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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

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

Plaintiff,

v.

BROOKLYN BEDDING LLC,

Defendant.

Case No. 3:23-cv-03781-RFL

**SECOND AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

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I. Introduction.

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

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

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

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

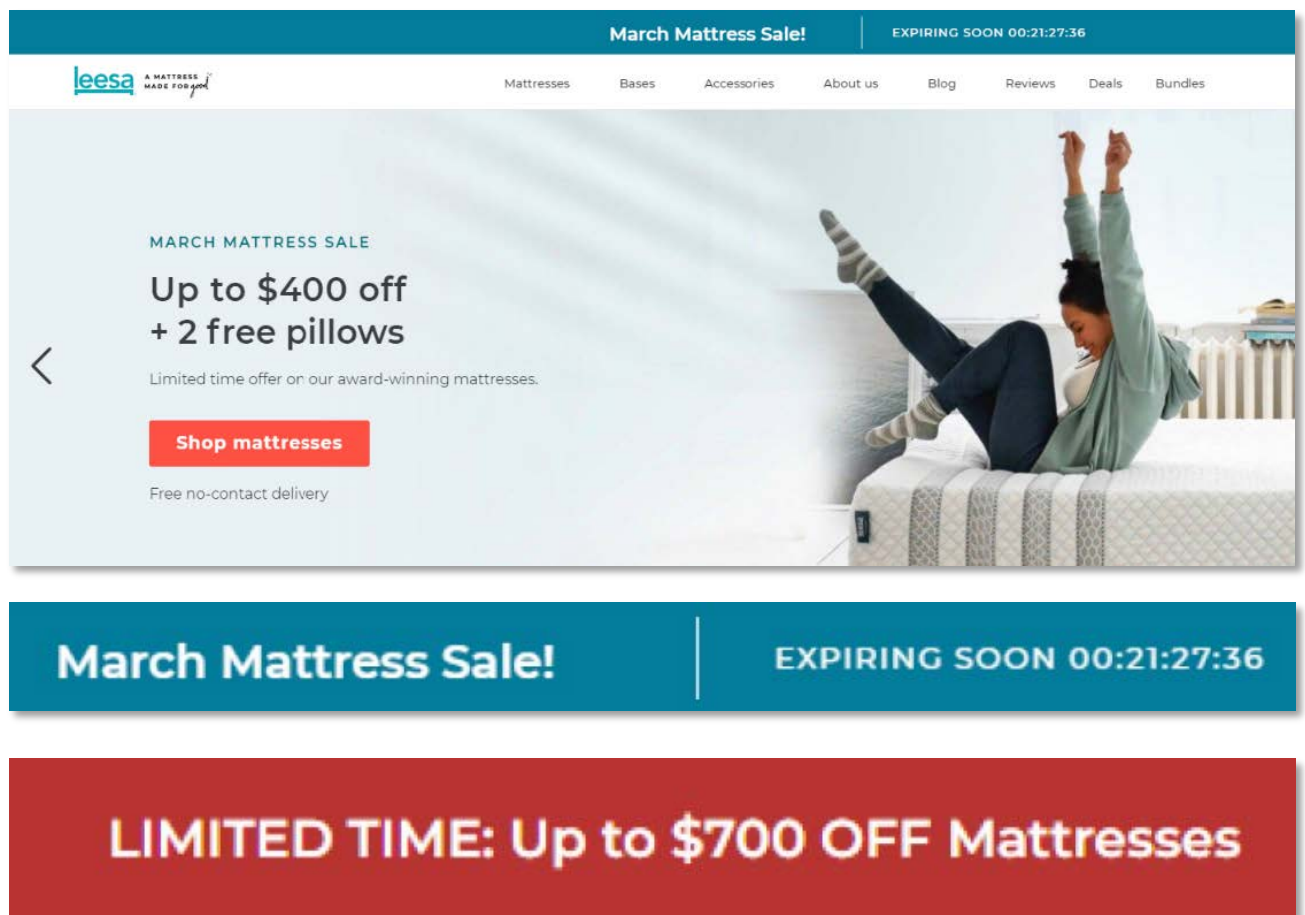
5. In addition, California’s Consumer Legal Remedies Act prohibits “advertising goods or services with the intent not to sell them as advertised” and specifically prohibits “false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.” Cal. Civ. Code §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

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

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

8. Defendant Brooklyn Bedding LLC ("Defendant" or "Leesa") sells and markets mattresses and bedding products online through the Leesa brand and website, www.leesa.com ("Leesa Products" or "Products").

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



1 LIMITED TIME: Up to \$700 OFF Mattresses

2 leesa Mattresses ▾ Bases ▾ Bedding & Cushions ▾ Bundles Blog Memorial Day Sale

3

4

5 MEMORIAL DAY SALE

6 **Up to \$700 off mattresses**

7 **+ 2 free pillows**

8 Our lowest price of the year. While supplies last.

9 [Offer Terms](#)

10 **Shop sale**

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UP TO \$200 OFF + 2 FREE PILLOWS	UP TO \$300 OFF + 2 FREE PILLOWS	UP TO \$400 OFF + 2 FREE PILLOWS
LEESA ORIGINAL MATTRESS Multilayer foam	LEESA HYBRID MATTRESS Foam + spring hybrid	LEESA LEGEND MATTRESS Foam + dual spring hybrid
		
BUDGET FRIENDLY	BEST VALUE	MOST LUXURIOUS
<ul style="list-style-type: none"> • 3 layers of premium foam • Cooling top layer foam that contours your body for comfort all night • Pressure-relieving support for all sleepers and body types 	<ul style="list-style-type: none"> • Premium foam meets springs for advanced comfort and support • Pocket springs provide edge-to-edge support, durability and stability • Wirecutter's #1 Hybrid Mattress 	<ul style="list-style-type: none"> • Premium foam + dual spring system • Support of pocket springs and targeted pressure-relief of micro-coils • A sustainable cover: organic cotton, Merino wool & recycled fiber
Starting at \$799 \$699 As low as <u>\$39/mo</u>	Starting at \$1099 \$949 As low as <u>\$53/mo</u>	Starting at \$1799 \$1549 As low as <u>\$54/mo</u>
Shop	Shop	Shop

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

1 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 based
7 on Defendant’s representations, Mr. Phillips believed that he was purchasing Products whose regular
8 price and market value were the purported regular prices that Defendant advertised, that he was
9 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 that Defendant sells the products for, the
13 purported discounts were not the true discounts, and the discounts were ongoing—not time-limited.
14 Had Defendant been truthful, Mr. Phillips and other consumers like him would not have purchased
15 the Products, or would have paid 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.

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

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

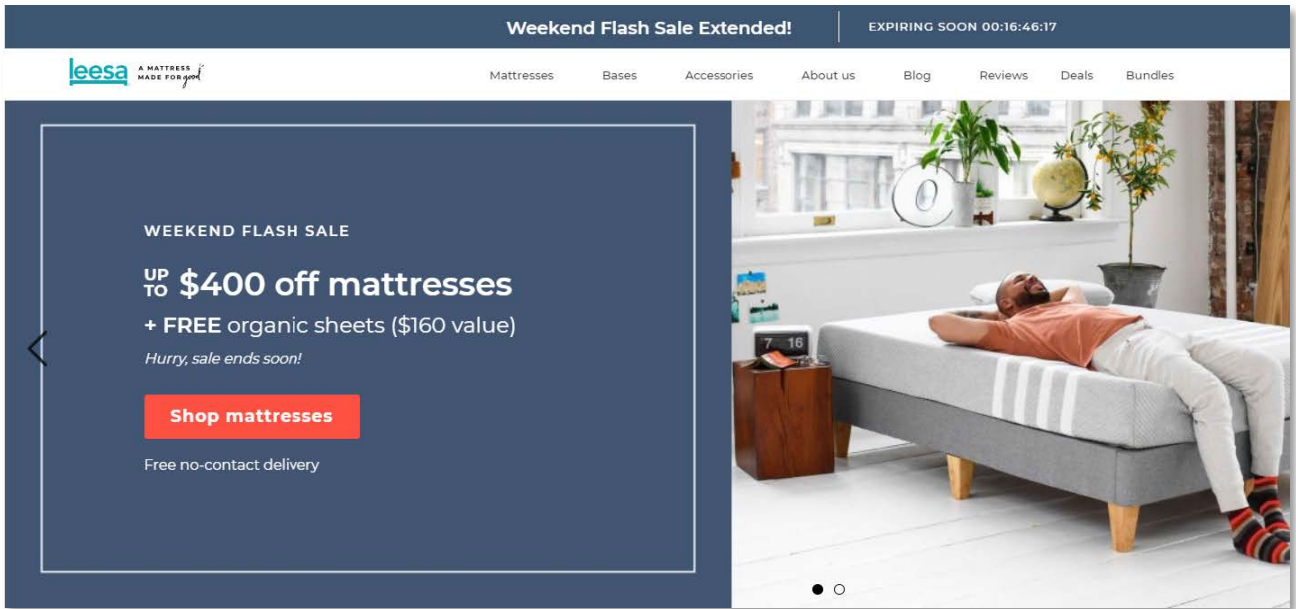
IV. Facts.

A. Defendant's fake prices and fake discounts.

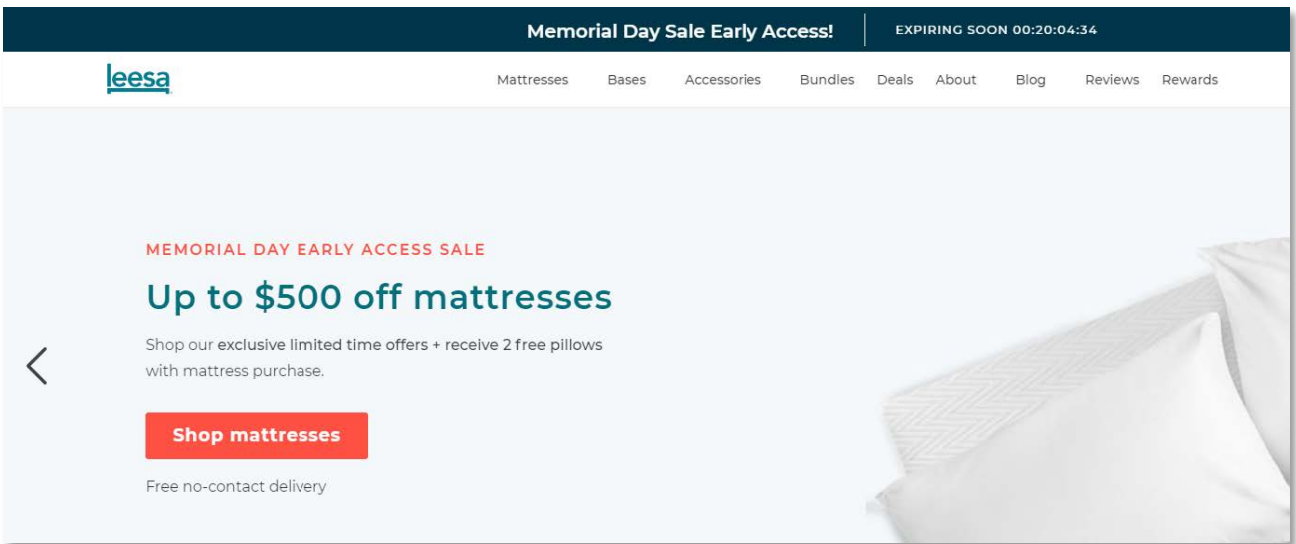
21. Defendant Brooklyn Bedding manufactures, distributes, markets, and sells mattresses and bedding products. Defendant sells its Products directly to consumers through its website, www.leesa.com.

22. On its website, Defendant creates the false impression that its Products' regular prices are higher than they truly are.

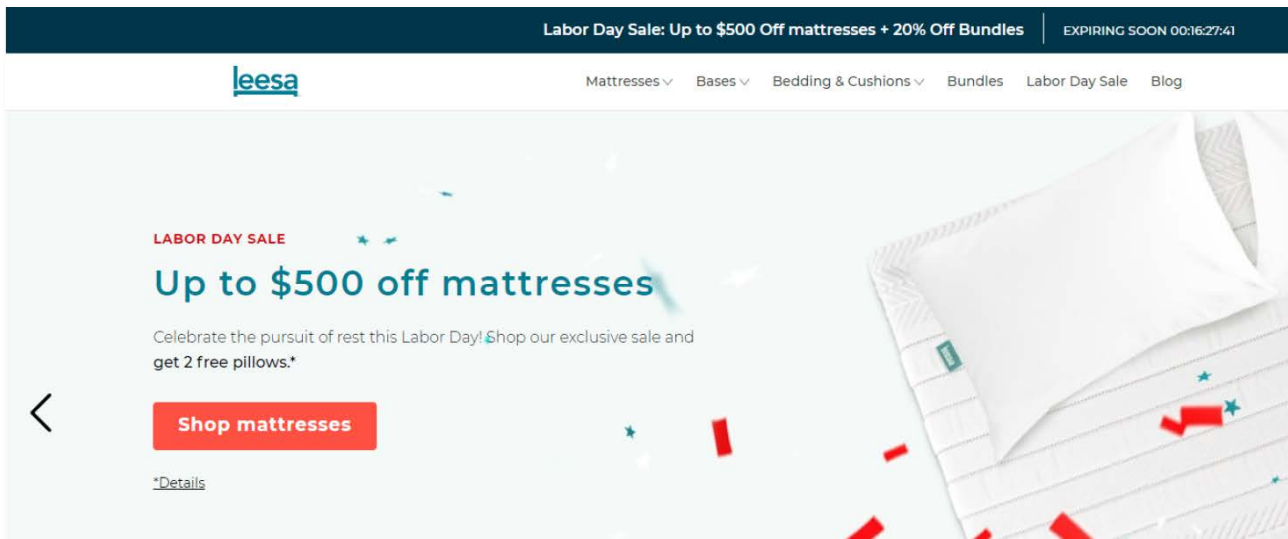
23. At any given time, on its website, Defendant advertises steep discounts on its Products. These discounts always offer "X%" or "\$X" off the listed regular prices Defendant advertises. Even though in truth these discounts run in perpetuity, Defendant prominently claims they are "LIMITED TIME" or "EXPIRING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



Captured on January 19, 2021



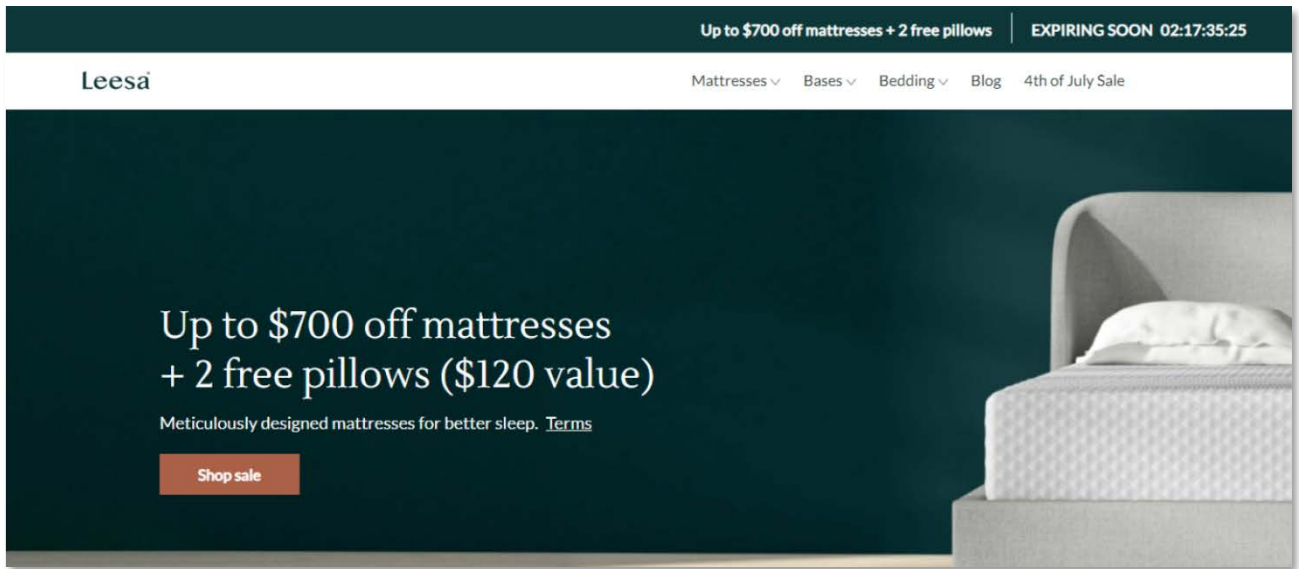
Captured on May 15, 2021



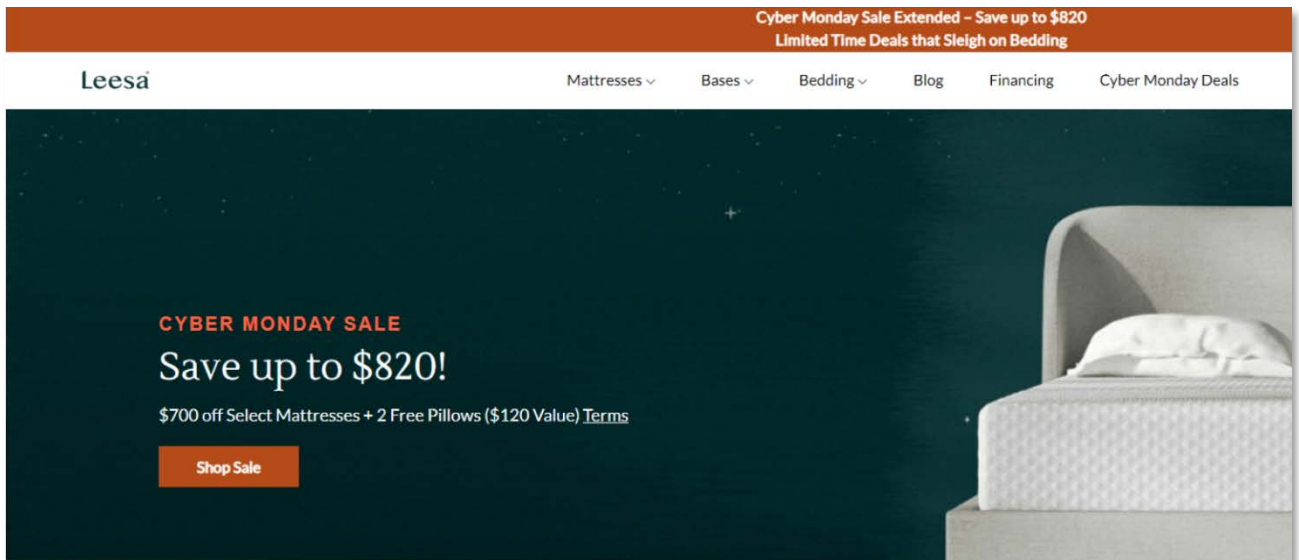
Captured on September 4, 2021



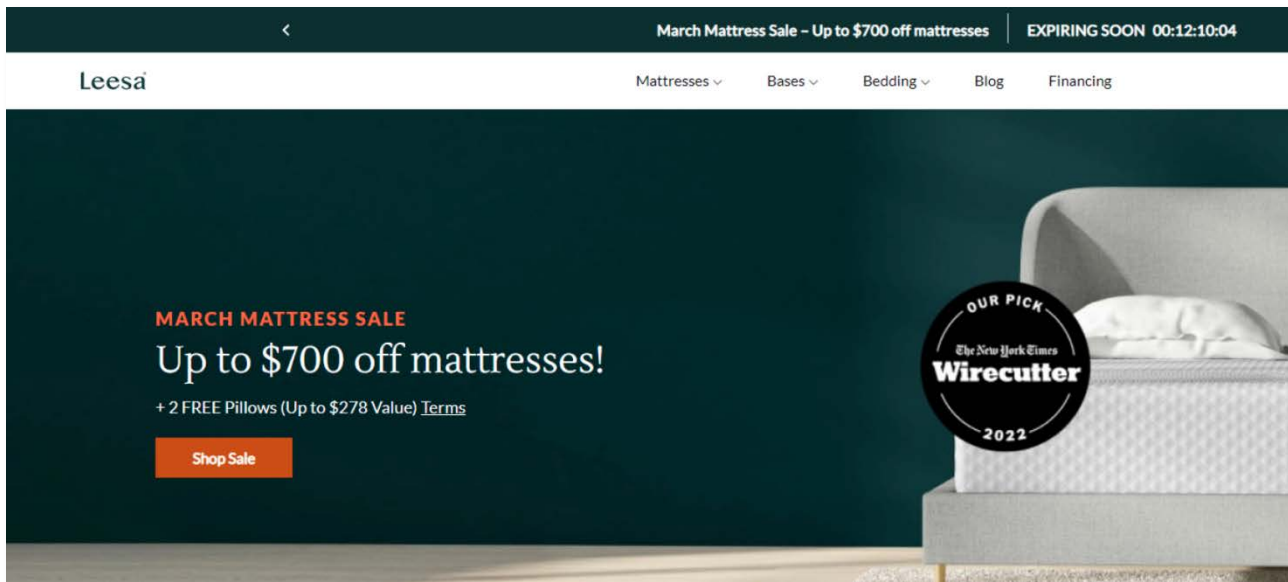
Captured on February 25, 2022



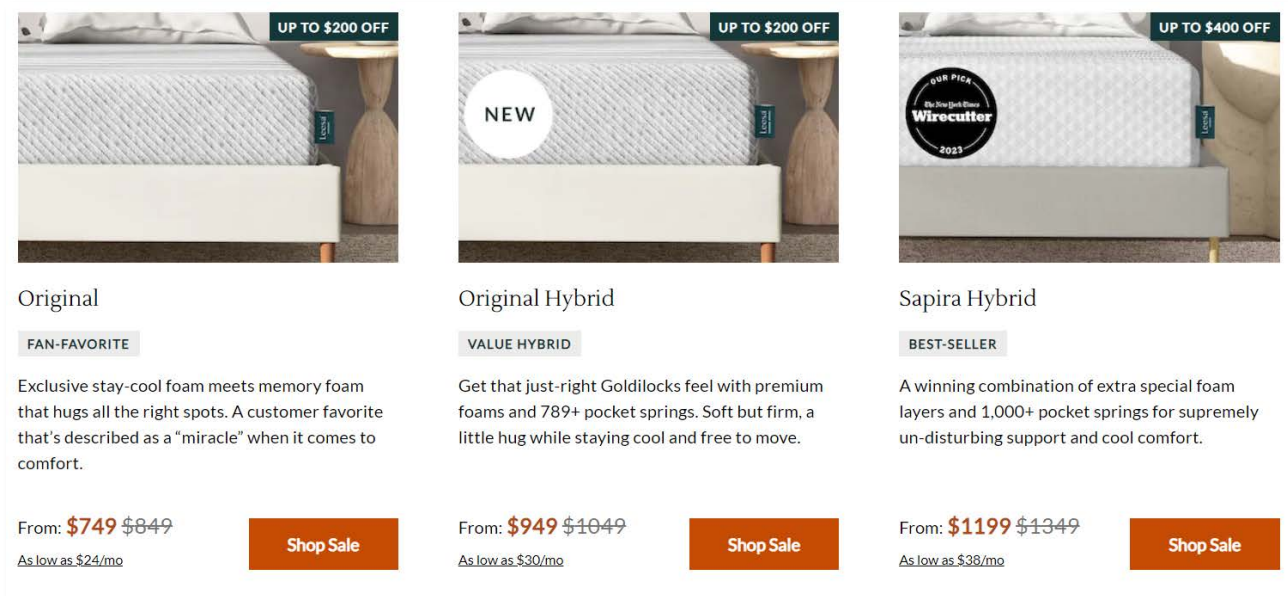
Captured on June 17, 2022



Captured on December 1, 2022



Captured on March 27, 2023

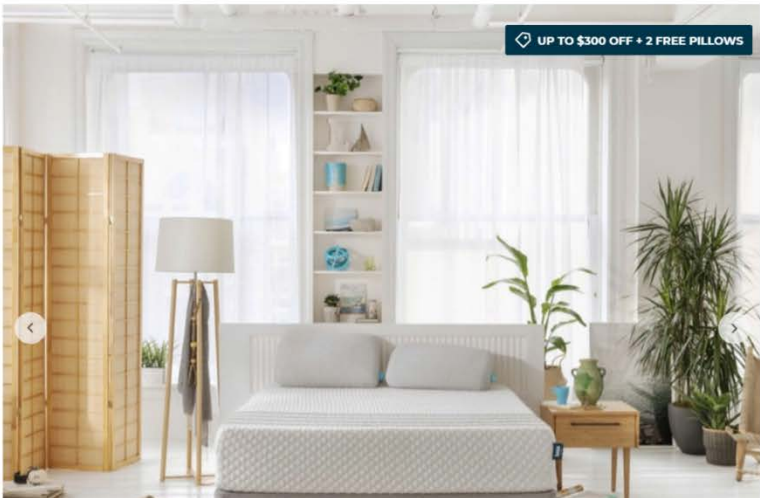


Captured on July 25, 2023

Memorial Day Sale Early Access! | EXPIRING SOON 00:13:33:49

leesa

Mattresses Bases Accessories Bundles Deals About Blog Reviews Rewards



UP TO \$300 OFF + 2 FREE PILLOWS

Leesa hybrid Mattress

Features

- Our award-winning, advanced hybrid mattress combines the benefits of premium foam with pocket springs for comfort and advanced support.
- A hole-punched top layer of foam sleeps cool, providing the hug and bounce you want in a mattress.
- 1,000+ active response pocket springs provide durability and stability for enhanced support for all types of sleepers.
- 2 FREE Down Alternative Pillows with mattress purchase while supplies last**

Perks

Pick your size:

Twin \$1099 \$949	Twin XL \$1199 \$1049	Full \$1499 \$1299
Queen \$1799 \$1549	King \$1999 \$1699	Cal King \$1999 \$1699

Captured on May 21, 2021

Summer Daze Sale: Up to \$700 Off + 2 FREE Pillows

leesa

Mattresses Bases Bedding Blog Financing Stores

Home / Mattresses / Original Hybrid Mattress

SLEEP FOUNDATION "Broad appeal and excellent performance make it an attractive choice for many sleepers."

MATTRESS ADVISOR

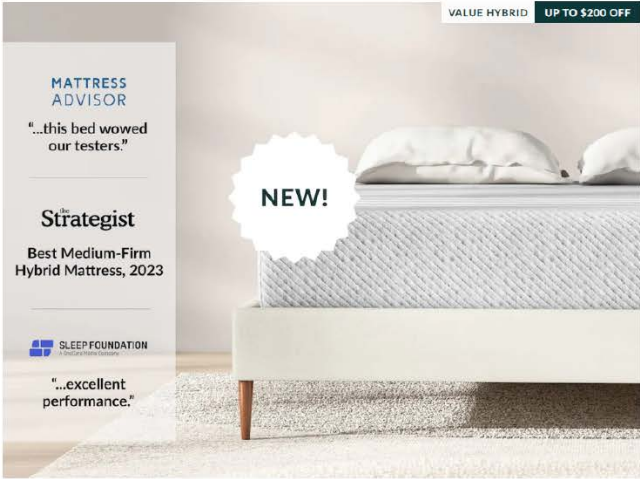
"...this bed wowed our testers."

Strategist

Best Medium-Firm Hybrid Mattress, 2023

SLEEP FOUNDATION

"...excellent performance."



NEW!

VALUE HYBRID UP TO \$200 OFF

Original Hybrid Mattress

★★★★★ 52 Reviews 24k+ Leesa Reviews

Order in the next **2 hours 39 minutes** and ships free as early as Wednesday, August 02.

Benefits

- A responsive top foam layer contours to your body for comfortable alignment and deeper sleep.
- High airflow foam that sleeps cool and helps with pressure relief.
- 789+ pocket springs deliver edge support and mobility for all body types and sleep positions.

2 FREE pillows with purchase

\$1299 ~~\$1499~~ Save \$200

Pick your size: 59.5" x 79.5" x 11" / 86lbs

Queen

Captured on July 26, 2023

The screenshot shows the Leesa website's checkout process. On the left, there's a contact information form with fields for email, shipping address, and phone number. The main content area displays a list of items being purchased: an 'Original Mattress QUEEN' for \$1,299.00 (discounted from \$1,499.00), a 'Down Alternative Pillows - Two Pack STANDARD' for FREE, and a 'Mattress Recycling Fee' of \$10.00. A 'Discount code' field is present with an 'Apply' button. Below the items, a summary shows a 'SUBTOTAL' of \$1,209.50 and a 'YOUR SAVINGS' of -\$200.00, resulting in a 'Total' of USD \$1,109.50. A callout box on the right highlights the savings: 'Original Mattress QUEEN' for \$1,299.00 (discounted from \$1,499.00) and 'Down Alternative Pillows - Two Pack STANDARD' for FREE. Another callout box at the bottom right states 'YOUR SAVINGS - \$200.00'. The page is titled 'Secure checkout' and has a 'Continue to shipping' button at the bottom.

Captured on January 10, 2023

24. Defendant's sales often offer "up to" \$X off, but they advertise *some* purported discount to items sitewide. For example, while the king-size of a certain mattress may be advertised with a higher purported discount ("Save \$400") than the twin-size ("Save \$150"), all sizes of the same mattress (and other Products) are always advertised as on sale for a discounted price.¹

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

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

¹ A limited set of Products are sometimes excluded from Defendant's sales and discounts (for example, Defendant's "trundle mattresses"). Other than these exclusions, Defendant's advertised sales are sitewide and always available. And, as explained below, the proposed class only includes consumers who purchased Products advertised at a discount.

Spring Refresh Sale Offer Terms

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

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

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

Up to 20% Off Select Bedding

Discount automatically applied to bedding.

Captured on April 19, 2023

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

Memorial Day Sale Offer Terms

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

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

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

Up to 20% Off Select Bedding

Discount automatically applied to bedding.

Captured on May 3, 2023

28. To confirm that Defendant always offers discounts off of purported regular prices, Plaintiff's counsel performed an investigation of Defendant's advertising practices using the Internet Archive's Wayback Machine (available at www.archive.org).² Defendant's sales have persisted continuously since at least January 1, 2020. For example, 54 randomly selected screenshots of Defendant's website, www.leesa.com, were collected from the Internet Archive's Wayback Machine, from the 2020-2022 period. In addition, 46 additional screenshots from the

² The Internet Archive, available at archive.org, is a library that archives web pages. <https://archive.org/about/>

1 www.leesa.com website were captured in 2023 by visiting the website and recording screenshots.

2 One hundred percent of the 100 randomly selected screenshots of Defendant's website, captured on
3 the Wayback Machine and directly on the website, displayed a purportedly time-limited discount.

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

10 30. Based on Defendant's advertisements, reasonable consumers reasonably believe that
11 the prices displayed in "strikethrough font" (e.g., "\$1400") are Defendant's regular prices and
12 former prices (that is, the price at which the goods were actually offered for sale on Defendant's
13 website before the limited-time offer went into effect). In other words, reasonable consumers
14 reasonably believe that the listed strikethrough regular prices Defendant advertises represent the
15 amount that consumers formerly had to pay on Defendant's website for Defendant's goods, before
16 the limited-time sale began. Said differently, reasonable consumers reasonably believe that, prior to
17 the supposedly time-limited sale, consumers buying from Defendant on its website had to pay the
18 regular price to get the item and did not have the opportunity to get a discount from that regular
19 price.

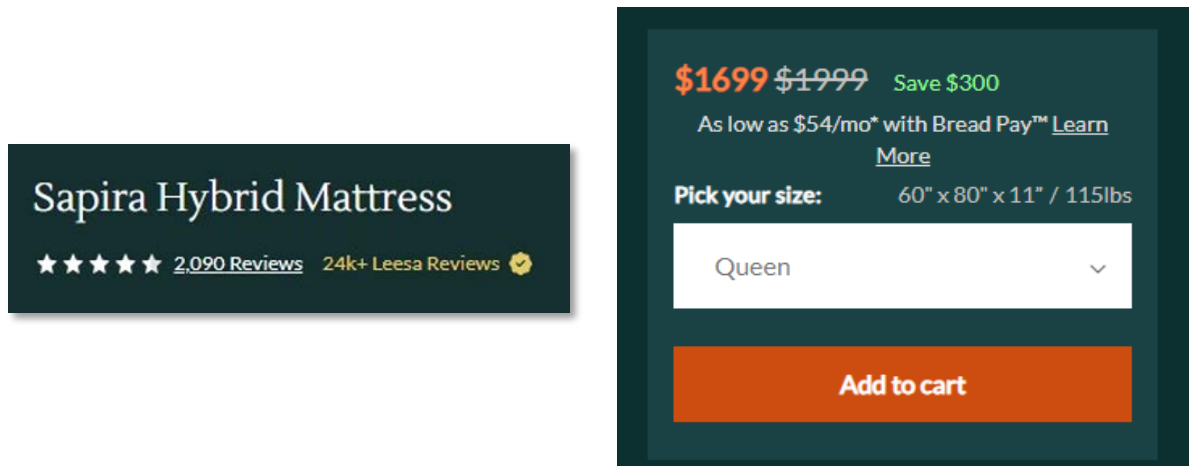
20 31. Reasonable consumers also reasonably believe that the listed regular prices Defendant
21 advertises represent the true market value of the Products, and are the prevailing prices for those
22 Products; and that they are receiving reductions from those listed regular prices in the amounts
23 advertised. In truth, however, Defendant *always* offers discounts off the purported regular prices it
24 advertises. As a result, everything about Defendant's price and purported discount advertising is
25 false. The regular prices Defendant advertises are not actually Defendant's regular or former prices,
26 or, as discussed below, the prevailing prices for the Products Defendant sells. And, the listed regular
27 prices do not represent the true market value for the Products, because Defendant's Products are
28 *always* available for less than that on Defendant's website, and customers did not have to formerly

1 pay that amount to get those items. The purported discounts Defendant advertises are not the true
 2 discount the customer is receiving, and are often not a discount at all. Nor are the purported
 3 discounts “LIMITED TIME” or “EXPIRING SOON”—quite the opposite, they are always
 4 available.

5 **B. Defendant’s purported regular prices were not the prevailing prices during the**
 6 **90 days immediately preceding Defendant’s advertisement of the purported**
 7 **discount.**

8 32. As explained above, Defendant sells its Leesa Products through its website,
 9 www.leesa.com. Some Leesa Products are also available through a small number of third-party
 10 retailers, including Amazon, Potterybarn, and West Elm.


11 33. Often, third-party retailers sell the Leesa Products for prices below Defendant’s listed
 12 regular prices. For example, on October 22, 2023, Defendant advertised the queen-sized Sapira
 13 Hybrid Mattress with a listed regular price of \$1,999, for a supposedly discounted price of \$1,699:



14
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 20
 21
 22 34. On the same day, Amazon was selling the Product for \$1,699—the supposedly
 23 “discounted” price Defendant was advertising. But on Amazon, that supposedly discounted price
 24 was listed as the regular price. And, on the listing, Amazon represented to consumers that the “List
 25 Price” is “the suggested retail price ... as provided by a manufacturer, supplier, or seller.” Defendant
 26 is the manufacturer and supplier of these Products. So, for this Product, Defendant provided Amazon
 27 with a suggested retail price equal to its own supposedly “discounted” price and below its own
 28 advertised “regular” prices.

35. Plus, for consumers who are Amazon “Prime” members, Amazon sold the mattress for an even lower price (\$1,444.15).

Non-Prime member:



Leesa Sapira Hybrid 11" Mattress, Queen Size, Premium Cooling Foam and Pocket Spring / CertiPUR-US Certified / 100-Night Trial, White and Gray

Visit the Leesa Store
4.3 ★★★★★ 276 ratings

\$1,699⁰⁰

Join Prime to buy this item at \$1,444.15


Pay \$120.35/month for 12 months, interest-free upon approval for Amazon Visa

Delivery & Support

Select to learn more

- Haul Away & Unpack available
- Ships from Amazon.com
- Eligible for Return, Refund or Replacement within 100 days of receipt
- Customer Support

Prime member:



Leesa Sapira Hybrid 11" Mattress, Queen Size, Premium Cooling Foam and Pocket Spring / CertiPUR-US Certified / 100-Night Trial, White and Gray

Visit the Leesa Store
4.3 ★★★★★ 276 ratings

With Prime

-15% \$1,444¹⁵

List Price: ~~\$1,699.00~~ ⓘ

Exclusive Prime price

Pay \$120.35/month for 12 months, interest-free upon approval for Amazon Visa

Delivery & Support

Select to learn more

- Ships from Amazon.com
- Eligible for Return, Refund or Replacement within 100 days of receipt

The List Price is the suggested retail price of a new product as provided by a manufacturer, supplier, or seller. Except for books, Amazon will display a List Price if the product was purchased by customers on Amazon or offered by other retailers at or above the List Price in at least the past 90 days. List prices may not necessarily reflect the product's prevailing market price. [Learn more](#)

36. And, a third-party Amazon price tracker reveals that in the three-months preceding the day of the screenshots above (October 22, 2023), the queen-sized Leesa Sapira Hybrid mattress was never sold at the purported regular price of \$1,999 on Amazon, and was always sold, even to non-Prime subscribers, for at least \$100 less than that price.

37. Amazon regularly sells Leesa Products to “Prime” subscribers for lower prices than even Leesa’s purported “discount” prices. For example, on October 22, 2023, the following prices were advertised on Leesa.com and Amazon.com for Leesa Products:

Product	Leesa.com Listed Regular Price	Leesa.com “Discounted” Price	Amazon.com Price
Original Mattress (Queen)	\$1299	\$1099	\$808.14
Original Hybrid Mattress (Queen)	\$1499	\$1299	\$1199.25
Sapira Hybrid Mattress (Queen)	\$1999	\$1699	\$1444.15
Studio Mattress (Queen)	\$799	\$749	\$636.65
Legend Hybrid Mattress (Queen)	\$2599	\$2099	\$1574.25

38. In short, as information from Amazon shows, third-party sellers regularly sell Defendant’s Products for less than the purported regular prices that Defendant advertises. This is not surprising, as prices charged by third-party retailers converge on Defendant’s price, especially since this Product is sold in an e-commerce market and Defendant, the manufacturer, sells the Products directly to consumers through its publicly available website.

39. Moreover, regardless of third-party retailers’ prices, Leesa Products are primarily sold through Defendant’s branded website, www.leesa.com. If consumers are searching for a Leesa

Product, they will go to Defendant's website. For example, if a consumer Googles "Leesa Mattress," the first result will be Leesa.com (followed by a New York Times review that repeatedly cites to Leesa.com³).

40. The difference in the number of product reviews on Defendant's website versus Amazon.com, one of the world's largest retailers of consumer goods, also shows that the Leesa Products are most commonly sold on Defendant's website (for Defendant's prices). For example, as of the filing of this Complaint, the Leesa "Original Mattress" has 19,989 reviews on Leesa's website, but only 1,100 on Amazon.com:

Leesa.com:



Amazon.com:



41. So, because the Leesa Products are most commonly sold on Defendant's website, they are most commonly sold for the discounted prices always available on Defendant's website.

42. Moreover, as discussed above, Amazon regularly sells Leesa Products to its "Prime" subscribers for far lower prices than Leesa's listed regular prices. And, because the vast majority of Amazon shoppers have a "Prime" membership, the vast majority of Amazon's sales of Leesa

³ <https://www.nytimes.com/wirecutter/reviews/leesa-mattress/>

1 Products are at these lower prices.⁴ Thus, between sales on Defendant’s website and Amazon, the
 2 Products routinely and predominantly sell for prices below Defendant’s purported regular prices, and
 3 the listed regular prices are not the prevailing market rates.

4 **C. Defendant’s advertisements are unfair, deceptive, and unlawful.**

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

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

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

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

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

25 48. Here, as described in detail above, Defendant makes untrue and misleading
 26 statements about its prices. Defendant advertises regular prices that are not its true regular prices, or

27
 28 ⁴ <https://www.statista.com/statistics/234253/share-of-amazon-prime-subscribers-in-the-united-states/>

its former prices, and were not the prevailing market price in the three months immediately preceding the advertisement. In addition, Defendant advertised goods or services with the intent not to sell them as advertised, for example, by advertising goods having certain former prices and/or market values without the intent to sell goods having those former prices and/or market values. Defendant made false or misleading statements of fact concerning the reasons for, existence of, and amounts of price reductions, including the existence of steep discounts, and the amounts of price reductions resulting from those discounts. And Defendant engaged in unlawful, unfair, and deceptive business practices.

D. Defendant's advertisements harm consumers.

49. Based on Defendant's advertisements, reasonable consumers would expect that the listed regular prices are the regular prices at which Defendant usually sells its Products and that these are former prices that Defendant sold its Products at before the time-limited discount was introduced.

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

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

52. Consumers that are presented with discounts are substantially more likely to make the purchase. "Nearly two-thirds of consumers surveyed admitted that a promotion or a coupon often closes the deal, if they are wavering or are undecided on making a purchase."⁵ And, "two-thirds of consumers have made a purchase they weren't originally planning to make solely based on finding a coupon or discount," while "80% [of consumers] said they feel encouraged to make a first-time purchase with a brand that is new to them if they found an offer or discount."⁶

⁵ <https://www.invespro.com/blog/how-discounts-affect-online-consumer-buying-behavior/>.

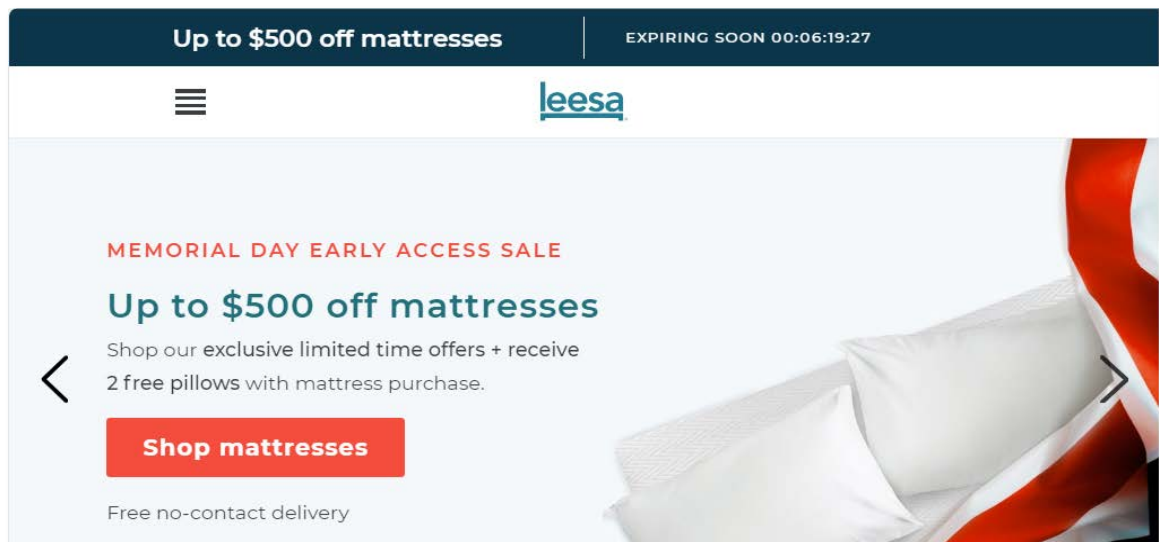
⁶ RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases Online, Especially Among Millennial Buyers (prnewswire.com).

53. Similarly, when consumers believe that an offer is expiring soon, the sense of urgency makes them more likely to buy a product.⁷

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

E. Plaintiff was misled by Defendant's misrepresentations.

55. On May 25, 2021, Defendant's website advertised a "Memorial Day Early Access Sale" that promised "limited time offers" including "2 free pillows" and "up to \$500 off" on its mattress Products:

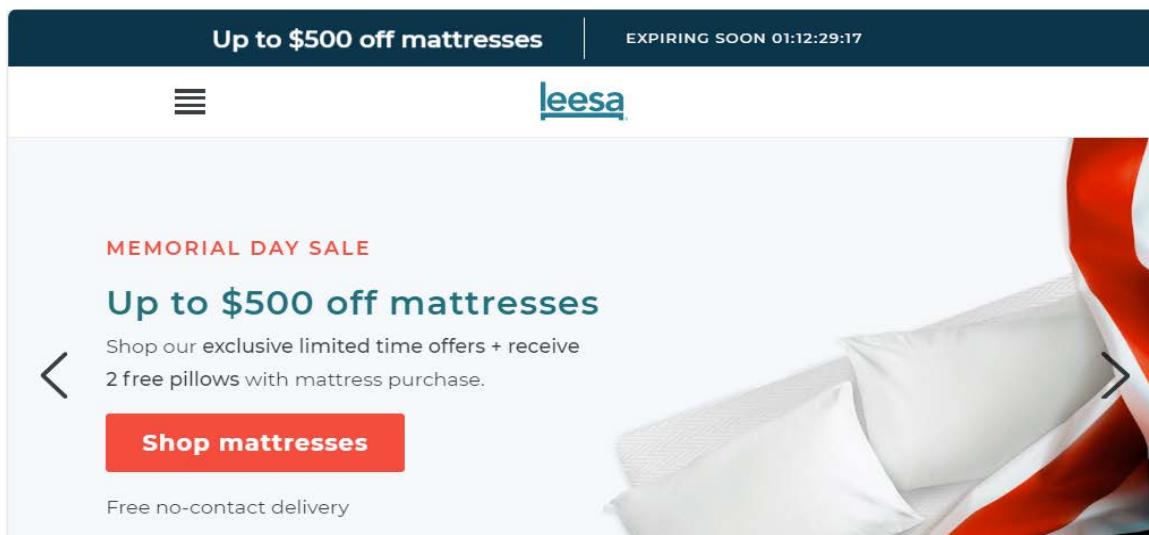


Captured on May 25, 2021

56. As shown above, the sale was advertised as "expiring soon" and Defendant's website displayed a countdown timer showing that the sale would end that day. In reality, the exact same sale

⁷ <https://cxl.com/blog/creating-urgency/> (addition of a countdown timer 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).

continued on. For example, on May 30, 2021, Defendant's website advertised the same sale, with a new countdown timer:



Captured on May 30, 2021

57. Pursuant to the advertised sale, on both days, and for weeks before and after, Defendant advertised the same purported discounts on its Products. For example, Defendant advertised the same discounts for the "Leesa Hybrid Mattress":

Leesa <i>hybrid</i> Mattress	
Features	Perks
<ul style="list-style-type: none"> Our award-winning, advanced hybrid mattress combines the benefits of premium foam with pocket springs for comfort and advanced support. A hole-punched top layer of foam sleeps cool, providing the hug and bounce you want in a mattress. 1,000+ active response pocket springs provide durability and stability for enhanced support for all types of sleepers. 2 FREE Down Alternative Pillows with mattress purchase while supplies last 	
Pick your size:	
Twin \$1099 \$949	Twin XL \$1199 \$1049
Full \$1499 \$1299	Queen \$1799 \$1549
King \$1999 \$1699	Cal King \$1999 \$1699


Captured on May 17, 2021

Leesa <i>hybrid</i> Mattress	
Features	Perks
<ul style="list-style-type: none"> Our award-winning, advanced hybrid mattress combines the benefits of premium foam with pocket springs for comfort and advanced support. A hole-punched top layer of foam sleeps cool, providing the hug and bounce you want in a mattress. 1,000+ active response pocket springs provide durability and stability for enhanced support for all types of sleepers. 2 FREE Down Alternative Pillows with mattress purchase while supplies last 	
Pick your size:	
Twin \$1099 \$949	Twin XL \$1199 \$1049
Full \$1499 \$1299	Queen \$1799 \$1549
King \$1999 \$1699	Cal King \$1999 \$1699

Captured on May 21, 2021

UP TO \$300 OFF + 2 FREE PILLOWS

LEESA HYBRID MATTRESS
Foam + spring hybrid



BEST VALUE

- Premium foam meets springs for advanced comfort and support
- Pocket springs provide edge-to-edge support, durability and stability
- Wirecutter's #1 Hybrid Mattress


Starting at ~~\$1099~~ **\$949** | as low as \$53/mo

Shop

Captured on May 25, 2021

UP TO \$300 OFF + 2 FREE PILLOWS

LEESA HYBRID MATTRESS
Foam + spring hybrid



BEST VALUE

- Premium foam meets springs for advanced comfort and support
- Pocket springs provide edge-to-edge support, durability and stability
- Wirecutter's #1 Hybrid Mattress

Starting at ~~\$1099~~ **\$949** | as low as \$53/mo

Shop

Captured on May 30, 2021

Leesa *hybrid* Mattress

Features	Perks
<ul style="list-style-type: none"> • Our award-winning, advanced hybrid mattress combines the benefits of premium foam with pocket springs for comfort and advanced support. • A hole-punched top layer of foam sleeps cool, providing the hug and bounce you want in a mattress. • 1,000+ active response pocket springs provide durability and stability for enhanced support for all types of sleepers. • 2 FREE Down Alternative Pillows with mattress purchase while supplies last 	

Pick your size:

Twin \$1099 \$949	Twin XL \$1199 \$1049
Full \$1499 \$1299	Queen \$1799 \$1549
King \$1999 \$1699	Cal King \$1999 \$1699

Captured on May 31, 2021

Leesa *hybrid* Mattress

Features	Perks
<ul style="list-style-type: none"> • Our award-winning, advanced hybrid mattress combines the benefits of premium foam with pocket springs for comfort and advanced support. • A hole-punched top layer of foam sleeps cool, providing the hug and bounce you want in a mattress. • 1,000+ active response pocket springs provide durability and stability for enhanced support for all types of sleepers. • 2 FREE Down Alternative Pillows with mattress purchase while supplies last 	

Pick your size:

Twin \$1099 \$949	Twin XL \$1199 \$1049
Full \$1499 \$1299	Queen \$1799 \$1549
King \$1999 \$1699	Cal King \$1999 \$1699

Captured on June 3, 2021

58. On May 27, 2021, Mr. Phillips purchased a queen-sized Leesa Hybrid Mattress and a Two-Pack of Down Alternative Pillows from Defendant's website while the same sale was on-going. He made this purchase while living in San Francisco, California. When Mr. Phillips made his

1 purchase, Defendant's website represented that the queen-sized Leesa Hybrid Mattress had a regular
 2 price of \$1,799. As shown above, this price was presented on the product page in strikethrough font
 3 ("~~\$1799~~") next to a purported discount price of \$1,549. And, the product page stated in red font that
 4 Mr. Phillips would receive "2 FREE Down Alternative Pillows," but only "while supplies last."

5 59. In the email order confirmation that Defendant sent to Mr. Phillips after he made his
 6 purchase, Defendant again represented that the Leesa Hybrid Mattress had a regular price of \$1,799.
 7 And, Defendant represented that Mr. Phillips received a discount of \$359.80.⁸ Defendant also
 8 represented that the pillows had a regular price of \$29, and that Mr. Phillips was receiving a discount
 9 of \$29. In short, Defendant represented that the Products had a certain regular price and that Mr.
 10 Phillips was receiving a substantial discount for the items that he purchased.

11 60. Mr. Phillips read and relied on Defendant's representations on the website,
 12 specifically that the Products were being offered at a discount for a limited time and had the regular
 13 prices listed above. He relied on the strikethrough regular price of "\$1799," the red discounted price
 14 of "\$1549," the promise to provide free pillows, and the representations that the sale was time-
 15 limited and expiring soon. Based on Defendant's representations described and shown above, Mr.
 16 Phillips reasonably understood that Defendant regularly (and before the promotion Defendant was
 17 advertising) sold the Products he was purchasing at the published regular price, that this regular price
 18 was the market value of the Products that he was buying, that he was receiving the advertised
 19 discount as compared to the regular price, and that advertised discount was only available for a
 20 limited time (during the limited time promotion). He would not have made the purchase if he had
 21 known that the Products were not discounted as advertised, and that he was not receiving the
 22 advertised discount.

23 61. In reality, as explained above, Defendant's products, including the Products that Mr.
 24 Phillips purchased, are *always* available at a discounted price off the purported regular prices.⁹ In

26 ⁸ Mr. Phillips received a \$250 discount off of the \$1,799 purported list price to get the
 27 advertised discounted price of \$1,549. In addition to the advertised discount, Mr. Phillips also
 applied a coupon code from Wirecutter for his purchase.

28 ⁹ As explained above, a limited set of Defendant's Products are sometimes excluded from
 Defendant's sales. The Products purchased by Mr. Phillips, however, are continuously on sale.

1 other words, Defendant did not regularly sell the Products Mr. Phillips purchased at the purported
 2 regular prices, and the Products were not discounted as advertised. Plus, the sale was not limited
 3 time—Defendant’s products are always on sale.

4 62. Plaintiff faces an imminent threat of future harm. Plaintiff would purchase Products
 5 from Defendant again in the future if he could feel sure that Defendant’s regular prices accurately
 6 reflected Defendant’s former prices and the market value of the Products, and that its discounts were
 7 truthful. But without an injunction, Plaintiff has no realistic way to know which—if any—of
 8 Defendant’s regular prices, discounts, and sales are not false or deceptive. For example, while he
 9 could watch Defendant’s website for a sale on the day that it is supposed to end to see if the sale is
 10 permanent, doing so could result in him missing out on the sale (*e.g.*, if the sale is actually limited in
 11 time, and not permanent). Accordingly, Plaintiff is unable to rely on Defendant’s advertising in the
 12 future, and so cannot purchase Products he would like to purchase.

13 **F. Defendant breached its contract with and warranties to Mr. Phillips and the**
 14 **putative class.**

15 63. When Mr. Phillips, and other members of the putative class, purchased and paid for
 16 the Leesa Products that they bought as described above, they accepted offers that Defendant made,
 17 and thus, a contract was formed each time that they made purchases. Each offer was to provide
 18 Products having a particular listed regular price and market value, and to provide those Products at
 19 the discounted price advertised on the website.

20 64. Defendant’s website and email confirmations list the market value of the items that
 21 Defendant promised to provide (which, for Mr. Phillips, are shown above). Defendant agreed to
 22 provide a discount equal to the difference between the regular prices, and the prices paid by Mr.
 23 Phillips and putative class members (also shown above for Mr. Phillips). For example, Defendant
 24 offered to provide Mr. Phillips (among other things) the Leesa Hybrid Mattress with a market value
 25 of \$1,799, and to provide a discount of \$359.80. Defendant also warranted that the regular price and
 26 market value of the Products Mr. Phillips purchased was the advertised list price and warranted that
 27 Mr. Phillips was receiving a specific discount on those Products.
 28

65. The regular price and market value of the items Mr. Phillips and putative class members would receive, and the amount of the discount they would be provided off the regular price of those items, were specific and material terms of the contract. They were also affirmations of fact about the Products and a promise relating to the goods.

66. Mr. Phillips and other members of the putative class performed their obligations under the contract by paying for the items they purchased.

67. Defendant breached its contract by failing to provide Mr. Phillips and other members of the putative class with Products that have a regular price and market value equal to the regular price displayed, and by failing to provide the discount it promised. Defendants also breached warranties for the same reasons.

G. Monetary damages would not adequately remedy the threat of future harm to Plaintiff.

68. Monetary damages are inadequate to remedy Plaintiff's future harm. Thus, in addition to seeking damages, Plaintiff seeks an injunction under California's Consumer Legal Remedies Act, Unfair Competition Law, and False Advertising Law, and based on his quasi-contract/unjust enrichment claim.

69. Plaintiff faces an imminent threat of future harm that only an injunction can remedy. Plaintiff would purchase Products from Defendant again in the future if he could feel sure that Defendant's regular prices accurately reflected Defendant's former prices and the market value of the Products, and that its discounts were truthful. But without an injunction, Plaintiff has no realistic way to know which—if any—of Defendant's regular prices, discounts, and sales are not false or deceptive. Thus, he is unable to rely on Defendant's advertising in the future, and so cannot purchase Products he would like to purchase.

V. Class action allegations.

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

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

71. 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

72. 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.

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

Predominance of Common Questions

74. 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 warranty;
- (5) damages needed to reasonably compensate Plaintiff and the proposed class.

Typicality & Adequacy

75. 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 ***Superiority***

2 76. A class action is superior to all other available methods for the fair and efficient
3 adjudication of this litigation because individual litigation of each claim is impractical. It would be
4 unduly burdensome to have individual litigation of millions of individual claims in separate lawsuits,
5 every one of which would present the issues presented in this lawsuit.

6 **VI. Claims.**

7 **First Cause of Action:**

8 **Violation of California's False Advertising Law Bus. & Prof. Code §§ 17500 & 17501 et. seq.**
9 **(By Plaintiff and the California Subclass)**

10 77. Plaintiff incorporates each and every factual allegation set forth above.

11 78. Plaintiff brings this cause of action on behalf of himself and members of the
12 California Subclass.

13 79. Defendant has violated sections 17500 and 17501 of the Business and Professions
14 Code.

15 80. Defendant has violated, and continues to violate, section 17500 of the Business and
16 Professions Code by disseminating untrue and misleading advertisements to Plaintiff and subclass
17 members.

18 81. As alleged more fully above, Defendant advertises former prices along with
19 discounts. Defendant does this, for example, by crossing out a higher price (*e.g.*, ~~\$1049~~) and
20 displaying it next to a lower, discounted price. Reasonable consumers would understand prices
21 advertised in strikethrough font from which time-limited discounts are calculated to denote "former"
22 prices, i.e., the prices that Defendant charged before the time-limited discount went into effect.

23 82. The prices advertised by Defendant are not Defendant's regular prices. In fact, those
24 prices are never Defendant's regular prices (i.e., the price you usually have to pay to get the Product
25 in question), because there is always a heavily-advertised promotion ongoing entitling consumers to
26 a discount. Moreover, for the same reasons, those prices were not the former prices of the Products.
27 Accordingly, Defendant's statements about the former prices of its Products, and its statements
28 about its discounts from those former prices, were untrue and misleading. In addition, Defendant's

1 statements that its discounts are “limited time” and only “valid” for a certain time period are false
2 and misleading too.

3 83. 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 84. 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 85. 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 86. Defendant’s misrepresentations were a substantial factor and proximate cause in
18 causing damages and losses to Plaintiff and the subclass.

19 87. 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 88. Accordingly, pursuant to California Business and Professions Code § 17535, Mr.
24 Phillips, on behalf of himself and all other members of the subclass, seeks injunctive relief.

25 **Second Cause of Action:**

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

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

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

1 90. Plaintiff brings this cause of action on behalf of himself and members of the
2 California Subclass.

3 91. Plaintiff and the subclass are “consumers,” as the term is defined by California Civil
4 Code § 1761(d).

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

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

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

15 95. Defendant violated, and continues to violate, section 1770 of the California Civil
16 Code.

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

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

24 98. And Defendant violated, and continues to violate section 1770(a)(13) by making false
25 or misleading statements of fact concerning reasons for, existence of, or amounts of, price reductions
26 on its website, including by (1) misrepresenting the regular price of Products on its website, (2)
27 advertising discounts and savings that are exaggerated or nonexistent, (3) misrepresenting that the
28 discounts and savings are unusually large, when in fact they are regularly available (4)

1 misrepresenting the reason for the sale (*e.g.*, “Presidents Day Sale,” when in fact the sale is ongoing
2 and not limited to Presidents Day).

3 99. Defendant’s representations were likely to deceive, and did deceive, Plaintiff and
4 reasonable consumers. Defendant knew, or should have known through the exercise of reasonable
5 care, that these statements were inaccurate and misleading.

6 100. Defendant’s misrepresentations were intended to induce reliance, and Plaintiff saw,
7 read, and reasonably relied on them when purchasing Leesa Products. Defendant’s
8 misrepresentations were a substantial factor in Plaintiff’s purchase decision.

9 101. In addition, subclass-wide reliance can be inferred because Defendant’s
10 misrepresentations were material, *i.e.*, a reasonable consumer would consider them important in
11 deciding whether to buy the Leesa Products.

12 102. Defendant’s misrepresentations were a substantial factor and proximate cause in
13 causing damages and losses to Plaintiff and the subclass.

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

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

21 105. CLRA § 1782 NOTICE. On July 21, 2023, a CLRA demand letter was sent to
22 Defendant’s headquarters and registered agent via certified mail (return receipt requested), that
23 provided notice of Defendant’s violations of the CLRA and demanded that Defendant correct the
24 unlawful, unfair, false and/or deceptive practices alleged here. Defendant does not have a California
25 headquarters. In his initial Complaint, Plaintiff only sought injunctive relief, and did not seek
26 damages, on his CLRA claim. But he stated that “If Defendant does not fully correct the problem
27 for Plaintiff and for each member of the California Subclass within 30 days of receipt, Plaintiff and
28 the California Subclass will seek all monetary relief allowed under the CLRA.” Now, 30 days have

1 passed and Defendant has not corrected the problem for Plaintiff and for each member of the
 2 California Subclass. Accordingly, Plaintiff seeks all monetary relief available under the CLRA,
 3 including punitive damages and reasonable attorney fees.

4 106. A CLRA venue declaration is attached.

5 **Third Cause of Action:**

6 **Violation of California's Unfair Competition Law**

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

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

9 108. Plaintiff brings this cause of action on behalf of himself and members of the
 10 California Subclass.

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

13 ***The Unlawful Prong***

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

19 ***The Deceptive Prong***

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

23 112. Defendant's representations were misleading to Plaintiff and other reasonable
 24 consumers.

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

The Unfair Prong

114. 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.

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

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

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

118. Defendant’s conduct, as alleged above, was immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers.

* * *

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

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

121. Defendant’s representations were a substantial factor and proximate cause in causing damages and losses to Plaintiff and the subclass members.

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

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

4 **Fifth Cause of Action:**

5 **Breach of Express Warranty**

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

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

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

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

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

17 138. In fact, the Leesa Products' stated market value was not the prevailing market value.
18 Thus, the warranty was breached.

19 139. Plaintiff provided Defendant with notice of this breach of warranty, by mailing a
20 notice letter to Defendant's headquarters and registered agent on July 21, 2023.

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

Sixth Cause of Action:

Quasi-Contract/Unjust Enrichment

(by Plaintiff and the Nationwide Class)

141. Plaintiff incorporates each and every factual allegation in paragraphs 1-62, 68-76 above.

142. Plaintiff brings this cause of action in the alternative to his Breach of Contract claim (Claim IV) on behalf of himself and the Nationwide Class. In the alternative, Plaintiff brings this claim on behalf of himself and the California Subclass.

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

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

145. (In the alternative only), due to Defendant's misrepresentations, its contracts with Plaintiff and other class members are void or voidable.

146. Plaintiff and the class seek injunctive relief.

Seventh Cause of Action:

Negligent Misrepresentation

(by Plaintiff and the California Subclass)

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

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

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

150. These representations were false.

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

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

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

VII. Relief.

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

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

VIII. Demand for Jury Trial.

166. Plaintiff demands the right to a jury trial on all claims so triable.

Dated: April 25, 2024

Respectfully submitted,

By: /s/ Grace Bennett

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