

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

CHRISTINA WILEY, ALEXANDRIA LEE,
TAWNEY BRIGGS, and CHRISTOPHER
KORDA, each individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

RUGSUSA, LLC,

Defendant.

Case No. 6:23-cv-03250-S-SRB

**CONSOLIDATED CLASS ACTION
COMPLAINT¹**

JURY TRIAL DEMANDED

Plaintiffs Christina Wiley, Alexandria Lee, Tawney Briggs, and Christopher Korda (“Plaintiffs”) bring this action on behalf of themselves and all others similarly situated against Defendant RugsUSA, LLC (“RugsUSA” or “Defendant”). Plaintiffs make the following allegations pursuant to the investigation of their counsel and based upon information and belief, except as to allegations specifically pertaining to themselves and their counsel, which are based on personal knowledge.

NATURE OF THE ACTION

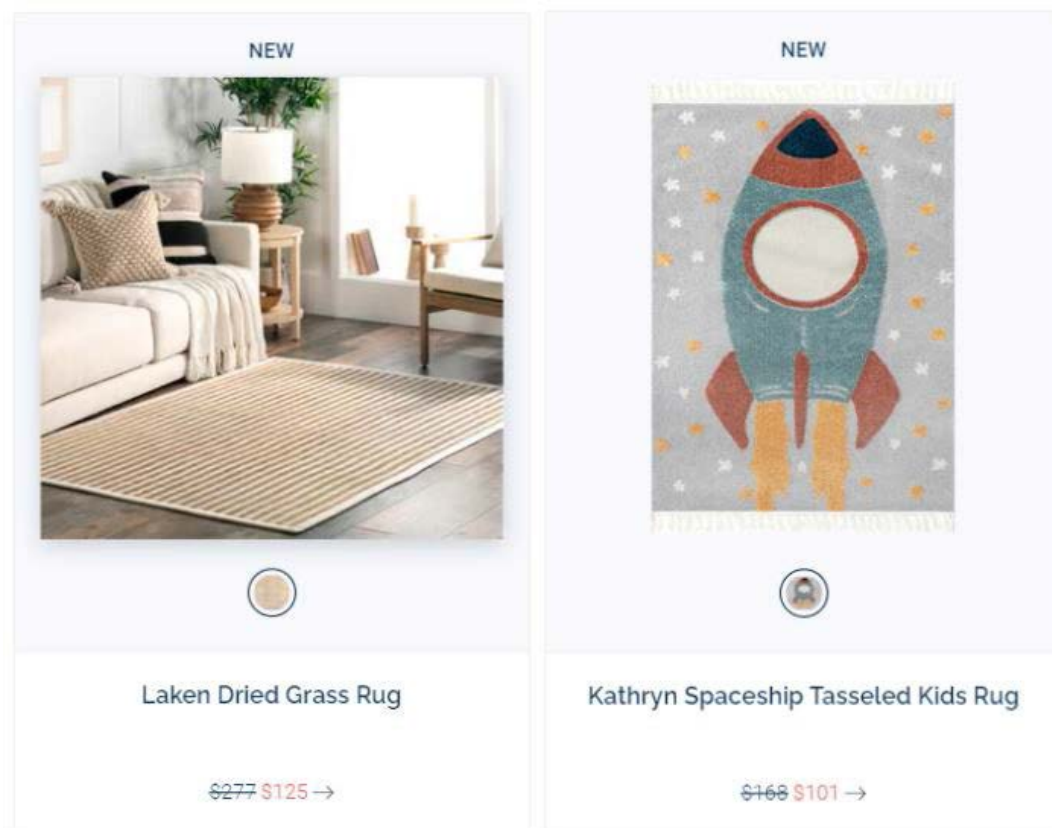
1. The market for rugs and carpets is highly competitive, with many options for consumers to choose from. Defendant seeks to carve out a larger own share of this market by

¹ Plaintiffs are filing this amended Complaint with Defendant’s written consent pursuant to a settlement agreement.

offering “perpetual sales” that never end and discounted prices through its e-commerce store, touting “thousands of world-inspired rug designs at prices that can’t be beat.”²

2. It is no secret that consumers actively seek out bargains and discounted items when making purchasing decisions. Retailers, including Defendant, are well aware of consumers’ susceptibility to such perceived bargains. Products perceived by consumers to be discounted, however, are not always actual bargains. In an effort to give off the appearance of a bargain, Defendant intentionally misleads consumers as to the quality and value of the merchandise available on its website (the “Products”) through its deceptive sales tactics.

3. When consumers visit Defendant’s online store, they are shown purported “sale” prices on nearly all of Defendant’s Products, including new product lines:



² <https://www.rugsusa.com/>

4. However, Defendant's Products never sell at the purported strikethrough price.

5. It is well established that false "reference pricing" violates state and federal law. Nonetheless, Defendant employs inflated, fictitious reference prices for the sole purpose of increasing its sales. Defendant engages in this deceptive practice to deceive consumers, including Plaintiffs, into believing they are receiving a bargain on their online purchases to induce them into making a purchase they otherwise would not have made.

6. As a direct and proximate result of Defendant's false and misleading sales practices, Plaintiffs and members of the Class, as defined herein, were induced into purchasing the Products under the false premise that they were of a higher grade, quality, or value than they actually were.

7. Plaintiffs bring this action on behalf of themselves and the other customers who purchased Defendant's products for personal, family, or household use from RugsUSA's Internet website.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), as amended by the Class Action Fairness Act of 2005 ("CAFA"), because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, there are over 100 members of the putative class, and Plaintiffs, as well as most members of the proposed class, are citizens of a state different from Defendant.

9. This Court has personal jurisdiction over the parties because Ms. Wiley resides in Missouri and submits to the jurisdiction of the Court, and because Defendant has, at all times relevant hereto, systematically and continually conducted business in Missouri, including within this District, and/or intentionally availed itself of the benefits and privileges of the Missouri

consumer market through the promotion, marketing, and sale of its products and/or services to residents within this District and throughout Missouri. Additionally, Ms. Wiley purchased the Products at issue from Defendant while in Missouri.

10. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this District. Also, Ms. Wiley resides in this District and purchased Defendant's Products in this District. Moreover, Defendant systematically conducts business in this District and throughout the State of Missouri, and it distributed, advertised, and sold the Products to Plaintiffs and class members in this State and District.

PARTIES

11. Plaintiff Christina Wiley is an individual consumer who, at all times material hereto, was a citizen and resident of Nixa, Missouri.

12. Plaintiff Alexandria Lee is an individual consumer who, at all times material hereto, was a citizen and resident of San Francisco, California.

13. Plaintiff Tawney Briggs is an individual consumer who, at all times material hereto, was a citizen and resident of Seattle, Washington.

14. Plaintiff Christopher Korda is an individual consumer who, at all times material hereto, was a citizen and resident of Portland, Oregon.

15. Ms. Wiley purchased an "Ivory Shaggy Diamond Trellis Rug" from Defendant's e-commerce store (www.rugsusa.com) in or around February 2023, which, at the time, showed a strikethrough price of \$440.60, with a purported "sale" price of \$390.60 – representing a 12 percent discount.³

³ Screenshot from Ms. Wiley's order confirmation email.

Product		Total
Rugs USA Ivory Shaggy Diamond Trellis Rug - Qty. of 1 Size: 8' x 11' SKU: 200BDFR01A-8011 Price for each: \$440.60 \$390.60	FEDEX #: 394775281650	\$390.60
		Sub-Total: \$390.60
		Shipping: FREE
		Sales Tax: \$29.20
		Total: \$419.80

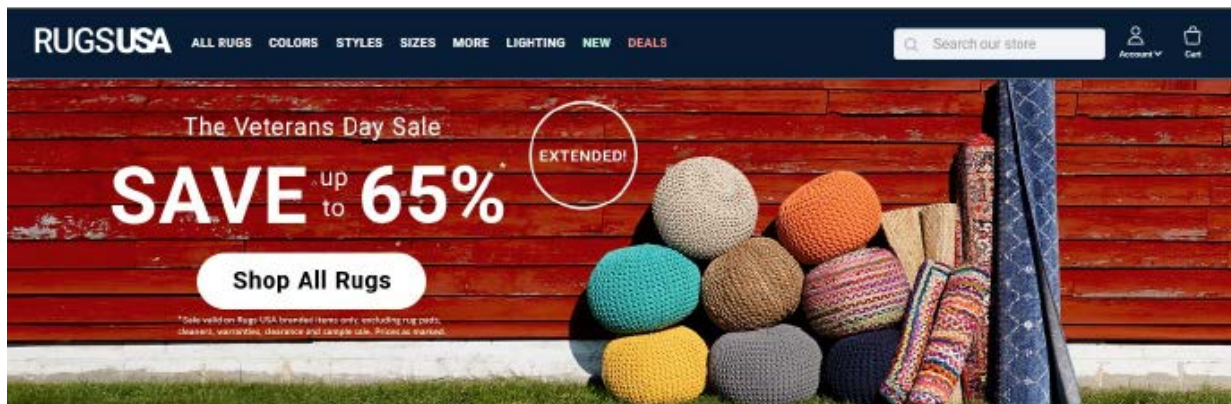
16. Before purchasing the Product, Ms. Wiley reviewed information about the Product, including Defendant's representations that the Product was being offered at a discounted "sale" price, including but not limited to that the product was normally sold at "\$440.60" and that the original, non-sale price of the Products was higher than the advertised price. When purchasing the Products, Ms. Wiley also reviewed the accompanying labels, disclosures, warranties, and marketing materials, and understood them as representation and warranties by Defendant that the Products were ordinarily offered at a higher price.

17. On September 16, 2020, Mrs. Lee purchased a Rugs USA Beige Raised Stripes Tassel Rug, a Rugs USA Padding White Standard Rug Pad, a Rugs USA Cream Solid Shag Tassel Rug, a Rugs USA Padding White Standard Rug Pad, and a Rugs USA Natural Stallion Rug from Defendant. She purchased the Products from Defendant's e-commerce store (www.rugsusa.com), while living in San Francisco, California. When she made the purchase, the website represented that each Product had a regular price and a discounted price. For example, the discounted price of the Rugs USA Beige Raised Stripes Rug was \$82.90, discounted from a higher regular price. Mrs. Lee's email confirmation represented that Mrs. Lee's total discounted price was \$459.78 plus tax.

18. Mrs. Lee read and relied on the representations on the website that the Products had the published regular prices and that those were their market value, and that she was receiving the advertised discounts as compared to the regular prices. She also relied on the representations that the sale was limited in time, and would end soon. She would not have made the purchase if she had known that the Products were not discounted as advertised, and that she was not receiving the advertised discounts.

19. On November 15, 2019, Ms. Briggs purchased a Rugs USA Black Shaggy Moroccan Lattice Fringe Rug from Defendant. She purchased the rug from Defendant's website-commerce store (www.rugsusa.com), while living in Seattle, Washington. When she made the purchase, the website represented that the Product had a regular price and a discounted price. The discounted price of the Black Shaggy Moroccan Lattice Fringe Rug was \$148.85, discounted from a higher purported regular price, approximately 40% higher. Ms. Briggs' email confirmation represented that Ms. Briggs' discounted price was \$148.85 plus tax.

20. On November 13, 2019, two days before Ms. Briggs' purchase, Defendant's website advertised a "Veterans Day Sale" featuring discounts of "up to 65%" on "Rugs USA branded items," which had been "extended":



21. The sale included the Shaggy Moroccan Lattice Fringe Rug, which had purported regular prices ranging from \$49.99 to \$1389.99 and discounted prices approximately 40% less, ranging from \$29.99 to \$833.99, depending on the color and the size of the rug:



22. Ms. Briggs read and relied on the representations on the website that the Product had the published regular price and that this was its market value, and that she was receiving the advertised discount as compared to the regular price. She would not have made the purchase if she had known that the Product was not discounted as advertised, and that she was not receiving the advertised discount.

23. Mr. Korda purchased a “Chroma Tree of Paradise Medallion Rug” Defendant’s e-commerce store in or around September 2022, which, at the time, showed a strikethrough price of \$309.40, with a purported “sale” price of \$123.70 – representing a 60 percent discount.⁴

⁴ Screenshot from Mr. Korda’s order confirmation email.



5' 3" x 7' 7"
Chroma Tree Of
Paradise Medallion
Rug
~~\$309.40~~ \$123.70
Quantity: 1

24. Before making his purchase, Mr. Korda reviewed information about the Product, including Defendant's representations that the Product he purchased was being offered at a discounted "sale" price, including but not limited to that the Product was normally sold at "\$309.40" and that the original, non-sale price was higher than the advertised price. When purchasing his Product, Mr. Korda also reviewed the accompanying labels, disclosures, warranties, and marketing materials, and understood them as representation and warranties by Defendant that its Products were ordinarily offered at a higher price.

25. Plaintiffs relied on Defendant's false, misleading, and deceptive representations and warranties about the Products in making their decisions to purchase the Products. Accordingly, these representations and warranties were part of the basis of the bargain, in that Plaintiffs would not have purchased the Products, or would not have paid as much for the Products, had they known Defendant's representations were not true. Defendant's representations about its Products are false and misleading because they induce consumers into believing that they are purchasing Products of a higher value and quality than they actually are.

26. Whenever Defendant increases the price of its Products, it simultaneously increases the purported strikethrough price. For example, on July 27, 2023, Ms. Wiley's purchased Product showed a strikethrough price of \$979.30, with a purported "sale" price of \$440.60—representing a 45 percent discount.

27. Had Plaintiffs known the truth—that the representations they relied upon in making their purchases were false, misleading, and deceptive—they would not have purchased the Products or would have paid less for the Products. Plaintiffs did not receive the benefit of their bargain, because Defendant’s Products were not of the represented quality and value. Plaintiffs understood that each purchase involved a direct transaction between themselves and Defendant, because the Products they purchased came with packaging, labeling, and other materials prepared by Defendant, including representations and warranties regarding the advertised claims.

28. Defendant’s advertised false reference prices and advertised false discounts were material misrepresentations and inducements to Plaintiffs’ purchases.

29. Plaintiffs were harmed as a direct and proximate result of Defendant’s acts and omissions.

30. Defendant commits the same unfair and deceptive sales practices for all of its Products.

31. Plaintiffs and members of the Class are not receiving the bargain or value that Defendant has misled them to believe.

32. Defendant RugsUSA, LLC, is a Delaware limited liability company with a principal place of business in Cranbury, New Jersey. Defendant manufactures, markets, and advertises and distributes its Products throughout the United States, including Missouri, California, Washington, and Oregon. Defendant manufactured, marketed, and sold the Products during the relevant Class Period. The planning and execution of the advertising, marketing, labeling, packaging, testing, and/or business operations concerning the Products were primarily or exclusively carried out by Defendant.

FACTUAL BACKGROUND

33. Defendant manufactures, markets, sells, and distributes its Products throughout the United States, including Missouri, California, Washington, and Oregon, through its e-commerce store (www.rugsusa.com).

State And Federal Pricing Guidelines

34. Federal and state courts have articulated the abuses that flow from false reference pricing practices. For example, the United States Court of Appeals for the Ninth Circuit explained: “Most consumers have, at some point, purchased merchandise that was marketed as being ‘on sale’ because the proffered discount seemed too good to pass up. Retailers, well aware of consumers’ susceptibility to a bargain, therefore, have an incentive to lie to their customers by falsely claiming that their products have previously sold at a far higher ‘original’ price in order to induce customers to purchase merchandise at a purportedly marked down ‘sale’ price.” *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1101 (9th Cir. 2013).

35. Missouri law prohibits false reference pricing practices such as those perpetrated by Defendant. The Missouri Merchandising Practices Act (“MMPA”) broadly prohibits “any deception, fraud, false pretense, false promise, misrepresentation, unfair practice ... in connection with the sale or advertisement of any merchandise” Mo. Rev. Stat. § 407.020 *et seq.*

36. Defendant’s advertised reference prices and discounts (including its percentage-off and strikethrough pricing) on its website violate Missouri law because Defendant’s advertised reference prices are inflated and fictitious, and its advertised percentage-off and dollars-off discounts are false.

37. 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.

38. 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).

39. California's Unfair Competition Law also bans unlawful, unfair, and deceptive business practices. *See* Cal. Bus. & Prof. Code § 17200.

40. Defendant's advertised reference prices and discounts (including its percentage-off and strikethrough pricing) on its website violate California law. As described in detail above, Defendant made untrue and misleading statements about its prices. Defendant advertised former prices that were not true 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 false statements regarding the reasons for its sitewide sales (*e.g.*, advertising a seasonal "New Year's Sale," when in fact the sale is ongoing), the existence of sitewide sales, and the amounts of price reductions resulting from those sales. And Defendant engaged in unlawful, unfair, and deceptive business practices.

41. Furthermore, Oregon law prohibits false reference pricing practices such as those perpetrated by Defendant. Oregon's Unlawful Trade Practices Act (UTPA) broadly prohibits: "Mak[ing] false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions." ORS 646.608(1)(j).

42. Oregon's UTPA explicitly prohibits reference price advertising which uses terms such as "regular," "sale," "originally," and "clearance" where the reference price was not in fact the retailer's own former price for the product. ORS 646.608(ee); ORS 646.885(1).

43. Oregon's UTPA also explicitly prohibits reference price advertising which uses terms such as "____ percent discount," "\$____ discount," "____ percent off" and/or "\$____ off" where the reference price was not in fact the retailer's own former price for the product. ORS 646.608(ee); ORS 646.885(2).

44. Defendant's advertised reference prices and discounts (including its percentage-off and strikethrough pricing) on its website violates Oregon law because Defendant's advertised reference prices are inflated and fictitious, and its advertised percentage-off and dollars-off discounts are false.

45. The Federal Trade Commission ("FTC") provides retailers with additional guidance as to permissible and unlawful sales tactics. *See* 16 C.F.R. § 233.

46. The FTC provides the following guidance on former price comparisons:

One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. **If, on the other hand, the former price being advertised is not bona fide but fictitious - for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction - the "bargain" being advertised is a false one;**

the purchaser is not receiving the unusual value he expects. In such a case, the “reduced” price is, in reality, probably just the seller’s regular price.

16 C.F.R. § 233.1(a) (emphasis added).

47. The FTC further provides that “[t]he advertiser should be especially careful [...] that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of his business, honestly and in good faith – and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based.” 16 C.F.R. § 233.1(b) (emphasis added).

48. The FTC also provides retailers with guidance as to retail price comparisons:

Another commonly used form of bargain advertising is to offer goods at prices lower than those being charged by others for the same merchandise in the advertiser’s trade area (the area in which he does business). This may be done either on a temporary or a permanent basis, but in either case **the advertised higher price must be based upon fact, and not be fictitious or misleading.** Whenever an advertiser represents that he is selling below the prices being charged in his area for a particular article, he should be reasonably certain that the higher price he advertises does not appreciably exceed the price at which substantial sales of the article are being made in the area - that is, a sufficient number of sales so that a consumer would consider a reduction from the price to represent a genuine bargain or saving.

16 C.F.R. § 233.2(a) (emphasis added).

49. So, advertising such false “bargains” is false, misleading, and unfair.

And Chapter 19.86 of Washington’s Consumer Protection Act prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

Wash. Rev. Code Ann. § 19.86.020. Thus, Defendant’s conduct violates Washington law as well.

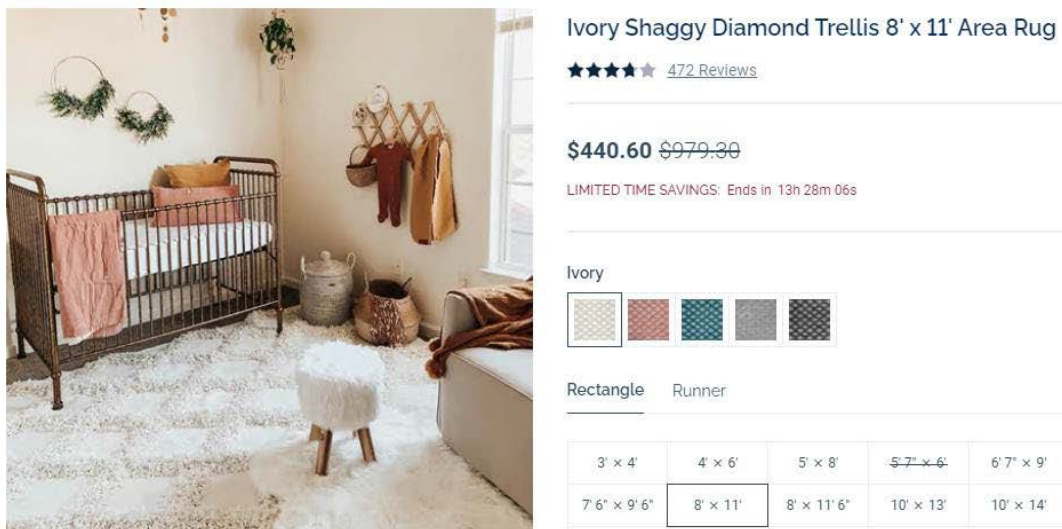
50. Essentially, federal and state laws provide that sales practices should be offered in good faith and accurately reflect the price at which comparable products are sold in the market.

Defendant's Deceptive Sales Practices

51. Defendant primarily sells its Products through its e-commerce website (www.rugsusa.com).

52. In an effort to increase sales, Defendant engages in a pervasive online marketing scheme to artificially inflate the prices of its Products for the sole purpose of marking them at a discounted “sale” price. Defendant is aware that consumers typically lack material information about a product and often rely on information from sellers when making purchasing decisions, especially when a product’s quality or value is difficult to discern.⁵

53. Defendant deceives consumers through the utilization of a fictitious strikethrough reference price accompanied by a purported lower discounted price, and/or a “Limited Time Savings” sale percentage:



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⁵ *Information and Consumer Behavior*, Phillip Nelson, *Journal of Political Economy* 78, no. 2, p. 311-312 (1970) (“Not only do consumers lack full information about the price of goods, but their information is probably even poorer about the quality variation of products simply because the latter information is more difficult to obtain.”).

⁶ <https://www.rugsusa.com/rugsusa/rugs/rugs-usa-tree-of-paradise-medallion/Orange/200KKCB22A-53077.html#fullModal>

54. Such representations are uniform for all Products listed on Defendant's website.

55. Upon information and belief, the strikethrough reference prices and "% Discount" prices listed by Defendant are purely fictitious prices and not based on comparable sales offerings in the market nor are they the former price at which such Products were originally available for. Instead, this fictitious price is merely offered for the purpose of deceiving consumers into believing they are receiving a bargain for their purchases.

56. In short, Defendant's sales tactics are not offered in good faith and are made for the sole purpose of deceiving and inducing consumers into purchasing products they otherwise would not have purchased.

CLASS ACTION ALLEGATIONS

57. **Class Definition:** Plaintiffs bring this action each individually and on behalf of a class of similarly situated individuals as a class action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure. The classes Plaintiffs seeks to represent are defined as follows (collectively, the "Classes"):

(a) ***the Class***. All persons who, while in the states of Missouri, California, Washington, and Oregon, purchased one or more products advertised as being subject to a purported discount on Defendant's website RugsUSA.com.

(b) ***Missouri Subclass***. All class members who, like Plaintiff Wiley, purchased the Products in Missouri.

(c) ***California Subclass***. All class members who, like Plaintiff Lee, purchased the Products in California.

(d) ***Washington Subclass***. All class members who, like Plaintiff Briggs, purchased the Products in Washington.

(e) ***Oregon Subclass.*** All class members who, like Plaintiff Korda, purchased the Products in Oregon.

58. Specifically excluded from the Classes are Defendant and any entities in which Defendant has a controlling interest, Defendant's agents and employees, the judge to whom this action is assigned, members of the judge's staff, and the judge's immediate family.

59. Plaintiffs reserve the right to amend the definitions of the Classes if discovery or further investigation reveals that the Classes should be expanded or otherwise modified.

60. ***Numerosity.*** Members of the Classes are so numerous that their individual joinder herein is impracticable. On information and belief, the Missouri, California, Washington, and Oregon Subclasses comprise at least thousands of consumers, and the Classes comprises at least hundreds of thousands of consumers throughout United States. The precise number of members of the Classes and their identities are unknown to Plaintiffs at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant.

61. ***Commonality and Predominance.*** Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual members of the Class and Subclasses. Common legal and factual questions include, but are not limited to (a) Whether Defendant is responsible for the conduct alleged herein which was uniformly directed at all consumers who purchased the Products; (b) Whether Defendant's misconduct set forth in this Complaint demonstrates violates the statutes referenced herein; (c) Whether Defendant made false and/or misleading statements concerning the Products that were likely to deceive a reasonable consumer and/or the public; (d) Whether Plaintiffs and the Class and Subclasses are entitled to injunctive relief; and (e) Whether Plaintiffs and the Class and Subclasses are entitled to damages under the same causes of action as the other Class Members.

62. **Typicality.** Plaintiffs are members of the Class and the Subclasses they each seek to represent. Plaintiffs' claims are typical of the claims of each Class member in the Class and the Subclasses they each seek to represent in that every member of the Class and each Subclass was susceptible to the same deceptive, misleading conduct and purchased the Defendant's Products. Plaintiffs are entitled to relief under the same causes of action as the other Class members in the Class and the Subclasses they seek to represent.

63. **Adequacy.** Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the Class or Subclass members they seek to represent; their consumer fraud claims are common to all other members of the classes and they have a strong interest in vindicating their rights; and they have retained counsel competent and experienced in complex class action litigation and they intend to vigorously prosecute this action. Plaintiffs have no interests which conflict with those of the classes. The Class Members' interests will be fairly and adequately protected by Plaintiffs and their counsel. Defendant has acted in a manner generally applicable to the Classes, making relief appropriate with respect to Plaintiffs and the Class members. The prosecution of separate actions by individual Class members would create a risk of inconsistent and varying adjudications.

64. **Superiority.** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since individual joinder of all Class members is impracticable. Additionally, the expense and burden of individual litigation would make it difficult or impossible for the individual Class members to redress the wrongs done to them, especially given the costs and risks of litigation as compared to the benefits that may be attained. Even if the Class members could afford individualized litigation, the cost to the court system would be substantial and individual actions would also present the potential for inconsistent or

contradictory judgments. By contrast, a class action presents fewer management difficulties and provides the benefit of single adjudication and comprehensive supervision by a single forum.

65. Defendant has acted or failed to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief with respect to the proposed Classes as a whole.

66. Without a class action, Defendant will continue a course of action that will result in further damages to Plaintiffs and members of the Class and Subclasses and will likely retain the benefits of Defendant's wrongdoing.

67. Based on the foregoing allegations, Plaintiffs' claims for relief include those set forth below.

COUNT I
Violation of the Missouri Merchandising Practices Act
(By Plaintiff Wiley and the Missouri Subclass)

68. Plaintiff Wiley hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

69. Plaintiff Wiley brings this cause of action individually and on behalf of the Missouri Subclass against Defendant.

70. Defendant's actions alleged herein violated, and continue to violate, the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010 *et seq.*

71. Defendant is a "person" within the meaning of the MMPA, Missouri Revised Statutes § 407.010(5).

72. The goods purchased from Defendant are "merchandise" within the meaning of the MMPA, Missouri Revised Statutes § 407.010(4).

73. The goods purchased from Defendant are for personal, family or household use.

74. The transactions resulting in purchases of goods from Defendant in Missouri are a “sale” within the meaning of the MMPA, Missouri Revised Statutes § 407.010(6).

75. Defendant’s actions alleged herein constituted and continue to constitute, illegal deceptive practice in violation of Mo. Rev. Stat. § 407.020.1 in that they were and are deception, fraud, false pretense, false promise, misrepresentation, unfair practice and/or the concealment, suppression, or omission of material fact in connection with the sale of merchandise in trade or commerce, within the meaning of the MMPA.

76. Defendant’s actions alleged herein violated, and continue to violate, the MMPA because they constituted, and continue to constitute, unfair practices as that term is defined in Mo. Code Regs. Tit. 15, § 60-8.020. Specifically, they were and are, inter alia, unethical.

77. Plaintiff Wiley and members of the Missouri Subclass have suffered ascertainable loss due to the unfair and deceptive practices described in this Count.

78. Plaintiff Wiley and members of the Missouri Subclass seek actual damages for all monies paid in violation of Mo. Rev. Stat. § 407.020.

79. Plaintiff Wiley and the members of the Missouri Subclass acted as reasonable consumers would in light of all circumstances.

80. Defendant’s unlawful practices would cause a reasonable person to enter into the transaction that resulted in damages.

81. Individual damages stemming from Defendant’s unlawful practices can be calculated with a reasonable degree of certainty.

82. Appropriate injunctive relief is necessary to prevent Defendant’s MMPA violations from continuing. If Defendant’s violations of the MMPA are not stopped by such injunctive relief, Plaintiff Wiley and the members of the Missouri Subclass will continue to suffer injury from Defendant’s false reference pricing scheme that fraudulently increases demand

for consumers. This fraud-on-the-market shifted the demand curve and enabled Defendant to charge higher prices than it otherwise could have charged.

83. The conduct of Defendant was malicious, corrupt, and intentional and/or reckless to a degree sufficient to support an award of punitive damages against Defendant.

84. Due to Defendant's violations of the MMPA, Plaintiff Wiley seeks damages, an order enjoining Defendant from the unlawful practices described above, reasonable attorneys' fees and any other relief the Court deems proper under the MMPA.

COUNT II

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

85. Plaintiff Lee hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

86. Plaintiff Lee brings this cause of action individually and on behalf of the California Subclass against Defendant.

87. Defendant has violated Sections 17500 and 17501 of the Business and Professions Code.

88. As alleged more fully above, Defendant advertises former prices on its website along with discounts. Defendant does this, for example, by crossing out a higher price (*e.g.*, \$109) and displaying it next to the discount price.

89. The prices advertised as former prices by Defendant were not the true former prices of the Products. Accordingly, Defendant's statements about the former prices of its Products were untrue and misleading.

90. In addition, Defendant's former price advertisements did not state clearly, exactly, and conspicuously when, if ever, the former prices prevailed. Defendant's advertisements did not indicate whether or when the purported former prices were offered at all.

91. As a result, Defendant violated, and continues to violate, Sections 17500 and 17501 to induce Plaintiff Lee and the California Subclass to make purchases on its website based on the advertised former prices.

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

93. 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 Products.

94. Defendant's misrepresentations were a substantial factor and proximate cause in causing damages and losses to Plaintiff Lee and the California Subclass.

95. Plaintiff Lee and the California Subclass were injured as a direct and proximate result of Defendant's conduct because (a) they would not have purchased Defendant's Products if they had known the truth, and/or (b) they overpaid for the Products because the Products were sold at a price premium due to the misrepresentation.

COUNT III
Violation of California's Consumer Legal Remedies Act
(By Plaintiff Lee and the California Subclass)

96. Plaintiff Lee hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

97. Plaintiff Lee brings this cause of action individually and on behalf of the California Subclass against Defendant.

98. Plaintiff Lee and members of the California Subclass are "consumers," as the term is defined by California Civil Code § 1761(d).

99. Plaintiff Lee and the California Subclass have engaged in “transactions” with Defendant as that term is defined by California Civil Code § 1761(e).

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

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

102. Defendant violated, and continues to violate, Section 1770(a) of the California Civil Code.

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

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

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

regularly available, and (4) misrepresenting the reason for the sale (*e.g.*, “New Year’s Sale,” when in fact the sale is ongoing and not limited to the New Year).

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

107. Defendant’s misrepresentations were intended to induce reliance, and Plaintiff Lee saw, read, and reasonably relied on them when purchasing the Products. Defendant’s misrepresentations were a substantial factor in Plaintiff Lee’s purchase decision.

108. 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 Products.

109. Defendant’s misrepresentations were a substantial factor and proximate cause in causing damages and losses to Plaintiff Lee and the California Subclass.

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

111. Accordingly, pursuant to California Civil Code § 1780(a)(2), Plaintiff Lee, on behalf of herself and all other members of the California Subclass, seeks injunctive relief.

112. CLRA § 1782 NOTICE. On May 17, 2023, a CLRA demand letter was sent to Defendant’s New Jersey headquarters and California location via certified mail (return receipt requested), that provided notice of Defendant’s violations of the CLRA and demanded that Defendant correct the unlawful, unfair, false and/or deceptive practices alleged here. Defendant

does not have a California headquarters. It has been more than 30 days since Defendant received notice of its CLRA violations. In that time, it has not corrected the problem for Plaintiff Lee or for members of the California Subclass. Accordingly, Plaintiff Lee seeks all monetary relief available under the CLRA, including restitution, damages (including compensatory damages, expectation damages, and punitive damages), attorneys' fees, and all other forms of monetary relief available.

113. Plaintiff Lee's CLRA venue declaration is attached.

COUNT IV
Violation of California's Unfair Competition Law
(By Plaintiff Lee and the California Subclass)

114. Plaintiff Lee hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

115. Plaintiff Lee brings this cause of action individually and on behalf of the California Subclass against Defendant.

116. 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

117. 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 C.F.R. § 233.1, § 233.2.

The Deceptive Prong

118. 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.

119. Defendant's representations were misleading to Plaintiff Lee and other reasonable consumers.

120. Plaintiff Lee relied upon Defendant's misleading representations and omissions, as detailed above.

The Unfair Prong

121. 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.

122. 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 and FAL).

123. The harm to Plaintiff Lee and the California 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.

124. Plaintiff Lee and the California Subclass could not have reasonably avoided this injury. As alleged above, Defendant's representations were deceptive to reasonable consumers like Plaintiff Lee.

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

* * *

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

127. 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 Defendant's Products.

128. Defendant's representations were a substantial factor and proximate cause in causing damages and losses to Plaintiff Lee and California Subclass members.

129. Plaintiff Lee and the California Subclass were injured as a direct and proximate result of Defendant's conduct because (a) they would not have purchased Defendant's 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.

COUNT V

Violation of the Washington Consumer Protection Act: RCW Chapter 19.86 (By Plaintiff Briggs and the Washington Subclass)

130. Plaintiff Briggs hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

131. Plaintiff Briggs brings this cause of action individually and on behalf of the Washington Subclass against Defendant.

132. Defendant has violated the Washington Consumer Protection Act (CPA), RCW Chapter 19.86.

133. Section 19.86.020 of the CPA states, “Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” RCW § 19.86.020.

134. Under the CPA, “[p]rivate rights of action may ... be maintained for recovery of actual damages, costs, and a reasonable attorney’s fee. A private plaintiff may be eligible for treble damages,” and “may obtain injunctive relief, even if the injunction would not directly affect the individual’s own rights.” Washington Pattern Jury Instruction Civil No. 310.00 (Consumer Protection Act—Introduction) (internal citations omitted); RCW § 1986.090.

135. Defendant engages in the conduct of trade or commerce within the meaning of the CPA. Defendant does this by selling rugs and home accessory products in a manner that directly and indirectly affects people of the state of Washington.

136. As alleged more fully above, Defendant made and disseminated untrue and misleading statements of facts in its advertisements to subclass members, constituting acts of unfair methods of competition and/or unfair or deceptive acts or practices.

Unfair Acts or Practices

137. As alleged in detail above, Defendant committed “unfair” acts by falsely advertising that Defendant’s Products were on sale, that the sale was limited in time, that the Products had higher regular prices, and that customers were receiving discounts.

138. The harm to Plaintiff Briggs and the Washington 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.

139. Plaintiff Briggs and the Washington Subclass could not have reasonably avoided this injury. As alleged above, Defendant's representations were deceptive to reasonable consumers like Plaintiff Briggs.

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

Deceptive Acts or Practices

141. 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.

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

* * *

143. Defendant's misrepresentations were intended to induce reliance, and Plaintiff Briggs saw, read, and reasonably relied on the statements when purchasing the Product. Defendant's misrepresentations were a substantial factor in Plaintiff Briggs' purchase decision.

144. 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 Defendant's Products.

145. Defendant's misrepresentations were a substantial factor and proximate cause in causing damages and losses to Plaintiff Briggs and the Washington Subclass.

146. Plaintiff Briggs and the Washington Subclass were injured as a direct and proximate result of Defendant's conduct because (a) they would not have purchased Defendant's Products if they had known the truth, (b) they paid more for the Products than they are worth

because the Products were sold at a price premium due to the misrepresentations, and/or (c) they received Products with market values lower than the promised market values.

147. Defendant's acts or omissions are injurious to the public interest because these practices were committed in the course of Defendant's business and were committed repeatedly before and after Plaintiff Briggs purchased Defendant's Product. They are part of a pattern of unfair and deceptive advertisements. These actions have injured other persons, and, if continued, have the capacity to injure additional persons.

COUNT VI

Violation of Oregon's Unlawful Trade Practices Act ("UTPA"), ORS §§ 646.605, *et seq.* (By Plaintiff Korda and the Oregon Subclass)

148. Plaintiff Korda hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

149. Plaintiff Korda brings this cause of action individually and on behalf of the Oregon Subclass against Defendant.

150. The UTPA, ORS § 646.605 *et seq.*, is Oregon's principal consumer protection statute. As the Supreme Court of Oregon has explained:

The civil action authorized by ORS 646.638 is designed to encourage private enforcement of the prescribed standards of trade and commerce in aid of the act's public policies as much as to provide relief to the injured party. This is apparent from the section itself. It allows recovery of actual damages or \$200, whichever is greater, plus punitive damages, costs, and attorney fees ... The evident purpose is to encourage private actions when the financial injury is too small to justify the expense of an ordinary lawsuit ... the legislature was concerned as much with devising sanctions for the prescribed standards of trade and commerce as with remedying private losses, and that such losses therefore should be viewed broadly. The private loss indeed may be so small that the common law likely would reject it as grounds for relief, yet it will support an action under the statute.

Weigel v. Ron Tonkin Chevrolet Co., 298 Or. 127, 134–36, 690 P.2d 488, 493–94 (1984). A private plaintiff may also seek an injunction “as may be necessary to ensure cessation of unlawful trade practices.” ORS 646.636.

151. Defendant is a “person,” as defined by ORS 646.605(4).

152. Defendant is engaged in “trade” and “commerce” in Oregon by offering for sale goods with reference prices and discounts that directly or indirectly affect the people of Oregon, as defined by ORS 646.605(8).

153. The Products advertised and sold by Defendant with reference prices and discounts are “goods” that are or may be obtained primarily for personal, family or household purposes, as defined by ORS 646.605(6).

154. Plaintiff Korda and the Oregon Subclass purchased the Products advertised by Defendant with reference prices and discounts for personal, family or household purposes.

155. The unlawful methods, acts and practices pled herein were committed in the course of Defendant’s business. ORS 646.608(1).

156. Defendant’s unlawful methods, acts and practices pled herein were “willful violations” of ORS 646.608 because Defendant knew or should have known that its conduct was a violation, as defined by ORS 646.605(10).

157. Defendant’s representations of reference prices and discounts on its website are “advertisements” as defined by ORS 646.881(1).

158. Defendant’s use of strikethrough reference prices and advertised discounts are “price comparisons” as defined by ORS 646.881(2).

159. Defendant’s list prices are all either (1) representations of Defendant’s own “former prices,” or (2) representations of Defendant’s “future price,” as defined by ORS 646.885.

160. Defendant's methods, acts and practices, including Defendant's misrepresentations, active concealment and failures to disclose, violated and continue to violate the UTPA in ways including, but not limited to, the following:

- (a) Defendant represented its goods had characteristics or qualities that the goods did not have (specifically, Defendant represented that the goods had a value equal to the reference price, when in fact they did not and instead had a much lower true value). ORS 646.608(1)(e);
- (b) Defendant advertised its goods with intent not to provide the goods as advertised (specifically, Defendant represented that the goods had a value equal to the reference price, when in fact they did not and instead had a much lower true value). ORS 646.608(1)(i);
- (c) Defendant made false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions. ORS 646.608(1)(j);
- (d) Defendant engaged in price comparison advertising in violation of ORS 646.883(2) by failing to comply with ORS 646.608(1)(j) and ORS 646.608(4). ORS 646.608(ee);
- (e) Defendant engaged in price comparison advertising in violation of ORS 646.885(1) by using terms such as "discount" and/or "sale" and providing strikethrough reference prices where the reference price was not in fact Defendant's own former price, or in the case of introductory advertisements, was not Defendant's future price. ORS 646.608(ee);
- (f) Defendant engaged in price comparison advertising in violation of ORS 646.885(2) by using terms such as "____ % discount," "% Discount Running Now," and/or providing strikethrough reference prices where the reference price

was not in fact Defendant's own former price, or in the case of introductory advertisements, was not Defendant's future price. ORS 646.608(ee); and

- (g) Defendant engaged in other unfair or deceptive conduct in trade or commerce, as described herein. ORS 646.608(1)(u); ORS 646.608(4).

161. With respect to omissions, Defendant at all relevant times had a duty to disclose the information in question because, *inter alia*:

- (a) Defendant had exclusive knowledge of material information that was not known to Plaintiff Korda and the Oregon Subclass;
- (b) Defendant concealed material information from Plaintiff Korda and the Oregon Subclass; and/or
- (c) Defendant made partial representations which were false and misleading absent the omitted information.

162. Defendant's misrepresentations and nondisclosures deceive and have a tendency to deceive a reasonable consumer and the general public.

163. Defendant's misrepresentations and nondisclosures are material, in that a reasonable person would attach importance to the information and would be induced to act on the information in making purchase decisions.

164. Defendant engaged in the reckless or knowing use or employment of the unlawful methods, acts or practices alleged herein which have been declared unlawful by ORS 646.608.

165. As a direct, substantial and/or proximate result of Defendant's conduct, Plaintiff Korda and Oregon Subclass members suffered ascertainable losses and injury to business or property.

166. Plaintiff Korda and Oregon Subclass members would not have purchased the products at the prices they paid, if they had known that the advertised reference prices and discounts were false.

167. Plaintiff Korda and Oregon Subclass members paid more than they otherwise would have paid for the products they purchased from Defendant.

168. Defendant's false reference pricing scheme fraudulently increased demand from consumers. This fraud-on-the-market shifted the demand curve and enabled Defendant to charge higher prices than it otherwise could have charged.

169. The Products that Plaintiff Korda and Oregon Subclass members purchased were not, in fact, worth as much as Defendant represented them to be worth.

170. Plaintiff Korda seeks, on behalf of himself and the Oregon Subclass: (1) the greater of statutory damages of \$200 or actual damages; (2) punitive damages; (3) appropriate equitable relief and/or restitution; and (4) attorneys' fees and costs. ORS 646.638(3); ORS 646.638(8).

171. The unlawful acts and omissions pled herein were, are, and continue to be part of a pattern or generalized course of conduct. Defendant's conduct is ongoing and is likely to continue and recur absent a permanent injunction. Accordingly, Plaintiff Korda seeks an order enjoining Defendant from committing such unlawful practices. ORS 646.638(1); ORS 646.638(8)(c); ORS 646.636.

172. The balance of the equities favors the entry of permanent injunctive relief against Defendant. Plaintiff Korda, the Oregon Subclass members and the general public will be irreparably harmed absent the entry of permanent injunctive relief against Defendant. Plaintiff Korda, the Oregon Subclass members and the general public lack an adequate remedy at law. A permanent injunction against Defendant is in the public's interest. Defendant's unlawful

behavior is ongoing as of the date of the filing of this Complaint. If not enjoined by order of this Court, Defendant will or may continue to injure Plaintiff Korda and Oregon consumers through the misconduct alleged herein. Absent the entry of a permanent injunction, Defendant's unlawful behavior will not cease and, in the unlikely event that it voluntarily ceases, it is capable of repetition and is likely to reoccur.

173. Defendant's conduct has caused substantial injury to the general public. Plaintiff Korda individually seeks public injunctive relief to protect the general public by putting an end to Defendant's false reference price advertising, false discounts and omissions.

174. This action was brought "within one year after the discovery of the unlawful method, act or practice." ORS 646.638(6).

175. The applicable limitations period is expansive and extends back decades based on the "discovery" rule explicitly provided for in the UTPA at ORS 646.638(6). Defendant's unlawful false discounting practices have been pervasive—and at the core of its marketing plan—for as long as RugsUSA has operated its website (the exact length of time will be subject to discovery and proof).

176. Plaintiff Korda and the Oregon Subclass members did not know, and could not have known, that these reference prices and discount representations were false. As the Oregon Supreme Court has explained, "In general terms, a cause of action does not accrue under the discovery rule until the claim has been discovered or, in the exercise of reasonable care, should have been discovered." *FDIC v. Smith*, 328 Or. 420, 428, 980 P.2d 141 (1999). *See also Saenz v. Pittenger*, 78 Or. App. 207, 211–12, 715 P.2d 1126 (1986) (UTPA statute of limitations begins running when plaintiff knows or should have known of the allegedly unlawful conduct).

177. Plaintiff Korda first learned of Defendant's false advertising scheme, and that he was likely a victim of the scheme, on May 26, 2023. Prior to that date, Plaintiff Korda was not

aware of Defendant's false discount advertising scheme and was not aware that the reference prices and discounts Defendant had previously advertised to him and upon which he had relied in purchasing Plaintiff Korda's purchased Product were false.

178. While Plaintiff Korda first learned of Defendant's false advertising scheme on May 26, 2023, almost all of the members of the Class are still not aware, at the time of the filing of this Complaint, of Defendant's false discount advertising scheme.

179. By Defendant's design, the false advertising scheme by its very nature is hidden and impossible for the typical consumer to discover. Consumers who shopped on Defendant's website would have no way to know the true daily price histories and past selling prices for the products they viewed and purchased. Or that the advertised percentage-off and dollars-off savings were false. Consumers would have no way to know that Defendant's false discounting practices extended across all of Defendant's Products. The bottom line is that the members of the Class have not discovered, and could not have reasonably discovered, Defendant's false discounting scheme.

180. Based on information and belief, almost all of the Class will learn of the scheme for the very first time upon court-ordered class notice in this case.

COUNT VII
Unjust Enrichment
(By Plaintiffs and the Class)

181. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

182. Plaintiffs bring this cause of action individually and on behalf of the Class against Defendant.

183. "Although there are numerous permutations of the elements of the unjust enrichment cause of action in the various states, there are few real differences. In all states, the

focus of an unjust enrichment claim is whether the defendant was unjustly enriched. At the core of each state's law are two fundamental elements – the defendant received a benefit from the plaintiff and it would be inequitable for the defendant to retain that benefit without compensating the plaintiff. The focus of the inquiry is the same in each state.” *In re Mercedes-Benz Tele Aid Contract Litig.*, 257 F.R.D. 46, 58 (D.N.J. Apr. 24, 2009), quoting *Powers v. Lycoming Engines*, 245 F.R.D. 226, 231 (E.D. Pa. 2007).

184. Plaintiffs and members of the Class conferred a benefit on Defendant by purchasing the Products and by paying a price premium for them.

185. Defendant has knowledge of such benefits.

186. Defendant has been unjustly enriched in retaining the revenues derived from Class members' purchases of the Products, which retention under these circumstances is unjust and inequitable because it misrepresents that its Products are on “Sale” at a “% discount” and includes a strikethrough reference price higher than the purported original price of the Products, as described above. These misrepresentations caused injuries to Plaintiffs and the Class because they would not have purchased the Products if the true facts regarding the value of the Products were known.

187. Because Defendant's retention of the non-gratuitous benefit conferred on them by Plaintiffs and the Class is unjust and inequitable, Defendant must pay restitution to Plaintiffs and the Class for their unjust enrichment, as ordered by the Court.

COUNT VIII
Fraud
(By Plaintiffs and the Class)

188. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

189. Plaintiffs bring this cause of action individually and on behalf of the Class against Defendant.

190. As discussed above, Defendant misrepresented and failed to disclose material facts about its sales practices, including misrepresenting strikethrough reference prices, misrepresenting “% Discounts” for product, and failing to disclose that its “sale” and “discount” prices were the normal prices at which the Products were typically sold, that its strikethrough prices were fictitious, and that these deceptive sales practices operated solely for the purpose of inducing consumers to make purchases they otherwise would not have made.

191. These misrepresentations and omissions made by Defendant, as described above, upon which Plaintiffs and members of the Class reasonably and justifiably relied, were intended to and actually did induce Plaintiffs and members of the Class to purchase the Products.

192. The fraudulent actions of Defendant caused damage to Plaintiffs and members of the Class, who are entitled to damages and other legal and equitable relief as a result.

COUNT IX
Breach of Contract
(By Plaintiffs and the Class)

193. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

194. Plaintiffs bring this cause of action individually and on behalf of the Class against Defendant.

195. Plaintiffs and Class members entered into contracts with Defendant when they placed orders to purchase Products on Defendant’s website.

196. The contracts provided that Plaintiffs and Class members would pay Defendant for the Products ordered.

197. The contracts further required that Defendant provide Plaintiffs and Class members with Products that have a former price, and a market value, equal to the regular prices displayed on the website. They also required that Defendant provide Plaintiffs and Class members with the discount advertised on the website. These were specific and material terms of the contract.

198. The specific discounts were a specific and material term of each contract, and were displayed to Plaintiffs and Class members at the time they placed their orders.

199. Plaintiffs and Class members paid Defendant for the Products they ordered, and satisfied all other conditions of their contracts.

200. Defendant breached the contracts with Plaintiffs and Class members by failing to provide Products that had a prevailing market value equal to the regular price displayed on its website, and by failing to provide the promised discounts. Defendant did not provide the discounts that Defendant had promised.

201. Plaintiff Briggs provided Defendant with notice of this breach of contract, by mailing a notice letter to Defendant's headquarters on May 5, 2023.

202. Plaintiff Lee provided Defendant with notice of this breach of contract, by mailing a notice letter to Defendant's headquarters on May 17, 2023.

203. As a direct and proximate result of Defendant's breaches, Plaintiffs and Class members were deprived of the benefit of their bargained-for exchange, and have suffered damages in an amount to be established at trial.

COUNT X
Breach of Express Warranty
(By Plaintiffs and the Class)

204. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

205. Plaintiffs bring this cause of action individually and on behalf of the Class against Defendant.

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

207. Defendant also issued material, written warranties by representing that the Products were being sold at an advertised discounted price. This was an affirmation of fact about the Products and a promise relating to the goods.

208. These warranties were part of the basis of the bargain and Plaintiffs and members of the Class relied on these warranties.

209. In fact, Defendant's Products did not have a market value equal to the purported regular prices. And the Products were not actually sold at the advertised discounts. Thus, the warranties were breached.

210. Plaintiff Briggs provided Defendant with notice of these breaches of warranty, by mailing a notice letter to Defendant's headquarters, on May 5, 2023.

211. Plaintiff Lee provided Defendant with notice of these breaches of warranty, by mailing a notice letter to Defendant's headquarters, on May 17, 2023.

212. Plaintiffs and the Class were injured as a direct and proximate result of Defendant's breaches, and these breaches were a substantial factor in causing harm, because (a) they would not have purchased Defendant's Products if they had known that these warranties were false, and/or (b) they paid more for the Products than they are worth because the Products were sold at a price premium due to the warranties.

COUNT XI
Negligent Misrepresentation
(By Plaintiffs and the Class)

213. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

214. Plaintiffs bring this cause of action individually and on behalf of the Class against Defendant.

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

216. These representations were false.

217. 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.

218. Defendant intended that Plaintiffs and Class members rely on these representations and Plaintiffs and Class members read and reasonably relied on them.

219. In addition, Class-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 Defendant's Products.

220. Defendant's misrepresentations were a substantial factor and proximate cause in causing damages and losses to Plaintiffs and Class members.

221. Plaintiffs and the Class were injured as a direct and proximate result of Defendant's conduct because (a) they would not have purchased Defendant's Products if they had known that the representations were false, and/or (b) they paid more for the Products than they are worth because the Products were sold at a price premium due to the misrepresentations.

COUNT XII
Intentional Misrepresentation
(By Plaintiffs and the Class)

222. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

223. Plaintiffs bring this cause of action individually and on behalf of the Class against Defendant.

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

225. These representations were false.

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

227. Defendant intended that Plaintiffs and Class members rely on these representations and Plaintiffs and Class members read and reasonably relied on them.

228. In addition, Class-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 Defendant's Products.

229. Defendant's misrepresentations were a substantial factor and proximate cause in causing damages and losses to Plaintiffs and Class members.

230. Plaintiff and the Class were injured as a direct and proximate result of Defendant's conduct because (a) they would not have purchased Defendant's Products if they had known that the representations were false, and/or (b) they paid more for the Products than they are worth because the Products were sold at a price premium due to the misrepresentations.

PRAYER FOR RELIEF

231. WHEREFORE, Plaintiffs, each individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- (a) For an order certifying the proposed Classes under Rule 23 of the Federal Rules of Civil Procedure, naming Plaintiffs as representative of the Classes, and naming Plaintiffs' attorneys as Class Counsel to represent the Classes;
- (b) A judgment in favor of Plaintiffs and the proposed Classes;
- (c) For an order declaring the Defendant's conduct violates the statutes and common laws referenced herein;
- (d) For an order finding in favor of Plaintiffs and the Class and Subclasses on all counts asserted herein;
- (e) For actual, compensatory, treble, statutory, and/or punitive damages in amounts to be determined by the Court and/or jury;
- (f) For pre- and post-judgment interest on all amounts awarded;
- (g) For an order of restitution and all other forms of equitable monetary relief;
- (h) Disgorgement, and other just equitable relief;
- (i) For injunctive relief as pleaded or as the Court may deem proper;
- (j) For an order awarding Plaintiffs and the Classes their reasonable attorneys' fees and expenses and costs of suit; and
- (k) Any additional relief that the Court deems reasonable and just.

DEMAND FOR TRIAL BY JURY

232. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable of right.

Dated: February 5, 2024

Respectfully submitted,

By: /s/ Simon Franzini

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* Admitted *Pro Hac Vice*

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2024, a copy of the foregoing document was electronically filed through the ECF system and will be sent electronically to all persons identified on the Notice of Electronic Filing.

Dated: February 5, 2024

/s/ Simon Franzini

Simon Franzini