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**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

KENYA NELSON individually, and  
on behalf of all others similarly  
situated,

Plaintiff,

v.

AMERICAN TEXTILE  
COMPANY, INC.

Defendant.

Case No. '23CV1879 CAB SBC

**CLASS ACTION COMPLAINT AND  
DEMAND FOR JURY TRIAL**

## INTRODUCTION

1. Defendant American Textile Company, Inc. (“Defendant” or “American Textile”) manufactures, distributes, markets, and sells a line of bed sheet products under the Sealy brand name that are labeled as having a “1250 Thread Count.” (the “Sealy Products” or “Products”). “Thread count is the number of threads in a square inch of fabric, and a higher thread count is considered superior.”<sup>1</sup> Defendant capitalizes on consumer demand for superior bed sheet products by advertising that the Sealy Products have a high thread count. Defendant also reinforces the notion that the Products are high-quality by labeling them as being “Premium Comfort.”

2. Unfortunately, Defendant’s labeling is false and misleading. Independent laboratory testing using the industry standard testing methodology revealed that the Sealy Products only have a thread count of 234.<sup>2</sup> Accordingly, Defendant’s thread count claim is inaccurate.

3. Defendant’s false and misleading representations that the Products have a certain thread count is likely to deceive reasonable consumers. Defendant’s advertising leads consumers to believe that the Products actually have a thread count of 1250 threads, and thus, are higher quality, more durable, and softer than other competing bed sheet products that have lower thread counts. Defendant charges a premium for the Products, but consumers who have purchased the Products received inferior products that have a lower than advertised thread count.

4. Plaintiff Kenya Nelson (“Plaintiff”) purchased a Sealy Product and now bring this class action seeking redress for Defendant’s false advertising and deceptive conduct.

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<sup>1</sup> *Are Shoppers Short-Sheeted by Thread Count?*, ABC NEWS (Nov. 22, 2002), available at <https://abcnews.go.com/GMA/story?id=125380&page=1>

<sup>2</sup> See **Exhibit A** attached hereto.

**JURISDICTION AND VENUE**

5. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because this is a class action in which: (1) there are over 100 members in the proposed class; (2) members of the proposed class have a different citizenship from Defendant; and (3) the claims of the proposed class members exceed \$5,000,000 in the aggregate, exclusive of interest and costs.

6. This Court has personal jurisdiction over Defendant because Defendant conducts and transacts business in the State of California, contracts to supply goods within the State of California, and supplies goods within the State of California. Defendant, on its own and through its agents, is responsible for the distribution, marketing, labeling, and sale of the Sealy Products in California, specifically in this judicial district. The marketing of the Products, including the decision of what to include and not include on the labels, emanates from Defendant. Thus, Defendant has intentionally availed itself of the markets within California through its advertising, marketing, and sale of the Products to consumers in California, including Plaintiff. The Court also has specific jurisdiction over Defendant as it has purposefully directed activities towards the forum state, Plaintiff's claims arise out of those activities, and it is reasonable for Defendant to defend this lawsuit because it has sold deceptively advertised Products to Plaintiff and members of the Class in California. By distributing and selling the Products in California, Defendant has intentionally and expressly aimed conduct at California which caused harm to Plaintiff and the Class that Defendant knows is likely to be suffered by Californians.

7. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this District because Plaintiff purchased one of the Products within this District.

## PARTIES

8. Defendant American Textile Company, Inc. is a Pennsylvania corporation that maintains its principal place of business at 10 N. Linden Street, Duquesne, Pennsylvania 15110. Defendant was the manufacturer, distributor, marketer, and seller of the Sealy Products throughout the class period.

9. Plaintiff Kenya Nelson is a resident of San Diego County, California. Plaintiff purchased a Sealy Product during the class period in California. Plaintiff relied on Defendant's deceptive advertising and labeling claims as set forth below.

## FACTUAL ALLEGATIONS

### THE SEALY PRODUCTS

10. Defendant labels the Sealy Products as having a "1250 Thread Count" as shown below:



11. The labels of the Sealy Products lead consumers to believe that Defendant's bed sheets are high-quality and superior to other brands because of the high thread count. For example, the front label of Products state "1250 Thread Count Sheet Set" and "Premium Comfort." Defendant also makes additional labeling statements indicating the Products are high-quality and superior to competing products, such as "premium modal blend fabric," "luxuriously soft & comfortable," "superior moisture wicking," and "keeps you cool dry and comfortable" as shown below.



#### TESTING REVEALS THAT DEFENDANT'S THREAD COUNT CLAIMS ARE FALSE

12. Independent laboratory testing shows that Defendant's thread count claims are false.<sup>3</sup>

13. On October 2, 2023, a Sealy Product labeled as having a "1250 Thread Count" was sent to the IDFL Laboratory and Institute ("IDFL") in Salt Lake City, Utah for laboratory analysis. IDFL "is one of the global leaders in

<sup>3</sup> See Exhibit A attached hereto.

auditing and testing for filled textiles” and “one of the largest filled-textile laboratories in the world.”<sup>4</sup>

14. IDFL analyzed the Product for its thread count content using the D3775 method developed by the American Society for Testing and Materials (“ASTM”). The ASTM D3775 method is an industry standard test for determining the thread count of linen products.<sup>5</sup> This standard requires that individual wrap ends and filling picks are counted as “single units regardless of whether they are comprised of single or plied components.”

15. IDFL determined that the Product had a thread count of only 234 threads despite being labeled as having a “1250 Thread Count.” Accordingly, Defendant’s thread count claims are false and misleading.

**REASONABLE CONSUMERS ARE DECEIVED BY DEFENDANT’S FALSE THREAD  
COUNT CLAIMS**

16. Consumers who purchase bed sheets rely on a product’s thread counts as an indication of quality.<sup>6</sup> Products with higher thread counts are more expensive than products with lower thread counts.<sup>7</sup> This is because “[h]igher-thread-count sheets are made with finer (thinner) yarns. The more yarns that fit into a square inch, the smoother, denser, and more durable the fabric. Fine yarn is also more expensive to produce, thus resulting in pricier sheets.”<sup>8</sup> “When it comes to buying

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<sup>4</sup> <https://idfl.com/about/>

<sup>5</sup> *Standard Test Method for End (Warp) and Pick (Filling) Count of Woven Fabrics*, available at <https://www.astm.org/d3775-17e01.html>

<sup>6</sup> *Are Shoppers Short-Sheeted by Thread Count?*, ABC NEWS (Nov. 22, 2002), available at <https://abcnews.go.com/GMA/story?id=125380&page=1>

<sup>7</sup> *Id.*

<sup>8</sup> Jackie Reeve, *What Is a Good Thread Count for Sheets?*, NEW YORK TIMES (Updated Feb. 11, 2020), available at <https://www.nytimes.com/wirecutter/blog/good-thread-count-for-sheets/>



1 bedding, the conventional wisdom goes like this: The higher a sheet's thread count,  
2 the higher the quality, and, of course, the higher the price.”<sup>9</sup>

3 17. However, some manufacturers “exaggerate the number of threads per  
4 square inch of fabric. The problem is that many threads are made up of multiple  
5 strands of yarn and manufacturers count each strand when they calculate the thread  
6 count.”<sup>10</sup> Laboratory testing has revealed that Defendant has likewise deceptively  
7 exaggerated the number of threads per square inch in the Sealy Products. This is  
8 misleading because the industry standard way to count threads is to “count the  
9 number of threads in both the warp and filling directions” and to count plied yarns  
10 as “one yarn, regardless of whether the yarn was a single ply or multi-ply yarn. (A  
11 multi-ply yarn is one yarn that has been created by twisting two or more yarns  
12 together.)” in accordance with the ASTM D3775 standard.<sup>11</sup>

13 18. In a letter to the National Textiles Association (“NTA”), the Federal  
14 Trade Commission (“FTC”) acknowledged that the ATSM D3775 method applies  
15 “standard industry practices.”<sup>12</sup> The FTC stated that “[b]ased upon the ASTM  
16 standard, as well as the information [provided by the NTA] about standard industry  
17 practices with regard to disclosing thread count, we believe that consumers could  
18 be deceived or misled by the practice of stating an inflated thread count, achieved  
19 by multiplying the actual count by the number of plies within the yarn.”<sup>13</sup>

20  
21 <sup>9</sup> *The Truth Behind Thread Counts*, ABC NEWS (March 22, 2006), available at  
22 <https://abcnews.go.com/GMA/Moms/story?id=1751253&page=1>

23 <sup>10</sup> *Id.*

24 <sup>11</sup> Letter from James Kohm, Assoc. Dir. for Enf't Bureau of Consumer Prot., FTC,  
25 to E. Linwood Wright, III, Chairman of the Textile Bedding Comm. of the Nat'l  
26 Textile Ass'n (Aug. 2, 2005), available at  
[https://www.ftc.gov/sites/default/files/documents/advisory\\_opinions/national-textileassociation/natltextileassn.pdf](https://www.ftc.gov/sites/default/files/documents/advisory_opinions/national-textileassociation/natltextileassn.pdf) and attached hereto as **Exhibit B**.

27 <sup>12</sup> *Id.*

28 <sup>13</sup> *Id.*

19. In a letter to the FTC, the American Textile Manufacturer’s Institute (“ATMI”) also opined that the ASTM D3775 method is “long-accepted industry standard for determining count” and the “method has been in use in this country for many years and serves as the industry’s standard way to report the count of many woven textile fabrics, including sheeting. It is based on the number of yarns in the warp direction and filling direction, regardless of ply, and has become an important parameter used by consumers to judge the quality of sheeting products, since the higher the count, the more luxurious the product.”<sup>14</sup> The ATMI further opined that it believes “that plied yarns are to be properly counted as only one yarn. For example, a fabric containing 250 individual four ply yarns in a square inch would be described as a ‘250 thread count fabric, even though each thread of yarn contained four plies twisted together.’ It would be false and misleading to describe this as a 1000 thread count product.”<sup>15</sup>

20. Despite knowing the long-standing industry standard, Defendant deviated from the traditional thread counting standards to deceive consumers. The Sealy Products were advertised and sold with inflated thread counts.

21. Consumers, like Plaintiff, relied on Defendant’s advertising and labeling statements set forth above, including the “1250 Thread Count” labeling statement.

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<sup>14</sup> Letter from Carlos Moore, Exec. Vice Pres. of ATMI, to Steve Ecklund, FTC (Jan. 31, 2002), *available at* [https://www.ftc.gov/sites/default/files/documents/advisory\\_opinions/american-textile-manufacturers-institute/american-textile-manuinate.pdf](https://www.ftc.gov/sites/default/files/documents/advisory_opinions/american-textile-manufacturers-institute/american-textile-manuinate.pdf) and attached hereto as **Exhibit C**.

<sup>15</sup> *Id.*



**PLAINTIFF'S EXPERIENCES**

22. Plaintiff Kenya Nelson purchased a set of Defendant's Sealy bed sheets in approximately January of 2023 from a JC Penny store located in Escondido, California. Plaintiff Nelson saw and relied on the "1250 Thread Count" claim on the label of the Product. Plaintiff Nelson also saw and relied on additional labeling statements indicating that the Product is high-quality and superior to competing products, such as "premium comfort," "premium modal blend fabric," "luxuriously soft & comfortable," "superior moisture wicking," and "keeps you cool dry and comfortable." Plaintiff Nelson would not have purchased the Product, or would have paid less for the Product, had she known that the Product has a lower than advertised thread count. As a result, Plaintiff Nelson suffered injury in fact when she spent money to purchase the Product she would not have purchased, or would have paid less for, absent Defendant's misconduct. Plaintiff Nelson has not purchased the Product after learning that the Products only have a thread count of 234 threads. Plaintiff Nelson desires to purchase the Products again if the labels of the products were accurate and if the products actually had the advertised thread count. However, as a result of Defendant's ongoing misrepresentations, Plaintiff Nelson is unable to rely on the Products' advertising and labeling when deciding in the future whether to purchase the Products.

**PLAINTIFF AND PUTATIVE CLASS MEMBERS SUFFERED ECONOMIC INJURY**

23. Plaintiff and the putative class members suffered economic injury as a result of Defendant's actions. Plaintiff and putative class members spent money that, absent Defendant's actions, they would not have spent. With all the other bed sheet products on the market with accurate thread count claims, a reasonable consumer would choose to purchase a product without inflated thread count claims.

24. Plaintiff and putative class members are entitled to damages and restitution for the purchase price of the Products that were falsely labeled and

1 advertised. Consumers, including Plaintiff, would not have purchased Defendant's  
 2 Products, or would have paid less for the Products, if they had known the Products  
 3 have an inflated thread count. Defendant charges a premium for the Products.  
 4 Because Defendant represents that the Products have a "1250 Thread Count,"  
 5 Defendant is able to charge consumers more money for the Products.

6 25. Accordingly, Plaintiff brings this action individually and on behalf of  
 7 other similarly situated consumers to halt the dissemination of Defendant's  
 8 deceptive advertising message, correct the deceptive perception it has created in  
 9 the minds of consumers, and obtain redress for those who have purchased the  
 10 Products. As a consequence of Defendant's deceptive advertising, Plaintiff brings  
 11 causes of action for (1.) violations of California's Consumers Legal Remedies Act,  
 12 Cal. Civ. Code § 1750 *et seq.* (the "CLRA"), (2.) violations of California's Unfair  
 13 Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (the "UCL"), and (3.)  
 14 breach of express warranty.

#### 15 NO ADEQUATE REMEDY AT LAW

16 26. Plaintiff and members of the class are entitled to equitable relief as  
 17 no adequate remedy at law exists. The statutes of limitations for the causes of  
 18 action pled herein vary. Class members who purchased the Products more than  
 19 three years prior to the filing of the complaint will be barred from recovery if  
 20 equitable relief were not permitted under the UCL.

21 27. The scope of actionable misconduct under the unfair prong of the  
 22 UCL is broader than the other causes of action asserted herein. It includes  
 23 Defendant's overall unfair marketing scheme to promote and brand the Products,  
 24 across a multitude of media platforms, including the product labels, packaging,  
 25 and online advertisements, over a long period of time, in order to gain an unfair  
 26 advantage over competitor products. Plaintiff and class members may also be  
 27 entitled to restitution under the UCL, while not entitled to damages under other  
 28 causes of action asserted herein (e.g., the CLRA is limited to certain types of

1 plaintiffs (an individual who seeks or acquires, by purchase or lease, any goods or  
2 services for personal, family, or household purposes) and other statutorily  
3 enumerated conduct).

4 28. A primary litigation objective in this litigation is to obtain injunctive  
5 relief. Injunctive relief is appropriate on behalf of Plaintiff and members of the  
6 class because Defendant continues to misrepresent the Products as having a higher  
7 thread count than they actually have. Injunctive relief is necessary to prevent  
8 Defendant from continuing to engage in the unfair, fraudulent, and/or unlawful  
9 conduct described herein and to prevent future harm—none of which can be  
10 achieved through available legal remedies (such as monetary damages to  
11 compensate past harm). Injunctive relief, in the form of affirmative disclosures or  
12 halting the sale of unlawful sold products is necessary to dispel the public  
13 misperception about the Products that has resulted from years of Defendant's  
14 unfair, fraudulent, and unlawful marketing efforts. Such disclosures would  
15 include, but are not limited to, publicly disseminated statements stating the actual  
16 thread counts of the products. An injunction requiring affirmative disclosures to  
17 dispel the public's misperception, and prevent the ongoing deception and repeat  
18 purchases, is also not available through a legal remedy (such as monetary  
19 damages). In addition, Plaintiff is currently unable to accurately quantify the  
20 damages caused by Defendant's future harm, because discovery and Plaintiff's  
21 investigation has not yet completed, rendering injunctive relief necessary. Further,  
22 because a public injunction is available under the UCL, and damages will not  
23 adequately benefit the general public in a manner equivalent to an injunction.

24 29. It is premature to determine whether an adequate remedy at law  
25 exists. This is an initial pleading and discovery has not yet commenced and/or is  
26 at its initial stages. No class has been certified yet. No expert discovery has  
27 commenced and/or completed. The completion of fact/non-expert and expert  
28 discovery, as well as the certification of this case as a class action, are necessary

1 to finalize and determine the adequacy and availability of all remedies, including  
 2 legal and equitable, for Plaintiff's individual claims and any certified class or  
 3 subclass. Plaintiff therefore reserves her right to amend this complaint and/or  
 4 assert additional facts that demonstrate this Court's jurisdiction to order equitable  
 5 remedies where no adequate legal remedies are available for either Plaintiff and/or  
 6 any certified class or subclass. Such proof, to the extent necessary, will be  
 7 presented prior to the trial of any equitable claims for relief and/or the entry of an  
 8 order granting equitable relief.

### 9 CLASS ACTION ALLEGATIONS

10 30. Plaintiff brings this action as a class action pursuant to Federal Rules  
 11 of Civil Procedure 23(b)(3) and 23(b)(2) on behalf of the following Class:

12 All persons who purchased the Sealy Products for personal use in  
 13 California within the applicable statute of limitations until the date class  
 14 notice is disseminated.

15 31. Excluded from the class are: (i) Defendant and its officers, directors,  
 16 and employees; (ii) any person who files a valid and timely request for exclusion;  
 17 (iii) judicial officers and their immediate family members and associated court  
 18 staff assigned to the case; (iv) individuals who received a full refund of the  
 19 Products from Defendant.

20 32. Plaintiff reserves the right to amend or otherwise alter the class  
 21 definition presented to the Court at the appropriate time, or to propose or eliminate  
 22 subclasses, in response to facts learned through discovery, legal arguments  
 23 advanced by Defendant, or otherwise.

24 33. The Class is appropriate for certification because Plaintiff can prove  
 25 the elements of the claims on a classwide basis using the same evidence as would  
 26 be used to prove those elements in individual actions alleging the same claims.

27 34. Numerosity: Class Members are so numerous that joinder of all  
 28 members is impracticable. Plaintiff believes that there are thousands of consumers

1 who are Class Members described above who have been damaged by Defendant's  
2 deceptive and misleading practices.

3 35. Commonality: There is a well-defined community of interest in the  
4 common questions of law and fact affecting all Class Members. The questions of  
5 law and fact common to the Class Members which predominate over any questions  
6 which may affect individual Class Members include, but are not limited to:

7 a. Whether Defendant is responsible for the conduct alleged herein  
8 which was uniformly directed at all consumers who purchased the Products;

9 b. Whether Defendant's misconduct set forth in this Complaint  
10 demonstrates that Defendant engaged in unfair, fraudulent, or unlawful business  
11 practices with respect to the advertising, marketing, and sale of the Products;

12 c. Whether Defendant made misrepresentations concerning the  
13 Products that were likely to deceive the public;

14 d. Whether Plaintiff and the Class are entitled to injunctive relief;

15 e. Whether Plaintiff and the Class are entitled to money damages and/or  
16 restitution under the same causes of action as the other Class Members.

17 36. Typicality: Plaintiff is a member of the Class that Plaintiff seeks to  
18 represent. Plaintiff's claims are typical of the claims of each Class Member in that  
19 every member of the Class was susceptible to the same deceptive, misleading  
20 conduct and purchased the Products. Plaintiff is entitled to relief under the same  
21 causes of action as the other Class Members.

22 37. Adequacy: Plaintiff is an adequate Class representative because  
23 Plaintiff's interests do not conflict with the interests of the Class Members Plaintiff  
24 seeks to represent; the consumer fraud claims are common to all other members of  
25 the Class, and Plaintiff has a strong interest in vindicating the rights of the class;  
26 Plaintiff has retained counsel competent and experienced in complex class action  
27 litigation and Plaintiff intends to vigorously prosecute this action. Plaintiff has no  
28 interests which conflict with those of the Class. The Class Members' interests will

1 be fairly and adequately protected by Plaintiff and proposed Class Counsel.  
2 Defendant has acted in a manner generally applicable to the Class, making relief  
3 appropriate with respect to Plaintiff and the Class Members. The prosecution of  
4 separate actions by individual Class Members would create a risk of inconsistent  
5 and varying adjudications.

6 38. The Class is properly brought and should be maintained as a class  
7 action because a class action is superior to traditional litigation of this controversy.  
8 A class action is superior to the other available methods for the fair and efficient  
9 adjudication of this controversy because:

10 a. The joinder of hundreds of individual Class Members is  
11 impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or  
12 litigation resources;

13 b. The individual claims of the Class Members may be relatively modest  
14 compared with the expense of litigating the claim, thereby making it impracticable,  
15 unduly burdensome, and expensive to justify individual actions;

16 c. When Defendant's liability has been adjudicated, all Class Members'  
17 claims can be determined by the Court and administered efficiently in a manner  
18 far less burdensome and expensive than if it were attempted through filing,  
19 discovery, and trial of all individual cases;

20 d. This class action will promote orderly, efficient, expeditious, and  
21 appropriate adjudication and administration of Class claims;

22 e. Plaintiff knows of no difficulty to be encountered in the management  
23 of this action that would preclude its maintenance as a class action;

24 f. This class action will assure uniformity of decisions among Class  
25 Members;

26 g. The Class is readily definable and prosecution of this action as a class  
27 action will eliminate the possibility of repetitious litigation; and  
28



1 h. Class Members' interests in individually controlling the prosecution  
 2 of separate actions is outweighed by their interest in efficient resolution by single  
 3 class action;

4 39. Additionally or in the alternative, the Class also may be certified  
 5 because Defendant has acted or refused to act on grounds generally applicable to  
 6 the Class thereby making final declaratory and/or injunctive relief with respect to  
 7 the members of the Class as a whole, appropriate.

8 40. Plaintiff seeks preliminary and permanent injunctive and equitable  
 9 relief on behalf of the Class, on grounds generally applicable to the Class, to enjoin  
 10 and prevent Defendant from engaging in the acts described, and to require  
 11 Defendant to provide full restitution to Plaintiff and the Class members.

12 41. Unless the Class is certified, Defendant will retain monies that were  
 13 taken from Plaintiff and Class members as a result of Defendant's wrongful  
 14 conduct. Unless a classwide injunction is issued, Defendant will continue to  
 15 commit the violations alleged and the members of the Class and the general public  
 16 will continue to be misled.

17 **FIRST CLAIM FOR RELIEF**

18 **Violation of California's Consumers Legal Remedies Act**

19 **Cal. Civ. Code § 1750 *et seq.***

20 42. Plaintiff realleges and incorporates by reference all allegations  
 21 contained in this complaint, as though fully set forth herein.

22 43. Plaintiff brings this claim under the CLRA individually and on behalf  
 23 of the Class against Defendant.

24 44. At all times relevant hereto, Plaintiff and the members of the Class  
 25 were "consumer[s]," as defined in California Civil Code section 1761(d).

26 45. At all relevant times, Defendant was a "person," as defined in  
 27 California Civil Code section 1761(c).

1           46. At all relevant times, the Products manufactured, marketed,  
2 advertised, and sold by Defendant constituted “goods,” as defined in California  
3 Civil Code section 1761(a).

4           47. The purchases of the Products by Plaintiff and the members of the  
5 Class were and are “transactions” within the meaning of California Civil Code  
6 section 1761(e).

7           48. Defendant disseminated, or caused to be disseminated, through its  
8 advertising, false and misleading representations, including the Products’ labeling  
9 that the Products have a certain thread count. Defendant failed to disclose that the  
10 Products have a lower than advertised thread count. For example, the Products are  
11 labeled as having a “1250 Thread Count” but only have a thread count of 234  
12 threads. This is a material omission as reasonable consumer would find the fact  
13 that the Products have a lower than advertised thread count to be important to their  
14 decision in purchasing the Products. Defendant’s representations violate the  
15 CLRA in the following ways:

16           a) Defendant represented that the Products have characteristics,  
17 ingredients, uses, and benefits which they do not have (Cal. Civ. Code §  
18 1770(a)(5));

19           b) Defendant represented that the Products are of a particular standard,  
20 quality, or grade, which they are not (Cal. Civ. Code § 1770(a)(7));

21           c) Defendant advertised the Products with an intent not to sell the  
22 Products as advertised (Cal. Civ. Code § 1770(a)(9)); and

23           d) Defendant represented that the subject of a transaction has been  
24 supplied in accordance with a previous representation when it has not (Cal. Civ.  
25 Code § 1770(a)(16)).

26           49. Defendant violated the CLRA because the Products were prominently  
27 advertised as having a certain thread count, but, in reality, the Products have a  
28 lower than advertised thread count. Defendant knew or should have known that

1 consumers would want to know the actual thread count of the Products. For  
2 example, Defendant placed the thread count representation on the front of the  
3 packaging. Defendant had exclusive knowledge of the actual thread counts of the  
4 Products, and Defendant failed to disclose this fact. Defendant actively concealed  
5 this material fact. The fact that the Products have a lower than advertised thread  
6 count is material to consumers because reasonable consumers would deem this  
7 fact important in determining whether to buy the Products.

8 50. Defendant's actions as described herein were done with conscious  
9 disregard of Plaintiff's and the Class members' rights and were wanton and  
10 malicious.

11 51. Defendant's wrongful business practices constituted, and constitute,  
12 a continuing course of conduct in violation of the CLRA, since Defendant is still  
13 representing that the Products have characteristics which they do not have.

14 52. Pursuant to California Civil Code section 1782(d), Plaintiff and the  
15 members of the Class seek an order enjoining Defendant from engaging in the  
16 methods, acts, and practices alleged herein.

17 53. Pursuant to California Civil Code section 1782, Plaintiff will notify  
18 Defendant in writing by certified mail of the alleged violations of the CLRA and  
19 demand that Defendant rectify the problems associated with the actions detailed  
20 above and give notice to all affected consumers of their intent to so act. If  
21 Defendant fails to rectify the problems associated with the actions detailed herein  
22 and give notice to all affected consumers within 30 days of the date of written  
23 notice pursuant to section 1782 of the CLRA, then Plaintiff will amend her  
24 complaint to seek damages and restitution under the CLRA.

25 54. Pursuant to section 1780(d) of the CLRA, attached is an affidavit  
26 showing that this action was commenced in a proper forum.  
27  
28

**SECOND CLAIM FOR RELIEF**

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

**Cal. Bus. & Prof. Code § 17200 *et seq.***

55. Plaintiff realleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

56. Plaintiff brings this claim under the UCL individually and on behalf of the Class against Defendant.

57. The UCL prohibits any “unlawful,” “fraudulent,” or “unfair” business act or practice and any false or misleading advertising.

58. Defendant committed unlawful business acts or practices by making the representations and omitted material facts (which constitutes advertising within the meaning of California Business & Professions Code section 17200), as set forth more fully herein, and by violating California's Consumers Legal Remedies Act, Cal. Civ. Code §§17500, *et seq.*, California's False Advertising Law, Cal. Bus. & Prof. § 17500, *et seq.*, 15 U.S.C. § 45, and by breaching express warranties. Plaintiff, individually and on behalf of the other Class members, reserves the right to allege other violations of law, which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

59. Defendant committed “unfair” business acts or practices by: (1) engaging in conduct where the utility of such conduct is outweighed by the harm to Plaintiff and the members of the a Class; (2) engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff and the members of the Class; and (3) engaging in conduct that undermines or violates the intent of the consumer protection laws alleged herein. There is no societal benefit from deceptive advertising. Plaintiff and the other Class members paid for a Product that is not as advertised by Defendant. Further, Defendant failed to disclose a material fact (that the Products have a lower than advertised thread count) of which they had exclusive knowledge. While Plaintiff

1 and the other Class members were harmed, Defendant was unjustly enriched by its  
2 false misrepresentations and material omissions. As a result, Defendant's conduct  
3 is "unfair," as it offended an established public policy. There were reasonably  
4 available alternatives to further Defendant's legitimate business interests, other  
5 than the conduct described herein. For example, several of Defendant's  
6 competitors accurately label the thread counts of their linen products.

7 60. Defendant committed "fraudulent" business acts or practices by  
8 making the representations of material fact regarding the Products set forth herein.  
9 Defendant's business practices as alleged are "fraudulent" under the UCL because  
10 they are likely to deceive customers into believing the Products have accurate  
11 thread count claims on the labels.

12 61. Plaintiff and the other members of the Class have in fact been  
13 deceived as a result of their reliance on Defendant's material representations and  
14 omissions. This reliance has caused harm to Plaintiff and the other members of the  
15 Class, each of whom purchased Defendant's Products. Plaintiff and the other Class  
16 members have suffered injury in fact and lost money as a result of purchasing the  
17 Products and Defendant's unlawful, unfair, and fraudulent practices.

18 62. Defendant's wrongful business practices and violations of the UCL  
19 are ongoing.

20 63. Plaintiff and the Class seek pre-judgment interest as a direct and  
21 proximate result of Defendant's unfair and fraudulent business conduct. The  
22 amount on which interest is to be calculated is a sum certain and capable of  
23 calculation, and Plaintiff and the Class seek interest in an amount according to  
24 proof.

25 64. Unless restrained and enjoined, Defendant will continue to engage in  
26 the above-described conduct. Accordingly, injunctive relief is appropriate.  
27 Pursuant to California Business & Professions Code section 17203, Plaintiff,  
28 individually and on behalf of the Class, seek (1) restitution from Defendant of all

1 money obtained from Plaintiff and the other Class members as a result of unfair  
2 competition; (2) an injunction prohibiting Defendant from continuing such  
3 practices in the State of California that do not comply with California law; and (3)  
4 all other relief this Court deems appropriate, consistent with California Business  
5 & Professions Code section 17203.

6 **THIRD CLAIM FOR RELIEF**

7 **Breach of Express Warranty**

8 65. Plaintiff realleges and incorporates by reference all allegations  
9 contained in this complaint, as though fully set forth herein.

10 66. Plaintiff brings this claim for breach of express warranty individually  
11 and on behalf of the Class against Defendant.

12 67. As the manufacturer, marketer, distributor, and seller of the Products,  
13 Defendant issued an express warranty by representing to consumers at the point of  
14 purchase that the Products had a certain thread count as stated on the labels of the  
15 products. For example, the Products are labeled as having a “1250 Thread Count.”

16 68. Plaintiff and the Class reasonably relied on Defendant’s  
17 misrepresentations, descriptions and specifications regarding the Products’ thread  
18 count, quality, durability, and fitness of the products.

19 69. Defendant’s representations were part of the description of the goods  
20 and the bargain upon which the goods were offered for sale and purchased by  
21 Plaintiff and Members of the Class.

22 70. In fact, the Products do not conform to Defendant’s representations  
23 about the thread count because the Products have a lower thread count. By falsely  
24 representing the Products in this way, Defendant breached express warranties.

25 71. Plaintiff relied on Defendant’s (the manufacturer) representations on  
26 the Products’ labels and advertising materials which provide the basis for an  
27 express warranty under California law.



72. As a direct and proximate result of Defendant's breach, Plaintiff and Members of the Class were injured because they: (1) paid money for the Products that were not what Defendant represented; (2) were deprived of the benefit of the bargain because the Products they purchased were different than Defendant advertised; and (3) were deprived of the benefit of the bargain because the Products they purchased had less value than if Defendant's representations about the characteristics of the Products were truthful. Had Defendant not breached the express warranty by making the false representations alleged herein, Plaintiff and Class Members would not have purchased the Products or would not have paid as much as they did for them.

#### **REQUEST FOR RELIEF**

Plaintiff, individually, and on behalf of all others similarly situated, request for relief pursuant to each claim set forth in this complaint, as follows:

a. Declaring that this action is a proper class action, certifying the Class as requested herein, designating Plaintiff as the Class Representative and appointing the undersigned counsel as Class Counsel;

b. Ordering restitution and disgorgement of all profits and unjust enrichment that Defendant obtained from Plaintiff and the Class members as a result of Defendant's unlawful, unfair, and fraudulent business practices;

c. Ordering injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant to engage in a corrective advertising campaign;

d. Ordering damages in amount which is different than that calculated for restitution for Plaintiff and the Class;

e. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff and the other members of the Class;

f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and

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g. Ordering such other and further relief as may be just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury of all claims in this Complaint so triable.

Dated: October 13, 2023

CROSNER LEGAL, P.C.

By: /s/ Michael T. Houchin

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