Third Cause of Action:**

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

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

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

91. Plaintiff brings this cause of action on behalf of himself and members of the California Subclass.

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

***The Unlawful Prong***

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

***The Deceptive Prong***

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

95. Defendant’s representations were misleading to Plaintiff and other reasonable consumers.

96. Plaintiff relied upon Defendant’s misleading representations and omissions, as detailed above.

***The Unfair Prong***

97. As alleged in detail above, Defendant committed “unfair” acts by falsely advertising that its Products were on sale, that the sale was limited in time, that the Products had a specific regular price, and that the customers were receiving discounts.

1 98. Defendant violated established public policy by violating the CLRA, the FAL, and  
2 the FTCA, as alleged above and incorporated here. The unfairness of this practice is tethered to a  
3 legislatively declared policy (that of the CLRA, the FAL, and the FTCA).

4 99. The harm to Plaintiff and the subclass greatly outweighs the public utility of  
5 Defendant's conduct. There is no public utility to misrepresenting the price of a consumer product.  
6 This injury was not outweighed by any countervailing benefits to consumers or competition.  
7 Misleading consumer products only injure healthy competition and harm consumers.

8 100. Plaintiff and the subclass could not have reasonably avoided this injury. As alleged  
9 above, Defendant's representations were deceptive to reasonable consumers like Plaintiff.

10 101. Defendant's conduct, as alleged above, was immoral, unethical, oppressive,  
11 unscrupulous, and substantially injurious to consumers.

12 \* \* \*

13 102. For all prongs, Defendant's representations were intended to induce reliance, and  
14 Plaintiff saw, read, and reasonably relied on them when purchasing Leesa Products. Defendant's  
15 representations were a substantial factor in Plaintiff's purchase decision.

16 103. In addition, subclass-wide reliance can be inferred because Defendant's  
17 representations were material, i.e., a reasonable consumer would consider them important in  
18 deciding whether to buy Leesa Products.

19 104. Defendant's representations were a substantial factor and proximate cause in causing  
20 damages and losses to Plaintiff and the subclass members.

21 105. Plaintiff and the subclass were injured as a direct and proximate result of Defendant's  
22 conduct because (a) they would not have purchased the Leesa Products if they had known that they  
23 were not discounted, and/or (b) they overpaid for the Products because the Products were sold at the  
24 regular price and not at a discount.

25 **Fourth Cause of Action:**

26 **Breach of Contract**

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

28 106. Plaintiff incorporates each and every factual allegation set forth above.

1 107. Plaintiff brings this cause of action on behalf of himself and the Nationwide Class. In  
2 the alternative, Plaintiff brings this cause of action on behalf of himself and the California Subclass.

3 108. Plaintiff and class members entered into contracts with Defendant when they placed  
4 orders to purchase Products on Defendant's website.

5 109. The contracts provided that Plaintiff and class members would pay Defendant for the  
6 Products purchased.

7 110. The contracts further required that Defendant provides Plaintiff and class members  
8 with Products that have a market value equal to the regular prices displayed on the website. They  
9 also required that Defendant provide Plaintiff and class members with a discount equal to the  
10 difference between the price paid, and the regular prices advertised. These were specific and  
11 material terms of the contract.

12 111. The specific discounts were a specific and material term of each contract.

13 112. Plaintiff and class members paid Defendant for the Products they purchased, and  
14 satisfied all other conditions of their contracts.

15 113. Defendant breached its contracts with Plaintiff and class members by failing to  
16 provide Products that had a "regular" price, former price, and/or prevailing market value equal to the  
17 regular price displayed on its website, and by failing to provide the promised discount. Defendant  
18 did not provide the discount that it had promised.

19 114. As a direct and proximate result of Defendant's breaches, Plaintiff and class members  
20 were deprived of the benefit of their bargained-for exchange, and have suffered damages in an  
21 amount to be established at trial.

22 **Fifth Cause of Action:**

23 **Breach of Express Warranty**

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

25 115. Plaintiff incorporates each and every factual allegation set forth above.

26 116. Plaintiff brings this cause of action on behalf of himself and members of the  
27 California Subclass.

28



1 127. Plaintiff provided Defendant with notice of this breach of warranty, by mailing a  
2 notice letter to Defendant's headquarters, on July 21, 2023.

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

7 **Seventh Cause of Action:**

8 **Quasi-Contract/Unjust Enrichment**

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

10 129. Plaintiff incorporates each and every factual allegation in paragraphs 1-45, 51-60  
11 above.

12 130. Plaintiff brings this cause of action on behalf of himself and the Nationwide Class. In  
13 the alternative, Plaintiff brings this claim on behalf of himself and the California Subclass.

14 131. As alleged in detail above, Defendant's false and misleading advertising caused  
15 Plaintiff and the class to purchase Leesa Products and to pay a price premium for these Products.

16 132. In this way, Defendant received a direct and unjust benefit, at Plaintiff's expense.

17 133. Plaintiff and the class seek restitution.

18 **Eighth Cause of Action:**

19 **Negligent Misrepresentation**

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

21 134. Plaintiff incorporates each and every factual allegation set forth above.

22 135. Plaintiff brings this cause of action on behalf of himself and members of the  
23 California Subclass.

24 136. As alleged more fully above, Defendant made false representations and material  
25 omissions of fact to Plaintiff and subclass members concerning the existence and/or nature of the  
26 discounts and savings advertised.

27 137. These representations were false.  
28



1 149. In addition, subclass-wide reliance can be inferred because Defendant's  
2 misrepresentations were material, i.e., a reasonable consumer would consider them important in  
3 deciding whether to buy the Leesa Products.

4 150. Defendant's misrepresentations were a substantial factor and proximate cause in  
5 causing damages and losses to Plaintiff and subclass members.

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

10 **VI. Relief.**

11 152. Plaintiff seeks the following relief for himself and the proposed class:

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

21 **VII. Demand for Jury Trial.**

22 153. Plaintiff demands the right to a jury trial on all claims so triable.  
23

24 Dated: July 28, 2023

Respectfully submitted,

25 By: /s/ Christin Cho

26 Christin Cho (Cal. Bar No. 238173)  
christin@dovel.com

27 Simon Franzini (Cal. Bar No. 287631)  
simon@dovel.com

28 Grace Bennett (Cal. Bar No. 345948)  
grace@dovel.com

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DOVEL & LUNER, LLP  
201 Santa Monica Blvd., Suite 600  
Santa Monica, California 90401  
Telephone: (310) 656-7066  
Facsimile: (310) 656-7069

*Attorneys for Plaintiff*