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

13 Catherine Moody and Andrew Cohn,
14 each individually and on behalf of all
15 others similarly situated,

16 *Plaintiffs,*

17 v.

18 Hot Topic, Inc.,

19 *Defendant.*

Case No. 5:23-cv-00447-JGB-SP

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

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

9 3. California’s False Advertising Law prohibits businesses from making
10 statements they know or should know to be untrue or misleading. Cal. Bus. & Prof.
11 Code § 17500. This includes statements falsely suggesting that a product is on sale,
12 when it actually is not. Moreover, California’s False Advertising Law specifically
13 provides that “[n]o price shall be advertised as a former price ... unless the alleged
14 former price was the prevailing market price ... within three months next immediately
15 preceding” the advertising. Cal. Bus. & Prof. Code § 17501.

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

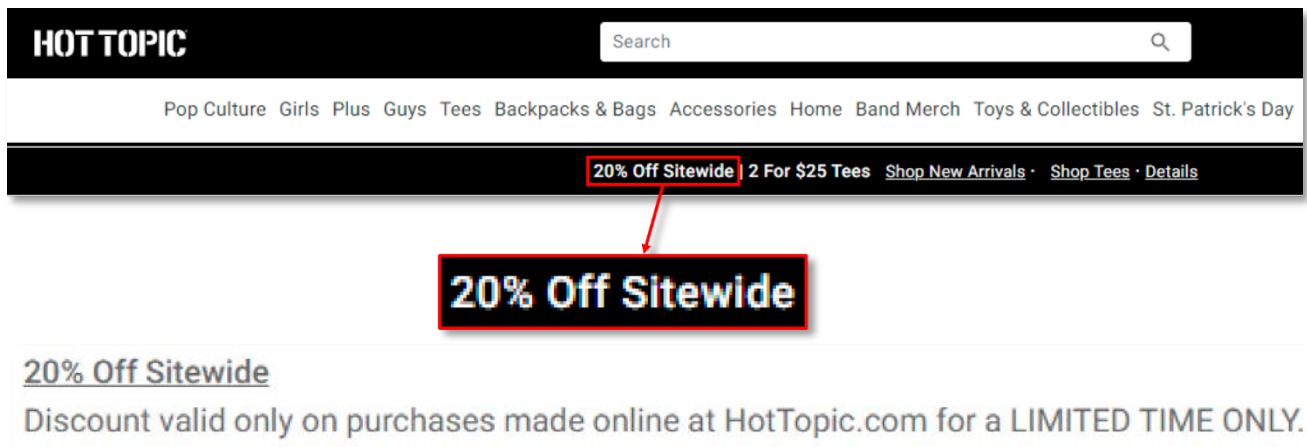
20 5. In addition, the Federal Trade Commission’s regulations prohibit false or
21 misleading “former price comparisons,” for example, making up “an artificial, inflated
22 price ... for the purpose of enabling the subsequent offer of a large reduction” off that
23 price. 16 C.F.R. § 233.1. They also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

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

4 7. Defendant Hot Topic, Inc. (“Hot Topic” or “Defendant”) makes, sells, and
5 markets clothing and accessories (the “Hot Topic Products” or “Products”). The
6 Products are sold online through Defendant’s website, HotTopic.com.

7 8. Defendant’s website prominently advertises sales. These advertisements
8 include purported regular prices and purported discounts. For example:
9 Hot Topic’s sale:



18 Purported regular prices, and associated discounts:

<p>Breaking Bad Duo T-Shirt</p> <p>\$19.12 - \$22.32 \$23.90 - \$27.90</p> <p>4 interest-free payments available on orders over \$35 with</p> <p>20% Off</p>	<p>Sweet Society Blueberry Glitter Mesh Dress</p> <p>\$44.90</p> <p>Or 4 interest-free payments of \$12 with Learn more</p> <p>30% Off - Use Code: HTDEAL Not Combinable With Hot Cash</p>
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23 9. But these advertisements are false. Defendant always offers sitewide
24 discounts, as well as discounts on certain items, so its Products are always available for
25 less than the purported regular prices. The sales are not limited in time, but instead
26 immediately reset and continue to be available.

27 10. Plaintiffs Catherine Moody and Andrew Cohn bought Hot Topic Products
28 from Hot Topic on HotTopic.com. Like Hot Topic’s other customers, when Plaintiffs

1 bought these Products, Hot Topic advertised that a purported sale was going on, and
2 that the Products were heavily discounted. Plaintiffs believed that the Hot Topic
3 Products that they purchased usually retailed for the displayed regular price. They
4 further believed that they were getting a substantial discount from the regular price, and
5 that the sale would end soon. These reasonable beliefs are what caused them to buy
6 from Defendant. If they had known that the Products they purchased were not on sale,
7 they would not have bought them.

8 11. But none of that was true. Defendant's published regular prices were not
9 the prevailing regular prices. The sale Defendant advertised was not really a time-limited
10 sale. Had Defendant been truthful, Plaintiffs and other consumers would not have
11 purchased the Products or would have paid less for them.

12 12. Plaintiffs bring this case for themselves and the other customers who
13 purchased Hot Topic's Products.

14 **II. Parties.**

15 13. Plaintiff Catherine Moody is domiciled in Menifee, California.

16 14. Plaintiff Andrew Cohn is domiciled in Anaheim, California.

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

18 16. Defendant Hot Topic, Inc. is a California corporation with its principal
19 place of business at 18305 E San Jose Ave, City of Industry, California 91748.

20 **III. Jurisdiction and Venue.**

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

25 18. The Court has personal jurisdiction over Defendant because Defendant
26 resides and conducts business in California.

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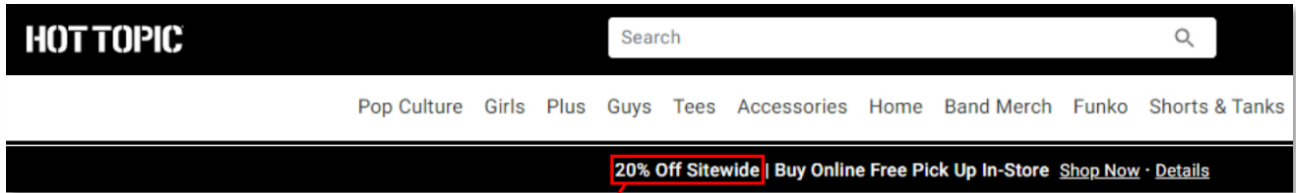
1 19. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of
2 Defendant’s conduct giving rise to the claims occurred in this District, including
3 Defendant’s sales to Plaintiffs.

4 **IV. Facts.**

5 **A. Defendant’s fake sales and discounts.**

6 20. Defendant makes, sells, and markets clothing and accessories. Hot Topic
7 sells its Products directly to consumers online, through its website, HotTopic.com.

8 21. Defendant’s website creates an illusion that customers are receiving a
9 limited-time discount. Defendant does this by advertising fake limited-time sales, fake
10 regular prices, and fake discounts based on the fake regular prices. For example,
11 Defendant advertises purportedly time-limited “sitewide” sales where everything is
12 purportedly 20% or more off for a limited time:



16 **20% Off Sitewide**

17 Captured April 19, 2022

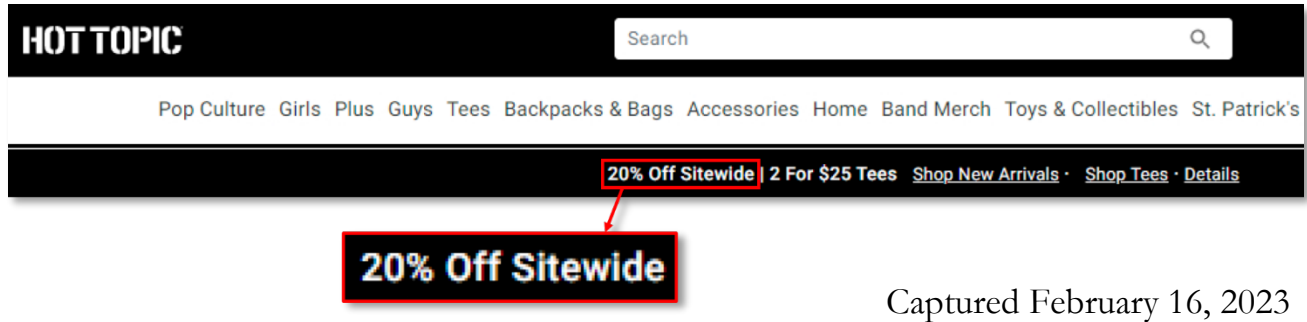
18 22. But Hot Topic Products are always on sale, and these sales persist. For
19 example, Hot Topic has prominently displayed, for over a year, a sitewide sale on its
20 website. These sales are designed to induce consumers to purchase its Products under
21 the mistaken belief they are getting a significant bargain because they are buying while
22 the sale is going on. Example screen captures showing sitewide sales at various points
23 throughout 2022 and 2023 are shown below:



26 **20% Off Sitewide**

27 Captured June 22, 2022

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23. Defendant’s sitewide sales have persisted continuously since at least April 7, 2022. Indeed, on 100 percent of 43 archived snapshots of Defendant’s site on archive.org between April 7, 2022, and March 31, 2023, Defendant was running a purportedly time-limited, sitewide discount of at least 20% every time that the website was checked.¹

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

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

25. For example, on February 7, 2023, Defendant advertised “20% Off Sitewide” for its Products. On this day, Defendant offered its Breaking Bad Duo T-Shirt, which has a purported regular price of \$23.90:

Shopping Bag (1 item)



Breaking Bad Duo T-Shirt **\$23.90**

Color: CHARCOAL

Size: MD

Qty: 1 **\$23.90**

20% Off **- \$4.78**

Total Price: **\$19.12**

Subtotal (before tax & shipping) **\$19.12**

PROCEED TO CHECKOUT

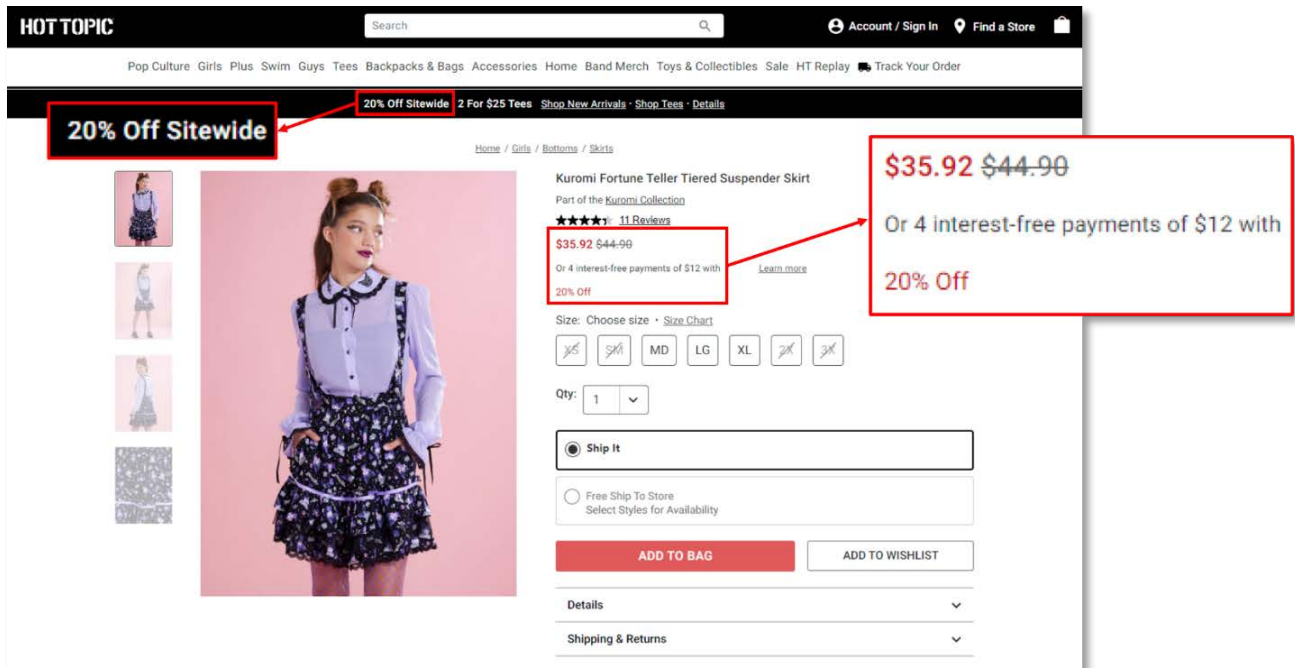
[View Shopping Bag](#)

[Continue Shopping](#)

Captured February 7, 2023

26. But the truth is, the Breaking Bad Duo T-Shirt’s listed regular price of \$23.90 is not its prevailing price. Instead, it is always at a discount from the purported regular price of \$23.90 (e.g., on February 7, 2023, it was on sale for \$19.12; on March 31, 2023, it was again on sale for \$19.12).

27. As another example, on March 20, 2023, Defendant advertised a purported sitewide sale on HotTopic.com. As part of this discount, Defendant listed purported regular prices in strikethrough font and represented that consumers would get “20% Off” by purchasing during the promotion. For example, Defendant represented that the “Kuromi Fortune Teller Tiered Suspender Skirt” had a regular list price of \$44.90, that consumers would get “20%” off of that regular list price by shopping now, and that the discount price was \$35.92:



Captured March 20, 2023

28. But the truth is, the Kuromi Fortune Teller Tiered Suspender Skirt's listed regular price of \$44.90 is not its regular price. Instead, it is always available at a discount from the purported regular price of \$35.92 (e.g., on March 20, 2023, it was priced at \$35.92, and on May 3, 2023, it again was priced at \$35.92), and the customer is not receiving the advertised discount by buying during the purported sale.

29. By listing fake regular prices and fake discounts, Defendant misleads consumers into believing that they are getting a good deal.

B. Defendant's advertisements are unfair, deceptive, and unlawful.

30. 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. Moreover, California's False Advertising Law specifically 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.

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

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

12 33. And finally, California’s Unfair Competition Law bans unlawful, unfair, and
13 deceptive business practices. *See* Cal. Bus. & Prof. Code § 17200.

14 34. Here, as described in detail above, Defendant made untrue and misleading
15 statements about its prices. Defendant listed former prices that were not true former
16 prices and were not the prevailing market price in the three months immediately
17 preceding. In addition, Defendant advertised goods with the intent not to sell them as
18 advertised, for example, by advertising goods having certain former prices and/or
19 market values without the intent to sell goods having those former prices and/or market
20 values. Defendant made false or misleading statements of fact concerning existence of,
21 and amounts of price reductions, including false statements regarding the limited-time
22 nature of the sitewide sales, the existence of sitewide sales, and the amounts of price
23 reductions resulting from those sales. And Defendant engaged in unlawful, unfair, and
24 deceptive business practices.

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

26 35. Based on Defendant’s advertisements, reasonable consumers would expect
27 that the listed regular prices are the prevailing prices at which Defendant actually sells its
28 Products.

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

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

8 38. Consumers that are presented with discounts are substantially more likely
9 to make the purchase. “Nearly two-thirds of consumers surveyed admitted that a
10 promotion or a coupon often closes the deal, if they are wavering or are undecided on
11 making a purchase.”² And, “two-thirds of consumers have made a purchase they
12 weren't originally planning to make solely based on finding a coupon or discount,” while
13 “80% [of consumers] said they feel encouraged to make a first-time purchase with a
14 brand that is new to them if they found an offer or discount.”³

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

17 40. Thus, Defendant’s advertisements harm consumers by inducing them to
18 make purchases based on false information.

19 **D. Plaintiffs were misled by Defendant’s misrepresentations.**

20 *Plaintiff Catherine Moody*

21 41. Ms. Moody made multiple purchases from Hot Topic, both in-store and
22 online.

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

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

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

1 42. For example, on December 3, 2021, Ms. Moody purchased a “Funko
2 Disney Winnie The Pooh Pop! Winnie The Pooh Vinyl Figure Hot Topic Exclusive”
3 and a “Funko Danganronpa 3: The End Of Hope's Peak Pop! Animation Monokuma
4 Vinyl Figure Hot Topic Exclusive” from Defendant. She purchased the Products from
5 Defendant’s website, HotTopic.com, while living in Menifee, California. Ms. Moody’s
6 invoice represented that she was receiving a substantial discount off of the regular prices
7 for the items that she ordered. The invoice represented that the regular price of all items
8 purchased was \$29.80 plus tax, and that Ms. Moody was receiving a discount of \$10.00.

9 43. On December 19, 2021, Ms. Moody purchased two “Funko The
10 Nightmare Before Christmas Pop! Trains Zero (In Duck Cart) Glow-In-The-Dark Vinyl
11 Figure Hot Topic Exclusive” from Defendant through Defendant’s website. The
12 invoice represented that the regular price of all items purchased was \$25.00 plus tax, and
13 that Ms. Moody was receiving a discount of \$5.00.

14 44. On February 25, 2022, Ms. Moody purchased a “Funko The Nightmare
15 Before Christmas Pop! Trains Oogie Boogie (In Dice Cart) Vinyl Figure” from
16 Defendant through Defendant’s website. The invoice represented that the regular price
17 of the item purchased was \$12.50 plus tax, and that Ms. Moody was receiving a discount
18 of \$0.51.

19 45. On March 6, 2022, Ms. Moody purchased a “Funko Disney Diamond
20 Collection Pop! Belle Vinyl Figure Hot Topic Exclusive” from Defendant through
21 Defendant’s website. The invoice represented that the regular price of the item
22 purchased was \$14.90 plus tax, and that Ms. Moody was receiving a discount of \$8.73.

23 46. On March 13, 2022, Ms. Moody purchased a “Pink & White Plaid Heart
24 Skirtall” and a “My Melody & Kuromi Lace-Up Chiffon Dress” from Defendant
25 through Defendant’s website. The invoice represented that the regular price of all items
26 purchased was \$96.80 plus tax, and that Ms. Moody was receiving a discount of \$45.00.

27 47. On March 19, 2022, Ms. Moody purchased a “Funko Sanrio Pop! Kuromi
28 Vinyl Figure Hot Topic Exclusive” from Defendant through Defendant’s website. The

1 invoice represented that the regular price of the item purchased was \$14.90 plus tax, and
2 that Ms. Moody was receiving a discount of \$5.00.

3 48. On May 19, 2022, Ms. Moody purchased a “Funko Pop! Animation
4 Gloomy Bear Vinyl Figure Hot Topic Exclusive” from Defendant through Defendant’s
5 website. The invoice represented that the regular price of the item purchased was \$15.90
6 plus tax, and that Ms. Moody was receiving a discount of \$2.00.

7 49. On September 20, 2022, Ms. Moody purchased a “Funko Sanrio Pop!
8 Kuromi (With Baku) Vinyl Figure Hot Topic Exclusive” from Defendant through
9 Defendant’s website. The invoice represented that the regular price of the item
10 purchased was \$14.90 plus tax, and that Ms. Moody was receiving a discount of \$7.00.

11 50. On September 23, 2022, Ms. Moody purchased a “Kuromi Lavender Sheer
12 Girls Woven Long-Sleeve Top,” a “Kuromi Fortune Teller Tiered Suspender Skirt,” a
13 “Kuromi Fortune Teller Skimmer Girls Cardigan,” and a “Kuromi Baku Lolita Enamel
14 Pin” from Defendant through Defendant’s website. The invoice represented that the
15 regular price of all items purchased was \$151.60 plus tax, and that Ms. Moody was
16 receiving a discount of \$75.00.

17 51. On November 23, 2022, Ms. Moody purchased a “My Melody & My Sweet
18 Piano Roses Faux Nail Set” and a “Pompompurin Honey Throw Blanket” from
19 Defendant through Defendant’s website. The invoice represented that the regular price
20 of all items purchased was \$39.80 plus tax, and that Ms. Moody was receiving a discount
21 of \$21.94.

22 52. On December 2, 2022, Ms. Moody purchased a “Funko Wednesday
23 Metallic Pop! Television Wednesday Addams Vinyl Figure Hot Topic Exclusive” from
24 Defendant through Defendant’s website. The invoice represented that the regular price
25 of the item purchased was \$14.90 plus tax, and that Ms. Moody was receiving a discount
26 of \$5.00.

27 53. On December 4, 2022, Ms. Moody purchased a “Pink Rose Ribbon
28 Choker,” a “Pink Rhinestone Heart Lace Bracelet Cuff Set,” and a “Pink Lace Heart

1 Gem Hair Bow Set” from Defendant through Defendant’s website. The invoice
2 represented that the combined regular price of the 3 items purchased was \$34.70 plus
3 tax, and that Ms. Moody was receiving a total discount of \$24.90.

4 ***Plaintiff Andrew Cohn***

5 54. Mr. Cohn also made multiple purchases from Hot Topic online.

6 55. On July 20, 2021, Mr. Cohn purchased a “Disney Mickey Mouse Cowboy
7 T-Shirt” from Defendant. He purchased the Product from Defendant’s website,
8 HotTopic.com, while living in Anaheim, California. Mr. Cohn’s invoice represented that
9 he was receiving a substantial discount off of the regular price for the item that he
10 ordered. The invoice represented that the regular price of the item purchased was
11 \$22.90 plus tax, and that Mr. Cohn was receiving a discount of \$9.16.

12 56. On July 26, 2021, Mr. Cohn purchased a “Disney Mickey Mouse Cowboy
13 T-Shirt” from Defendant through Defendant’s website. The invoice represented that
14 the regular price of the item purchased was \$22.90 plus tax, and that Mr. Cohn was
15 receiving a discount of \$11.45.

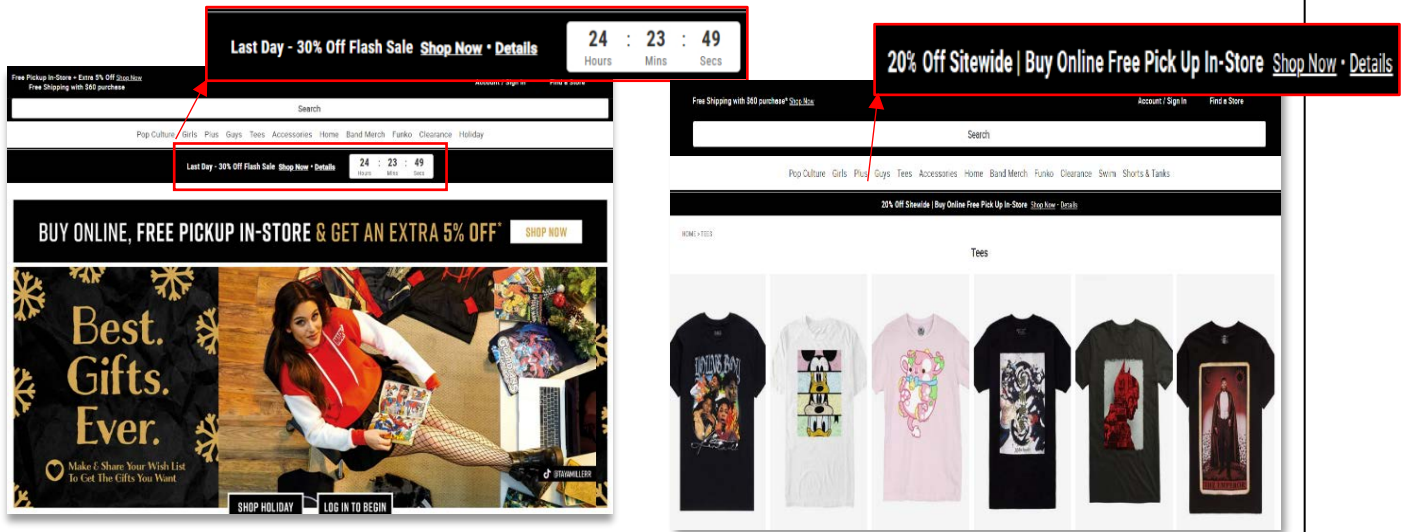
16 57. On August 10, 2021, Mr. Cohn purchased a “Disney Mickey Mouse
17 Cowboy T-Shirt” from Defendant through Defendant’s website. The invoice
18 represented that the regular price of the item purchased was \$22.90 plus tax, and that
19 Mr. Cohn was receiving a discount of \$11.45.

20 58. On May 9, 2022, Mr. Cohn purchased two “Disney Mickey Mouse Cowboy
21 T-Shirts” from Defendant through Defendant’s website. The invoice represented that
22 the combined regular price of the 2 items purchased was \$45.80 plus tax, and that Mr.
23 Cohn was receiving a total discount of \$18.32.

24 59. As highlighted above, Defendant’s constant sales are always prominently
25 advertised on its website, HotTopic.com. Plaintiffs saw and relied on this advertising in
26 deciding to make their purchases.

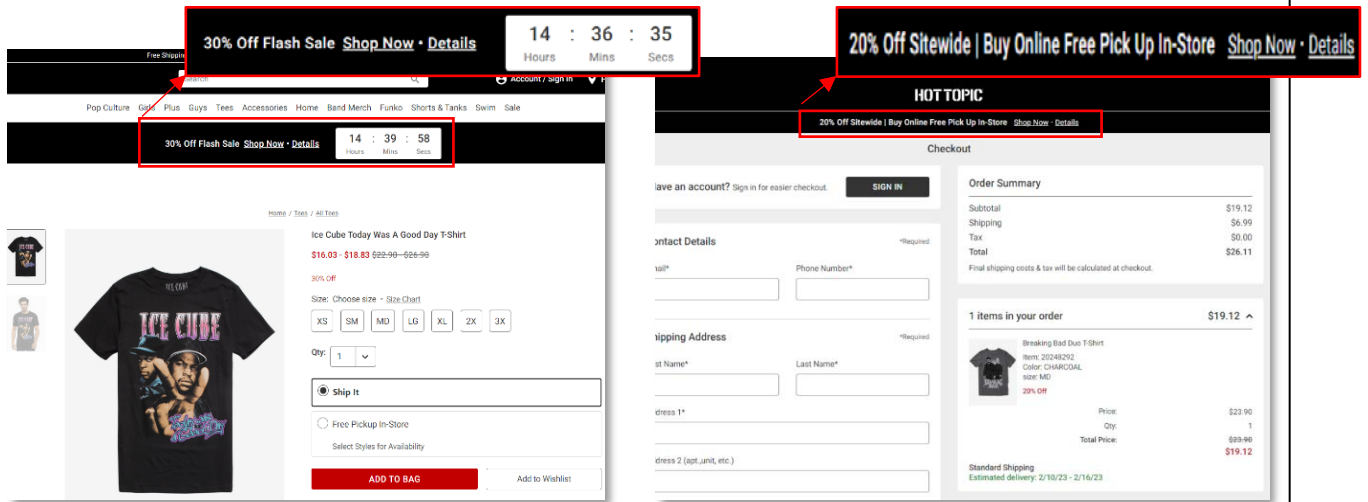
27 60. The website homepage, and other webpages on the site—including, but not
28 limited to, product pages, category pages (*e.g.*, “Tees” or “Accessories”), and checkout

1 pages—routinely advertise the sales with a banner at the top of the page. For example,
2 Defendant has advertised sales with the following website banners:



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12 Homepage, Captured December 3, 2021

“Tees” Page, Captured March 17, 2022



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22 Product Page, Captured May 9, 2022

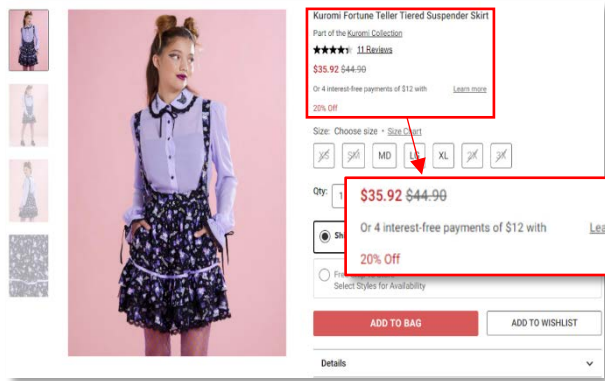
Checkout Page, Captured February 7, 2023

23 61. Ms. Moody shorts and relied on substantially similar banners when she made
24 purchases on Defendant’s website. For example, when she made her November 23,
25 2022, purchase, she saw and relied on the following banner, on Defendant’s homepage,
26 on the product page, and on the checkout page. She viewed the banner on November
27
28

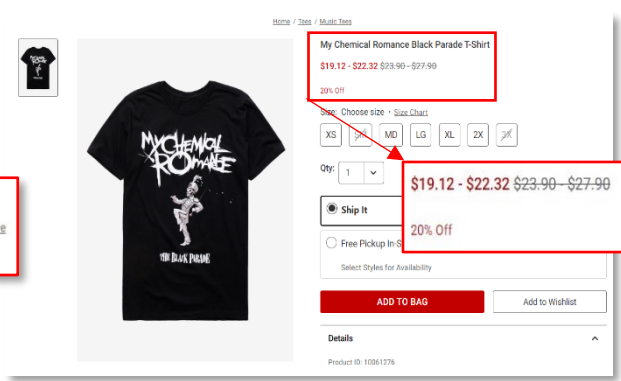
23, 2022, shortly before she made her purchase, and reasonably believed that by purchasing during the sale, she would get at least “30%” off any Product’s regular price:⁵



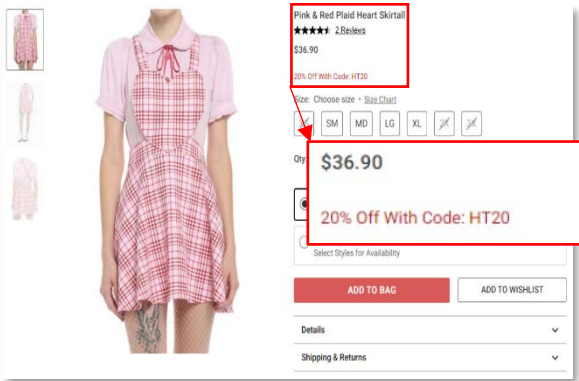
62. Before they made each of their purchases, both Plaintiffs relied on the “X% Off” language and crossed out regular prices displayed on Defendant’s product, shopping bag, and checkout pages. For example, Defendant’s individual product pages show the currently applicable percentage discount for each specific Product in red:



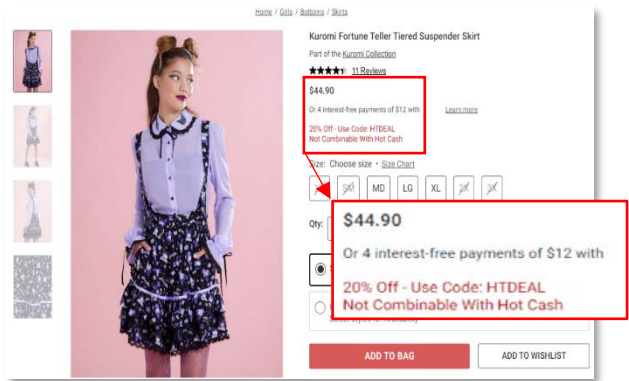
Captured May 22, 2022



Captured March 27, 2023



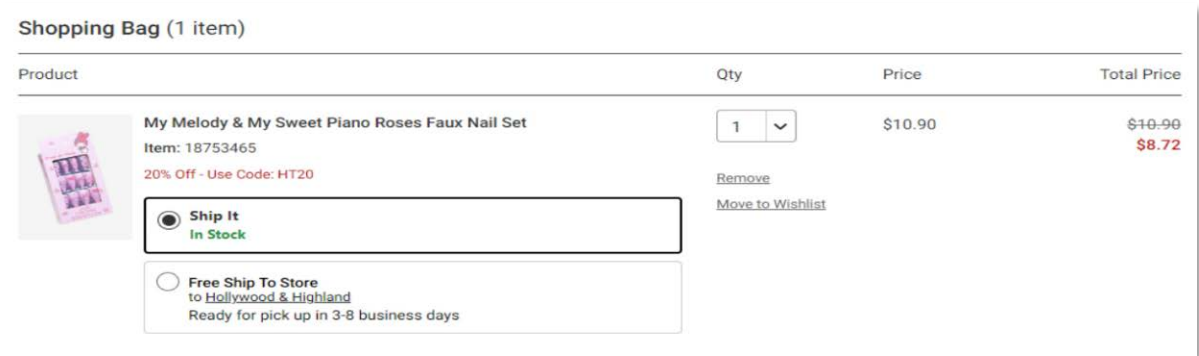
Captured July 28, 2023



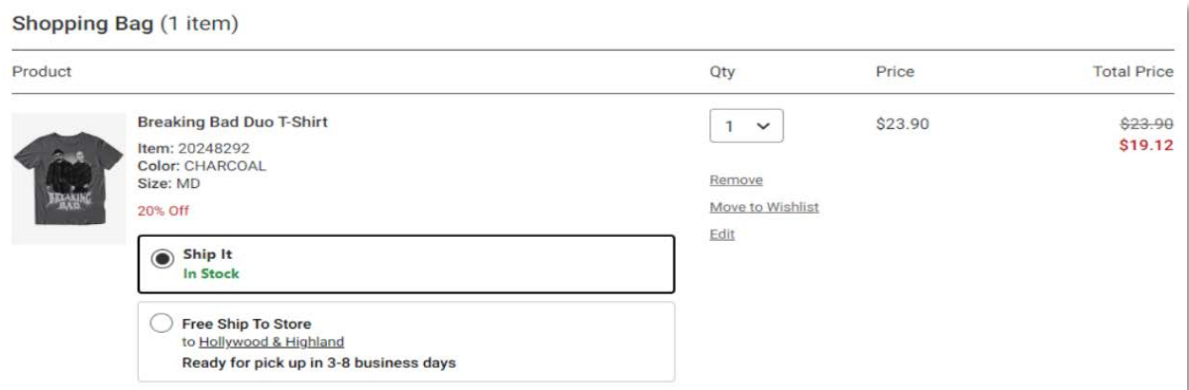
Captured April 19, 2023

⁵ Ms. Moody received 30% off her purchased items and then used Hot Topic Rewards cash to get an additional \$10 off.

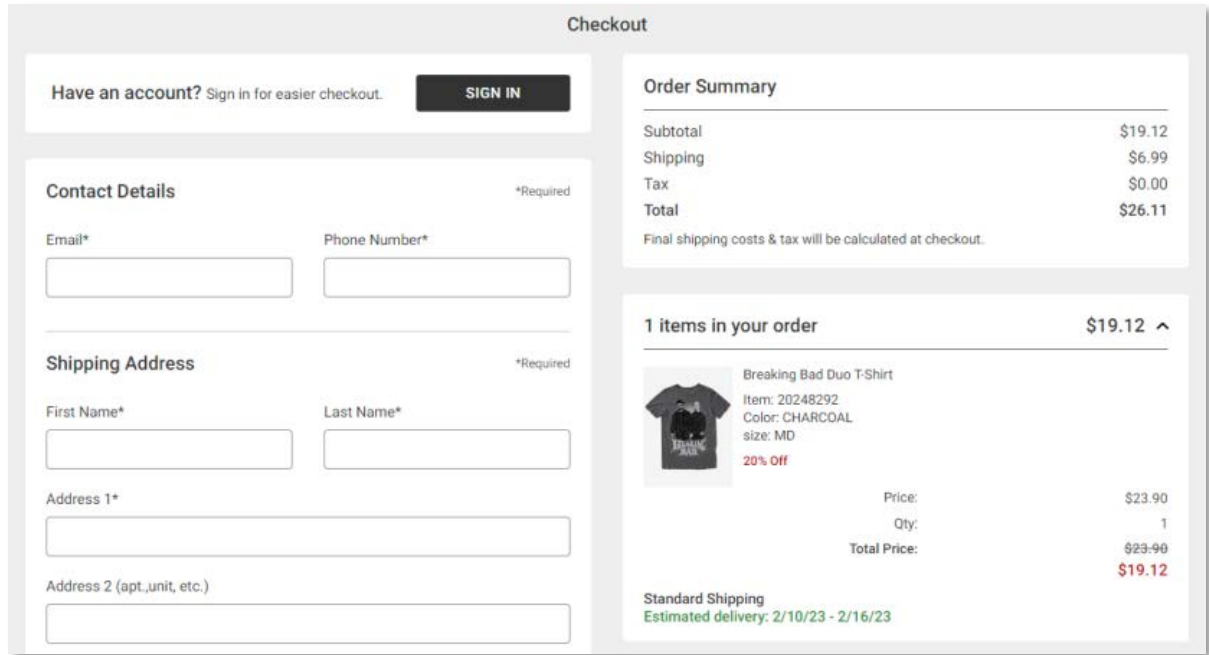
63. And Defendant’s “Shopping Bag” and “Checkout” pages also show both the advertised discount in red font (e.g., “20% Off”), and the purported regular prices of the items in strikethrough font next to the lower discounted prices in red (e.g., “~~\$23.00~~ \$19.12”). For example:



Shopping Bag, Captured August 16, 2023



Shopping Bag, Captured February 7, 2023



Checkout Page, Captured February 7, 2023

64. Shortly before they made their purchases, Plaintiffs saw and relied on the percentage discount language (e.g., **20% Off**) on the product, shopping cart, and checkout pages. For example, shortly before Ms. Moody made her November 23 purchase, she saw and relied on language claiming that the Products she purchased were 30% off. And, shortly before Mr. Cohn made his May 9 purchase, he saw and relied on language claiming that the t-shirt he purchased was 40% off (reflecting the advertised 40% off discount on t-shirts). They reasonably understood this language to mean that they were receiving the advertised discounts as compared to the regular prices of the Products.

65. Shortly before they made their purchases, Plaintiffs also saw and relied on the list prices displayed in strikethrough font alongside the purported discount prices in red font. They reasonably understood these representations to mean that the Products regularly and formerly sold at the struck-through prices, and had a market value equal to those prices, but were available at the red discount prices for a limited time (if they purchased during the sale).

1 66. Plaintiffs would not have made the purchases if they had known that the
2 Products were not discounted as advertised, and that they were not receiving the
3 advertised discounts.

4 67. Plaintiffs face an imminent threat of future harm. Plaintiffs would both
5 purchase more Hot Topic Products if they could feel sure that Defendant's list prices
6 accurately reflected its regular and former prices, and the market value of the Products,
7 and that its specific discounts were truthful. But without an injunction, Plaintiffs have
8 no realistic way to know which—if any—of Defendant's list prices, discounts, and sales
9 are not false or deceptive. For example, while they could watch a sale until the
10 countdown timer or the day ends to see if the sale is permanent, doing so could result in
11 them missing out on the sale (*e.g.*, if the sale is actually limited in time, and not
12 permanent). As a result, Plaintiffs cannot rely on Defendant's advertising in the future,
13 and so, although they would like to purchase Defendant's Products, they cannot do so
14 without being subject to potentially fake sales and pricing.

15 **E. Defendant breached its contract with and warranties to Plaintiffs and**
16 **the putative class.**

17 68. As explained above, when Plaintiffs purchased the Hot Topic Products,
18 they relied on specific language claiming that the Products were for sale at "X% Off" of
19 listed regular prices shown in strikethrough font. In purchasing and paying for the
20 Products, Plaintiffs, and other putative class members, accepted offers that Defendant
21 made, and thus, contracts were formed each time that they made the purchases. The
22 offers were to provide Products having a particular listed regular price and market value,
23 and to provide those Products at the discounted price advertised on the website.

24 69. Each time that Ms. Moody made a purchase at Hot Topic, Ms. Moody and
25 Hot Topic entered a contract.

26 70. For example, for Ms. Moody's December 4, 2022, purchase, the offer was
27 to provide Products having a total regular price and market value of \$34.70, for a
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1 discounted total price of \$9.80 plus tax, and to provide a discount of \$24.90 off of the
2 total regular price.

3 71. Each time that Mr. Cohn made a purchase at Hot Topic, Mr. Cohn and
4 Hot Topic entered a contract.

5 72. For example, for Mr. Cohn's May 9, 2022, purchase, the offer was to
6 provide Products having a total regular price and market value of \$45.80, for a
7 discounted total price of \$27.48 plus tax, and to provide a discount of \$18.32 off of the
8 total regular price.

9 73. As discussed above, Defendant's website lists the purported regular
10 prices—the market values—of the items that Defendant promised to provide. And
11 Defendant agreed to provide a discount equal to the difference between the regular
12 prices, and the discounted prices paid by Plaintiffs and putative class members.
13 Defendant also warranted that the regular price and market value of the Products
14 Plaintiffs purchased were the advertised list prices and warranted that Plaintiffs were
15 receiving a specific discount on those Products.

16 74. The regular price and market value of the Products Plaintiffs and putative
17 class members would receive, and the amount of the discounts that they would be
18 provided off the regular prices of the items, were specific and material terms of the
19 contracts. They were also affirmations of fact about the Products and a promise relating
20 to the goods.

21 75. Plaintiffs and other putative class members performed their obligations
22 under the contract by paying for the items they purchased.

23 76. Defendant breached its contracts by failing to provide Plaintiffs and other
24 putative class members with Products that have regular prices and market values equal to
25 the list prices displayed on its website, and by failing to provide the discounts promised,
26 in the amounts in promised. Defendant also breached warranties for the same reasons.

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

2 77. Plaintiffs seek damages and, in the alternative, restitution. Plaintiffs are
3 permitted to seek equitable remedies in the alternative because they have no adequate
4 remedy at law.

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

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

21 **V. Class Action Allegations.**

22 80. Plaintiffs bring the asserted claims on behalf of the proposed class of:

- 23 • Nationwide Class: all persons who, within the applicable statute of limitations
24 period, purchased one or more Hot Topic Products at a purported discount
25 on Defendant's website.
- 26 • California Subclass: all persons who, while in the state of California and within
27 the applicable statute of limitations period, purchased one or more Hot Topic
28 Products at a purported discount on Defendant's website.

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

10 ***Numerosity & Ascertainability***

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

14 83. Class members can be identified through Defendant’s sales records and
15 public notice.

16 ***Predominance of Common Questions***

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

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

25 ***Typicality & Adequacy***

26 85. Plaintiffs’ claims are typical of the proposed class. Like the proposed class,
27 Plaintiffs purchased the Hot Topic Products advertised at a discount on Defendant’s
28 website. There are no conflicts of interest between Plaintiffs and the class.

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

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

7 104. Defendant violated, and continues to violate, section 1770(a) of the
8 California Civil Code.

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

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

18 107. And Defendant violated, and continues to violate section 1770(a)(13) by
19 making false or misleading statements of facts concerning existence of, or amounts of,
20 price reductions on its website, including by (1) misrepresenting the regular price of
21 Products on its website, (2) advertising discounts and savings that are exaggerated or
22 nonexistent, and (3) misrepresenting that the discounts and savings are unusually large,
23 when in fact they are regularly available.

24 108. Defendant's representations were likely to deceive, and did deceive,
25 Plaintiffs and reasonable consumers. Defendant knew, or should have known through
26 the exercise of reasonable care, that these statements were inaccurate and misleading.

27 109. Defendant's misrepresentations were intended to induce reliance, and
28 Plaintiffs saw, read, and reasonably relied on them when purchasing the Hot Topic

1 Products. Defendant's misrepresentations were a substantial factor in Plaintiffs'
2 purchase decisions.

3 110. In addition, subclass-wide reliance can be inferred because Defendant's
4 misrepresentations were material, i.e., a reasonable consumer would consider them
5 important in deciding whether to buy the Hot Topic Products.

6 111. Defendant's misrepresentations were a substantial factor and proximate
7 cause in causing damages and losses to Plaintiffs and the subclass.

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

14 113. Accordingly, pursuant to California Civil Code § 1780(a)(2), Plaintiffs, on
15 behalf of themselves and all other members of the subclass, seek injunctive relief.

16 114. CLRA § 1782 NOTICE. On March 7, 2023, Ms. Moody sent a CLRA
17 demand letter to Defendant's California headquarters via certified mail (return receipt
18 requested), that provided notice of Defendant's violations of the CLRA on behalf of Ms.
19 Moody and the class and demanded that Defendant correct the unlawful, unfair, false
20 and/or deceptive practices alleged here. On March 29, 2023, Mr. Cohn sent a second
21 CLRA demand letter to Defendant's California headquarters via certified mail (return
22 receipt requested), that again provided notice of Defendant's violations of the CLRA on
23 behalf of Mr. Cohn and the class and demanded that Defendant correct the unlawful,
24 unfair, false and/or deceptive practices alleged here. It has been more than 30 days since
25 Defendant received notice of its CLRA violations. In that time, it has not corrected the
26 problem for Plaintiffs or for members of the subclass. Accordingly, Plaintiffs seek all
27 monetary relief available under the CLRA.

28 115. Plaintiffs' CLRA venue declarations are attached.

Third Cause of Action:

Violation of California’s Unfair Competition Law

(By Plaintiffs and the California Subclass)

116. Plaintiffs incorporate each and every factual allegation set forth above.

117. Plaintiffs bring this cause of action on behalf of themselves and members of the California Subclass.

118. 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

119. 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). As the FTC’s regulations make clear, Defendant’s false pricing schemes violate the FTCA. 16 CFR § 233.1, § 233.2.

The Deceptive Prong

120. 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.

121. Defendant’s representations were misleading to Plaintiffs and other reasonable consumers.

122. Plaintiffs relied upon Defendant’s misleading representations and omissions, as detailed above.

The Unfair Prong

123. 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 customers were receiving discounts.

1 **Fourth Cause of Action:**

2 **Breach of Contract**

3 **(By Plaintiffs and the Nationwide Class)**

4 132. Plaintiffs incorporate each and every factual allegation set forth above.

5 133. Plaintiffs bring this cause of action on behalf of themselves and the
6 Nationwide Class. In the alternative, Plaintiffs bring this cause of action on behalf of
7 themselves and the California Subclass.

8 134. Plaintiffs and class members entered into contracts with Hot Topic when
9 they placed orders to purchase Products on Defendant's website.

10 135. The contracts provided that Plaintiffs and class members would pay Hot
11 Topic for the Products ordered.

12 136. The contracts further required that Hot Topic provides Plaintiffs and class
13 members with Products that have a former price, and a market value, equal to the
14 regular price displayed on the website. They also required that Hot Topic provides
15 Plaintiffs and the class members with the discount advertised on the website. These
16 were specific and material terms of the contracts.

17 137. The specific discounts were specific and material terms of each contract,
18 and were displayed to Plaintiffs and class members at the time they placed their orders.

19 138. Plaintiffs and class members paid Hot Topic for the Products they ordered,
20 and satisfied all other conditions of their contracts.

21 139. Hot Topic breached the contracts with Plaintiffs and class members by
22 failing to provide Products that had a prevailing market value equal to the regular price
23 displayed on its website, and by failing to provide the promised discounts. Hot Topic
24 did not provide the discounts that Hot Topic had promised.

25 140. Plaintiff Moody provided Defendant with notice of this breach of contract,
26 by mailing a notice letter to Defendant's headquarters, on March 7, 2023.

27 141. Plaintiff Cohn provided Defendant with notice of this breach of contract,
28 by mailing a notice letter to Defendant's headquarters, on March 29, 2023.

Sixth Cause of Action:

Negligent Misrepresentation

(By Plaintiffs and the California Subclass)

151. Plaintiffs incorporate each and every factual allegation set forth above.

152. Plaintiffs bring this cause of action on behalf of themselves and the California Subclass.

153. As alleged more fully above, Defendant made false representations and material omissions of fact to Plaintiffs and California Subclass members concerning the existence and/or nature of the discounts and savings advertised on its website.

154. These representations were false.

155. 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.

156. Defendant intended that Plaintiffs and the subclass rely on these representations and Plaintiffs and subclass members read and reasonably relied on them.

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

158. Defendant's misrepresentations were a substantial factor and proximate cause in causing damages and losses to Plaintiffs and the subclass.

159. Plaintiffs and the subclass were injured as a direct and proximate result of Defendant's conduct because (a) they would not have purchased Hot Topic 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.

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- A judgment in favor of Plaintiffs and the proposed class and subclass;
- Damages, treble damages, and punitive damages where applicable;
- Restitution;
- Disgorgement, and other just equitable relief;
- 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.

Demand For Jury Trial

170. Plaintiffs demand the right to a jury trial on all claims so triable.

Dated: December 11, 2023

Respectfully submitted,

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