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13
 14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**

16 ROGER BARR, ELISA MONTES DE
 17 OCA, and GABRIELA FERNANDEZ,
 18 each individually and on behalf of all
 19 others similarly situated,

20 *Plaintiffs,*

21 v.

22 SELECTBLINDS LLC,

23 *Defendant.*

24 Case No. 2:22-cv-08326-SPG-PD

25 **FIRST AMENDED CLASS**
26 **ACTION COMPLAINT**

27 **DEMAND FOR JURY TRIAL**

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Table of Contents

I. Introduction..... 1

II. Parties. 3

III. Jurisdiction and Venue..... 4

IV. Facts..... 4

 A. Defendant’s fake sales and discounts. 4

 B. Defendant’s advertisements are unfair, deceptive, and unlawful. 16

 C. Defendant’s advertisements harm consumers..... 18

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

 E. Defendant breached its contracts..... 21

 F. No adequate remedy at law. 22

V. Class Action Allegations..... 22

VI. Causes of Action..... 24

 First Cause of Action: Violation of California’s False Advertising Law Bus.
 & Prof. Code §§ 17500 et. seq. 24

 Second Cause of Action: Violation of California’s Consumer Legal
 Remedies Act..... 26

 Third Cause of Action: Violation of California’s Unfair Competition Law..... 29

 Fourth Cause of Action: Breach of Contract..... 31

 Fifth Cause of Action: Breach of Express Warranty 32

 Sixth Cause of Action: Quasi-Contract/Unjust Enrichment 33

VII. Jury Trial Demand..... 34

VIII. Prayer for Relief..... 34

1 **I. Introduction.**

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

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

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

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

20 5. In addition, the Federal Trade Commission’s regulations prohibit false or
21 misleading “former price comparisons,” for example, making up “an artificial, inflated
22 price ... for the purpose of enabling the subsequent offer of a large reduction” off that
23 price. 16 C.F.R. § 233.1. They also prohibit false or misleading “retail price
24 comparisons” and “comparable value comparisons,” for example, ones that falsely
25 suggest that the seller is “offer[ing] goods at prices lower than those being charged by
26 others for the same merchandise” when this is not the case. 16 C.F.R. § 233.2.
27 They also prohibit advertising fictitious “manufacturer’s suggested or list prices” which
28 “do not in fact correspond to prices at which a substantial number of sales of the article

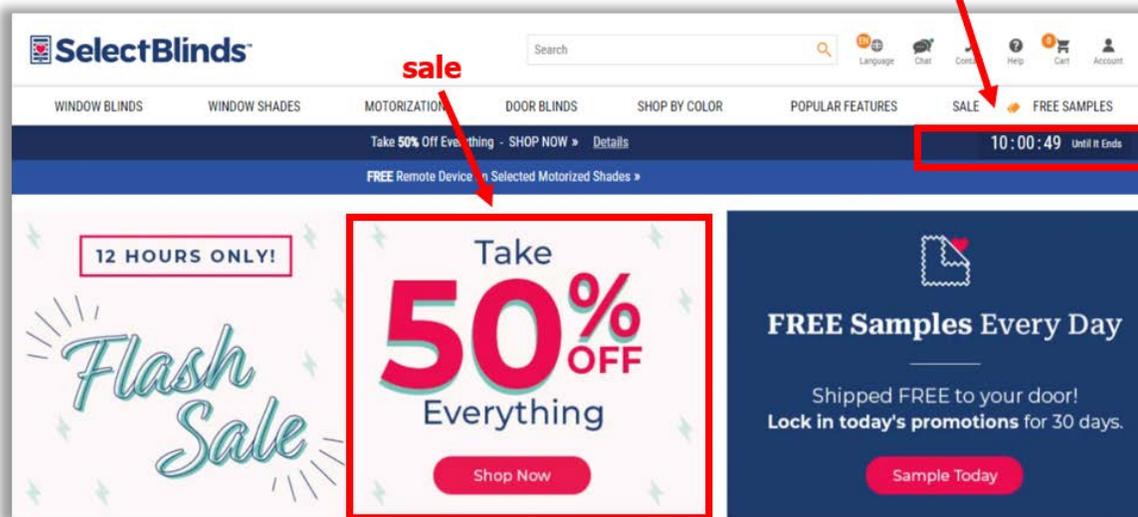
1 in question are made.” 16 C.F.R. § 233.3. And, they require that manufacturers and
2 retailers “act honestly and in good faith in advertising a list price ... and not with the
3 intention of establishing a basis ... for a deceptive comparison.” 16 C.F.R. § 233.3.

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

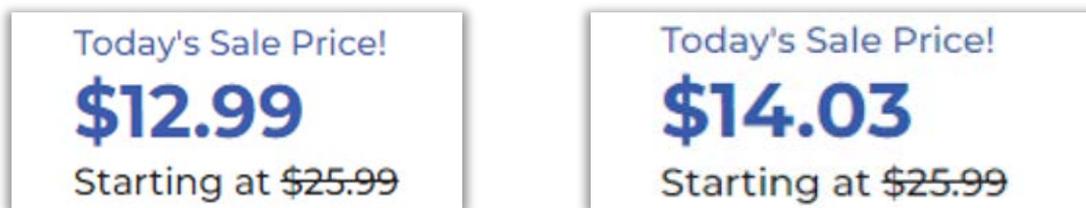
7 7. Defendant makes, sells, and markets window and door coverings (the
8 “SelectBlinds Products” or “Products”). The Products are sold online through
9 Defendant’s website, SelectBlinds.com.

10 8. Defendant prominently advertises sales on its website. Those sales include
11 sitewide percentages off (for example, 50% off sitewide, meaning all Products sold on
12 Defendant’s website are 50% off). They also include countdown timers indicating that
13 the sale will end soon:

14 *Defendant’s sale, with a countdown clock listing when the sale ends:*



24 *Purported regular prices, and associated discounts:*



1 9. Everything about these advertisements is false. The sales Defendant
2 advertises are not limited-time events where the Products are marked down from their
3 regular retail prices. Defendant’s Products do not ever retail at the supposed regular
4 prices it lists. They always retail at a much lower price, at least 30% less. And when the
5 countdown timer ends, the sales do not end. Instead, they are immediately replaced by a
6 different sale offering comparable amounts off—always more than 30% off, and are
7 typically close to 50%. And the countdown timer resets and begins counting down
8 again.

9 10. Plaintiffs bought Products from Defendant online on SelectBlinds.com.
10 Like Defendant’s other customers, when Plaintiffs bought the Products, Defendant
11 advertised that a purported sale was going on and that it would end when a displayed
12 countdown expired. Plaintiffs believed that the SelectBlinds Products that they
13 purchased retailed for the displayed regular price. They further believed that they were
14 getting a substantial discount from the regular price, and that the sale would end soon.
15 These reasonable beliefs are what caused them to buy from Defendant. If they had
16 known that the Products they purchased were not on sale, they would not have bought
17 them.

18 11. In truth, however, the representations Plaintiffs relied on were not true.
19 The purported “regular” prices were not the true regular prices, the purported
20 “discounts” were not the true discounts, and the discounts were ongoing—not time
21 limited. Had Defendant been truthful, Plaintiffs and other consumers like them would
22 not have purchased the Products, or would have paid less for them.

23 12. Plaintiffs bring this case for themselves and the other consumers who
24 purchased SelectBlinds Products.

25 **II. Parties.**

26 13. Plaintiff Roger Barr is domiciled in Camarillo, California.

27 14. Plaintiff Elisa Montes de Oca is domiciled in Elk Grove, California.

28 15. Plaintiff Gabriela Fernandez is domiciled in Modesto, California.

1 16. The proposed class includes citizens of every state.

2 17. Defendant SelectBlinds LLC is a Delaware LLC with its principal place of
3 business in Arizona.

4 **III. Jurisdiction and Venue.**

5 18. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2).
6 The amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and the
7 matter is a class action in which one or more members of the proposed class are citizens
8 of a state different from Defendant. There are at least 100 class members.

9 19. The Court has personal jurisdiction over Defendant because Defendant
10 does business here. Defendant sold the SelectBlinds Products to consumers in
11 California, including to Plaintiffs. Defendant derives substantial revenue from sales of
12 its Products in this State, and markets and sells its Products for use in this State.

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

16 **IV. Facts.**

17 **A. Defendant's fake sales and discounts.**

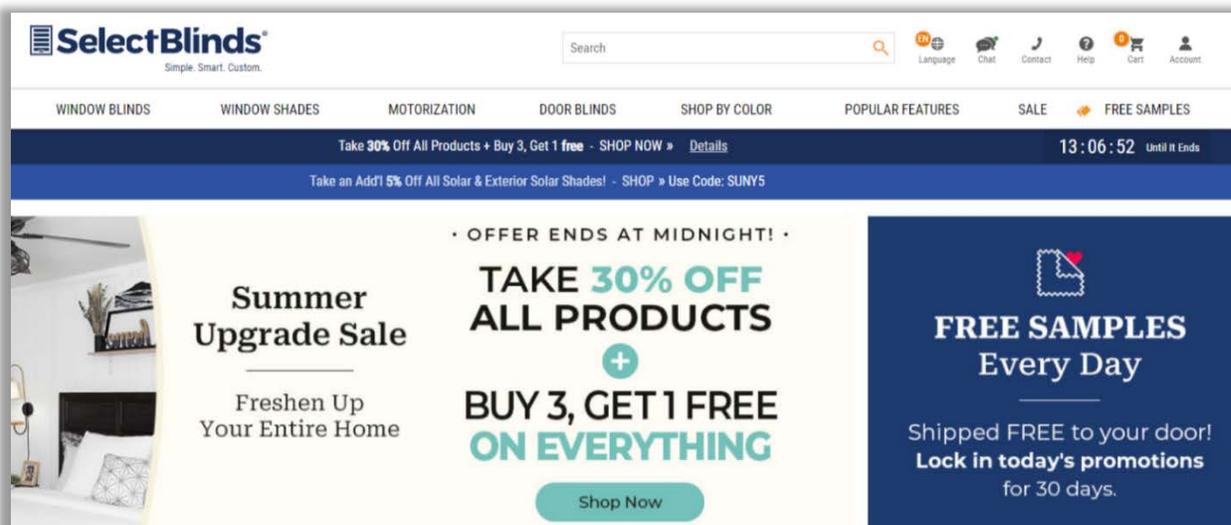
18 21. Defendant manufactures, sells, and markets window and door blinds and
19 shades. Defendant sells its Products directly to consumers online, through its website,
20 SelectBlinds.com.

21 22. Defendant's website creates an illusion that customers are receiving a
22 limited-time discount. Defendant does this by advertising fake limited-time sales, fake
23 regular prices, and fake discounts based on the fake regular prices.

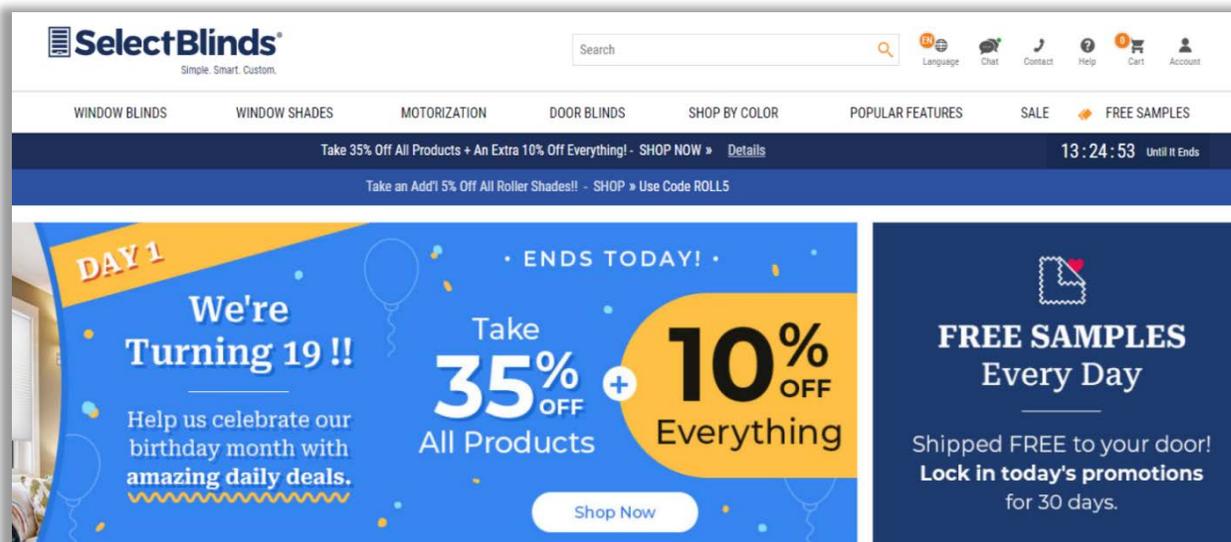
24 Fake limited-time sales:

25 23. At any given time, on its website, Defendant advertises steep sitewide sales
26 and discounts. These discounts always offer at least 30% off the "regular" prices off all
27 Products. Even though in truth these discounts run in perpetuity, Defendant
28 prominently claims they are limited in time and displays a countdown timer indicating so.

1 And it advertises these discounts extensively: on its homepage; on the product search
2 page next to the price of each item; on the product page for each item; on the “shopping
3 cart” pop-up page; and during checkout. Example screenshots are provided below:
4

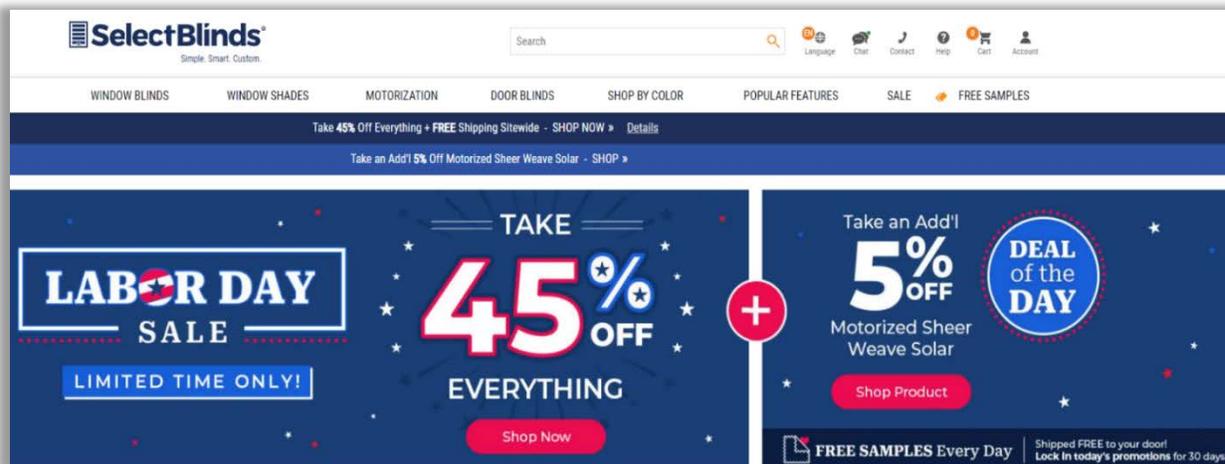


13 Captured July 18, 2022.

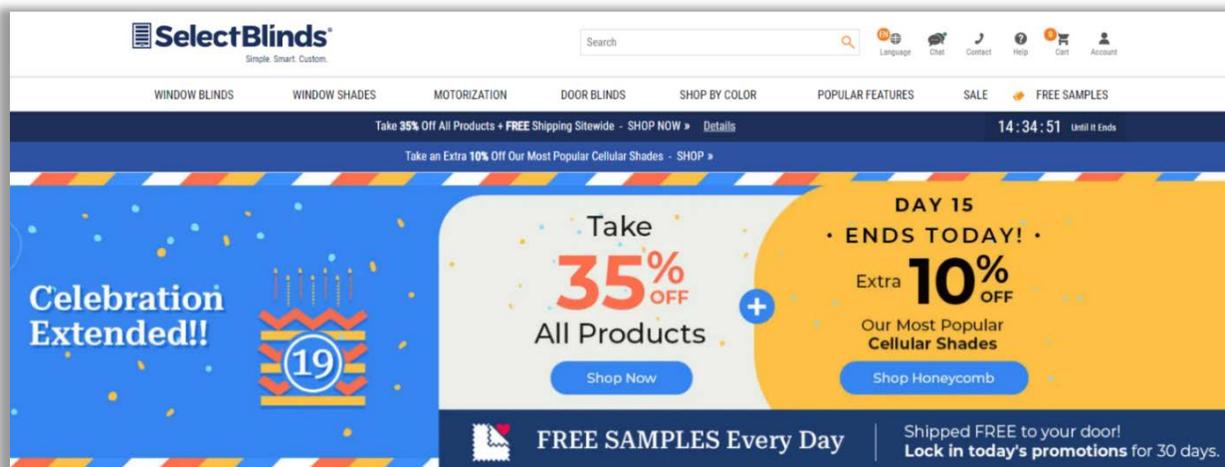


23 Captured August 1, 2022.

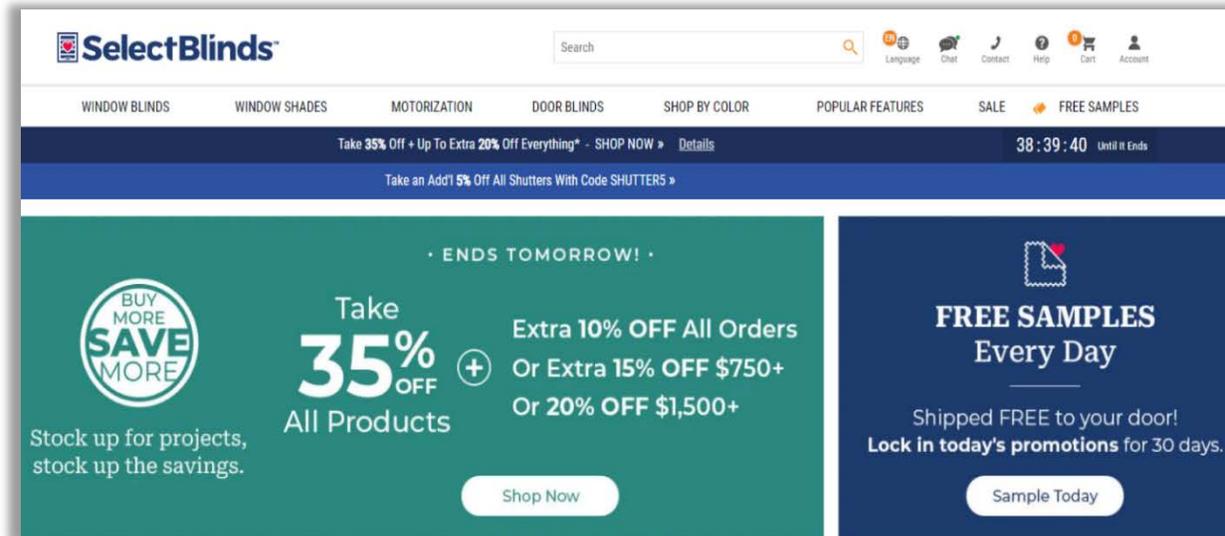
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Captured August 15, 2022.

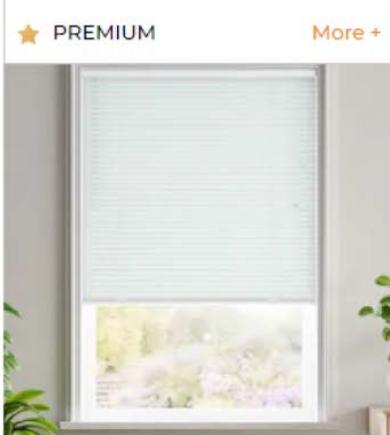


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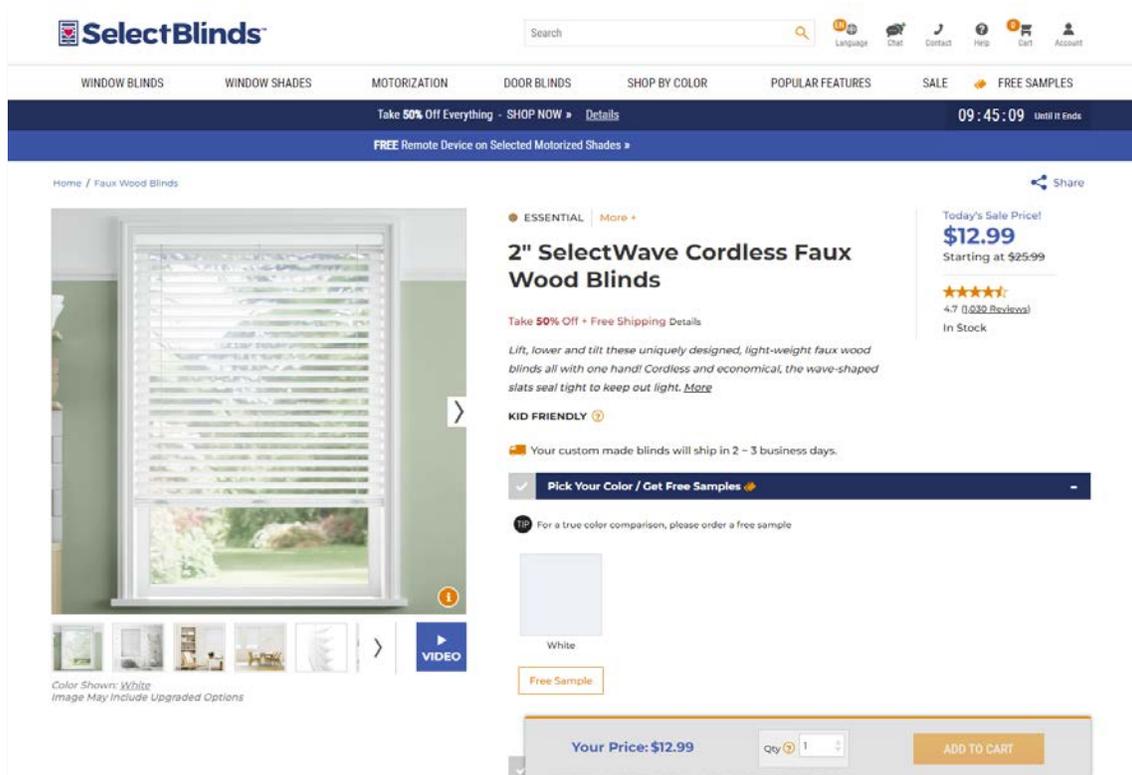


Captured September 26, 2022.

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 <p>SIGNATURE More +</p> <p>Made In Under 5 Days</p> <p>+4 More</p> <p>2" Traditional Cordless Faux Wood Blinds</p> <p>★★★★☆ 4.8 (221 Reviews)</p> <p>Starting at \$106.99</p> <p>Take 50% Off \$53.49</p>	 <p>LUXURY More +</p> <p>+17 More</p> <p>2" Luxe Modern Faux Wood Blinds</p> <p>★★★★☆ 4.8 (3,811 Reviews)</p> <p>Starting at \$118.99</p> <p>Take 50% Off \$59.49</p>	 <p>PREMIUM More +</p> <p>+13 More</p> <p>1" Architect Aluminum Blinds</p> <p>★★★★☆ 4.7 (3,152 Reviews)</p> <p>Starting at \$72.99</p> <p>Take 50% Off \$36.49</p>
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Captured September 15, 2022.



SelectBlinds

Take 50% Off Everything - SHOP NOW » Details 09:45:09 until it ends

FREE Remote Device on Selected Motorized Shades »

Home / Faux Wood Blinds

2" SelectWave Cordless Faux Wood Blinds

Take 50% Off + Free Shipping Details

Lift, lower and tilt these uniquely designed, light-weight faux wood blinds all with one hand! Cordless and economical, the wave-shaped slats seal tight to keep out light. [More](#)

KID FRIENDLY

Your custom made blinds will ship in 2 - 3 business days.

Pick Your Color / Get Free Samples

White

Free Sample

Your Price: \$12.99 Qty 1 ADD TO CART

Today's Sale Price: **\$12.99** Starting at \$25.99

★★★★☆ 4.7 (1,620 Reviews) In Stock

Captured September 15, 2022.

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✓ New item added to cart ✕



2" SelectWave Cordless Faux Wood Blinds

Color: White
Size: 24" w x 36" h

Mount Type: Inside
Warranty: 3-Year Limited Warranty

[Edit](#)

Quantity	1
Unit Price	\$25.99
<hr/>	
Subtotal	\$25.99
50% Off!	-\$13.00
Warranty	FREE
Your Price	\$12.99

Cart Subtotal (1 item): \$12.99

 **Need to save your cart?**
[Create an Account](#) or [Sign In](#)

[Secure Checkout](#)

[View Cart](#)

[Continue Shopping](#)

Captured September 15, 2022.

SelectBlinds EN Language 

1 Shopping Cart
 2 Secure Checkout
 3 Order Confirmation

[Share](#)

REVIEW & CHECKOUT

SIGN IN

- or -

[Forgot Your Password?](#)

Don't have an account with us? You can create one below.

HOW DO YOU WANT TO PAY?

CREDIT CARD






FINANCE



PAYPAL
 

PAYMENT INFORMATION

/






ORDER SUMMARY

Subtotal	\$25.99
50% Off!	-\$13.00
Shipping	FREE
Warranty	FREE
Handling	\$5.95
TOTAL	\$18.94

PLACE ORDER



QTY 1 \$12.99

2" SelectWave Cordless Faux Wood Blinds

[REVIEW ORDER DETAILS](#)

[← EDIT ORDER](#)

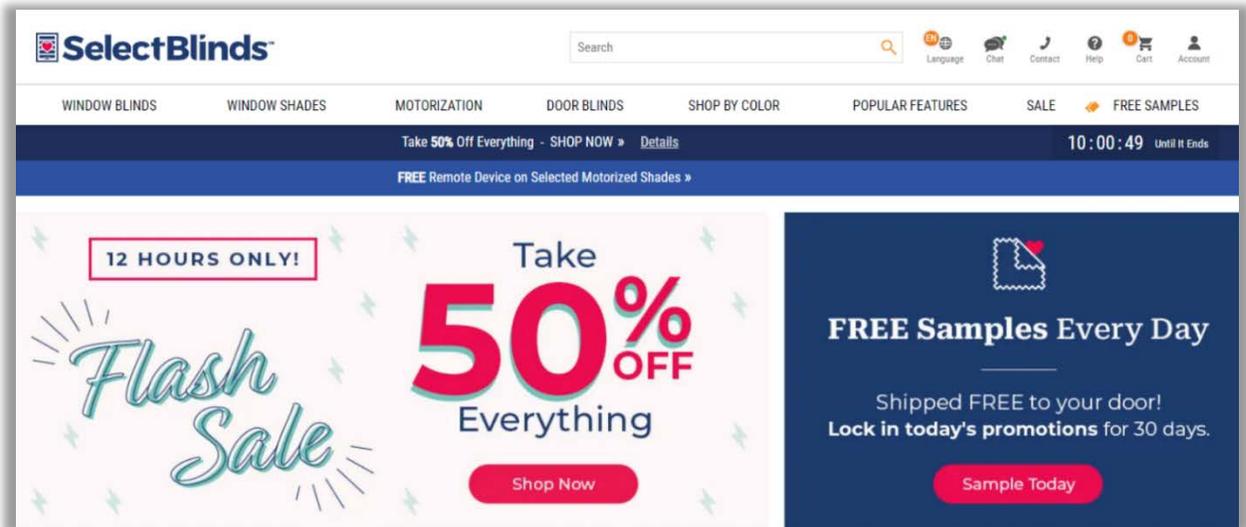
Captured September 15, 2022.

1 26. This same deception has gone on throughout the entire applicable statute
2 of limitations period.

3 27. Defendant’s website persistently misleads consumers into believing that
4 items are on sale, when in fact they are not. It also persistently misleads consumers into
5 believing that the supposed sale prices are available only for a limited time, when in fact
6 the sales never end.

7 Fake regular prices and fake discounts:

8 28. Defendant’s website also lists fake regular prices and fake discounts. For
9 example, on September 15, 2022, Defendant’s website advertised a sale:



19 29. The sale was advertised as ending at midnight that day.

20 30. As part of this sale, Defendant represented to consumers who purchased
21 the 2” SelectWave Cordless Faux Wood Blinds that they would be receiving a discount
22 from a regular price of \$25.99.

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Home / Faux Wood Blinds Share



ESSENTIAL [More +](#)

2" SelectWave Cordless Faux Wood Blinds

Take **50% Off** + Free Shipping Details

Lift, lower and tilt these uniquely designed, light-weight faux wood blinds all with one hand! Cordless and economical, the wave-shaped slats seal tight to keep out light. [More](#)

KID FRIENDLY

Your custom made blinds will ship in 2 - 3 business days.

Pick Your Color / Get Free Samples

TIP For a true color comparison, please order a free sample

White

[Free Sample](#)

Color Shown: White
Image May Include Upgraded Options

[VIDEO](#)

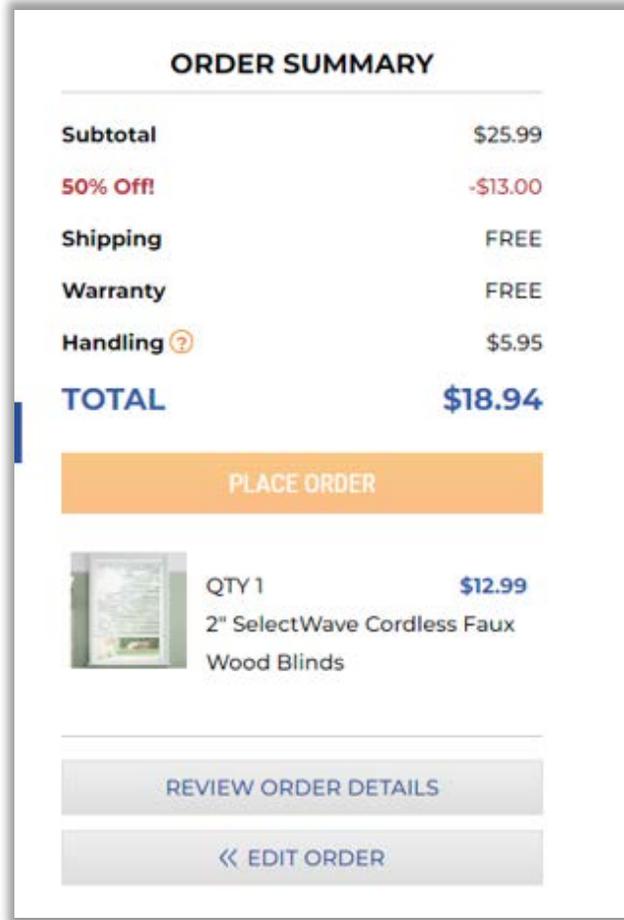
MSRP:	\$25.99
50% Off!	-\$13.00
Shipping:	FREE

Your Price: \$12.99

Qty

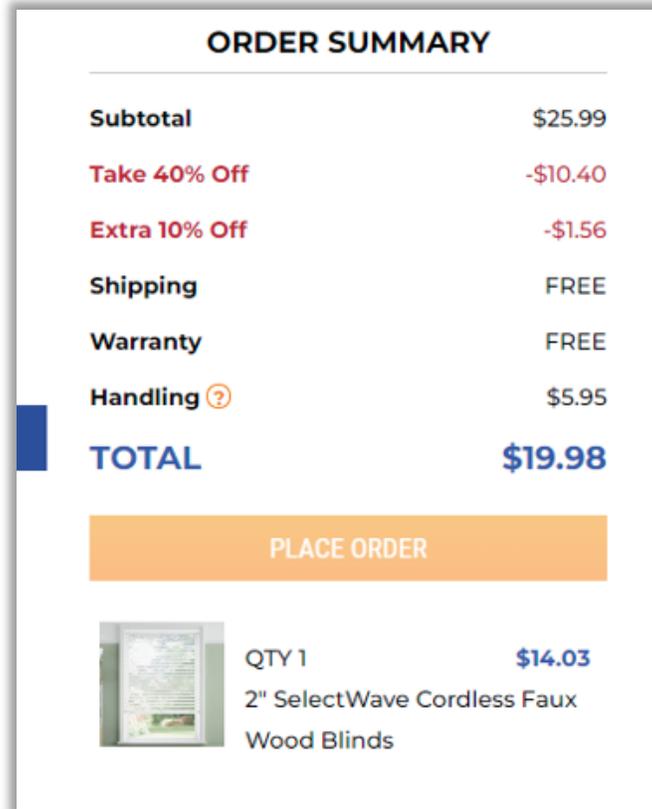
ADD TO CART

1 31. Defendant represented that a customer who purchased the blinds would
2 receive 50% off, or \$13.00 off:



19 32. But the truth is, the blinds are not regularly priced at \$25.99. Instead, the
20 blinds are always sold at a much lower price—at least 30% less.
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1 33. For example, the very next day—when the sale should have already
 2 expired—the same blinds were again available on sale at a comparable amount off (40%
 3 + 10% off):



ORDER SUMMARY	
Subtotal	\$25.99
Take 40% Off	-\$10.40
Extra 10% Off	-\$1.56
Shipping	FREE
Warranty	FREE
Handling ?	\$5.95
TOTAL	\$19.98
PLACE ORDER	
	QTY 1 \$14.03
	2" SelectWave Cordless Faux Wood Blinds

18 34. This cycle never ends: the Products are always advertised as on sale (at a
 19 purported discounted price) for a limited time. The sale is always at least 30% off of
 20 Defendant’s listed regular prices, and is usually close to 50%.

21 35. In several places on Defendant’s website, the purported regular prices are
 22 shown in a strikethrough font (for example ~~\$25.99~~), with a lower price and “Today’s Sale
 23 Price” displayed above them. In other places on Defendant’s website, the purported
 24 regular prices are shown with “X% off” displayed beneath them (for example, in the
 25 screenshot above, a consumer sees “Take 40% off” and “Extra 10% off” directly below
 26 the regular price) and/or with a quantification of the amount that they are purportedly
 27 saving expressed as a negative number in red (for example, -\$10.40). Reasonable
 28 consumers understand these representations to convey that the strikethrough or black

1 font price is the former price at which the items were previously sold (before the time-
2 limited discount) and the prices at which the Products are usually sold, and that the
3 purported percentage off and/or amount saved is the percent or amount off of such
4 regular prices, which the consumer is receiving due to the time-limited discount. For
5 example, where the website shows “~~\$25.99~~” with “Today’s Sale Prices” and “\$12.99”
6 displayed directly above it, a reasonable consumer reasonably understands this to mean
7 that the item was formerly sold at \$25.99, and is usually sold at that price, but is on
8 sale—for a limited time—for \$12.99. To reasonable consumers, a strikethrough price
9 signifies a former price, as well as a regular price, because this notation is commonly
10 used on websites for this reason.

11 36. In some places on its website, Defendant identifies its regular prices as an
12 “MSRP,” which is the “manufacturer’s suggested retail price,” that is, a price established
13 or suggested by a third-party manufacturer. As the FTC regulations explain, “[m]any
14 members of the purchasing public believe that a manufacturer’s list price, or suggested
15 retail price, is the price at which an article is generally sold. Therefore, if a reduction
16 from this price is advertised, many people will believe that they are being offered a
17 genuine bargain.” 16 C.F.R. § 233.3. Accordingly, Defendant’s MSRP notation further
18 conveys to reasonable consumers that Defendant’s purported list prices are the “regular”
19 prevailing prices at which Defendant’s articles are typically sold. In fact, however, as
20 explained above, Defendant’s advertised “MSRPs” are not the prices at which the
21 Products are generally sold. In reality, the Products are *never* sold at the MSRPs.
22 Denoting those prices as “MSRPs” is misleading to reasonable consumers for this
23 reason.

24 37. Moreover, denoting those prices as “MSRPs” is misleading for a second
25 reason: the prices at issue are *not MSRPs at all*. Indeed, unlike articles that have genuine
26 MSRPs, which are manufactured by one company and then sold by other companies to
27 whom the MSRP is suggested, here Defendant is both the manufacturer and the retailer.
28 The Products are manufactured by Defendant, directly or by an agent under Defendant’s

1 direction and control. So the purported “MSRPs” are not the manufacturer’s suggested
2 retail price in any sense; they are simply made-up prices that Defendant puts on its
3 website to trick consumers into thinking that they are being offered a genuine bargain,
4 when in fact they are not.

5 38. To be sure, the FTC regulations in question provide that “a manufacturer
6 or other distributor who does business on a large regional or national scale cannot be
7 required to police or investigate in detail the prevailing prices of his articles throughout
8 so large a trade area. If he advertises or disseminates a list or preticketed price in good
9 faith (i.e., as an honest estimate of the actual retail price) which does not appreciably
10 exceed the highest price at which substantial sales are made in his trade area, he will not
11 be chargeable with having engaged in a deceptive practice.” 16 C.F.R. § 233.3.
12 Defendant’s MSRPs, however, are the opposite of this. Defendant is not a manufacturer
13 or distributor who does business on a national scale and is unable to police the prices
14 that third party retailers charge. Rather, Defendant is a vertically integrated
15 manufacturer-retailer who knows exactly what the prevailing prices of its Products are
16 because Defendant itself is the only retailer who sells those Products. And Defendant’s
17 MSRPs are not good faith, honest estimates of the actual retail prices of its Products.
18 Nor do those MSRPs not appreciably exceed the highest price at which substantial sales
19 are made in Defendant’s trade area. Rather, Defendant sets its MSRPs in bad faith,
20 knowing that they are not honest estimates of actual retail prices but are in fact
21 intentionally inflated prices that exceed actual retail prices by at least 30%-45%. So
22 Defendant’s MSRPs are not consistent with, and instead expressly and intentionally
23 violate, the applicable FTC regulations.

24 39. Defendant’s sitewide sales have persisted continuously since at least
25 October 10, 2018 (the relevant statute of limitations period). For example, 66 randomly
26 selected screenshots of Defendant’s website, SelectBlinds.com, were collected from the
27 Internet Archive’s Wayback Machine, from the 2018-2022 period. In addition, 87
28 additional screen captures of the SelectBlinds.com website were captured in 2022 by

1 visiting the website and recording screen captures. One hundred percent of the 153
2 screenshots of Defendant’s website, captured on the Wayback Machine and directly on
3 the website, displayed a purportedly time-limited discount of at least 30%.¹

4 40. Reasonable consumers do not realize the fake nature of the sale. It is not
5 apparent from merely purchasing the Products, because the sale appears to be a bona
6 fide sale. Consumers do not have any reason to go back to the site day after day to
7 discover that there is a sale. And, even a consumer who occasionally checks the website
8 would reasonably believe that there happened to be another sale. Discovering
9 Defendant’s deception required extensive mining of internet archives, which revealed
10 that the sale is not limited in time, that the discounts are fake, and that the advertised
11 regular prices are fake.

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

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

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

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

27
28 ¹ The Internet Archive, available at archive.org, is a library that archives web pages. <https://archive.org/about/>

1 44. The Federal Trade Commission’s regulations also prohibit false or
2 misleading “former price comparisons,” for example, making up “an artificial, inflated
3 price ... for the purpose of enabling the subsequent offer of a large reduction” off that
4 price. 16 C.F.R. § 233.1. They further prohibit false or misleading “retail price
5 comparisons” and “comparable value comparisons,” for example, ones that falsely
6 suggest that the seller is “offer[ing] goods at prices lower than those being charged by
7 others for the same merchandise” when this is not the case. 16 C.F.R. § 233.2. And,
8 they require that manufacturers and retailers “act honestly and in good faith in
9 advertising a list price ... and not with the intention of establishing a basis ... for a
10 deceptive comparison.” 16 C.F.R. § 233.3.

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

13 46. Here, as described in detail above, Defendant made untrue and misleading
14 statements about its prices. Defendant listed former prices that were not true former
15 prices, were not “actual, bona fide price[s] at which the article[s] were offered to the
16 public on a regular basis for a reasonably substantial period of time,” and were not the
17 prevailing market price in the three months immediately preceding Defendant’s price
18 representations. In addition, Defendant advertised goods or services with the intent not
19 to sell them as advertised, for example, by advertising goods having certain former prices
20 and/or market values without the intent to sell goods having those former prices and/or
21 market values. Defendant made false or misleading statements of fact concerning the
22 reasons for, existence of, and amounts of price reductions, including false statements
23 regarding the limited-time nature of the sitewide sales (e.g., including countdown timers
24 indicating when the sale ends when in fact the sale is ongoing), the existence of sitewide
25 sales, and the amounts of price reductions resulting from those sales. And Defendant
26 acted dishonestly and engaged in unlawful, unfair, and deceptive business practices.

27
28

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

2 47. Based on Defendant’s advertisements, reasonable consumers would expect
3 that the listed regular prices are prices that Defendant actually sells its Products for.
4 Reasonable consumers would also expect that, if they purchase during the sale, they will
5 receive a discount from the regular purchase price. Reasonable consumers would also
6 expect that, if they purchase during the sale, they will receive an item whose regular price
7 and/or market value is the listed regular price and that they will receive the advertised
8 discount from the regular purchase price.

9 48. As explained above, however, Plaintiffs and class members’ reasonable
10 expectations were not met. Instead of receiving an item with a regular price and market
11 value equal to the listed regular price, they received an item worth 30-45% less. In
12 addition, instead of receiving a significant discount, Plaintiffs and the class received little
13 or no discount, or in some cases even received an item whose regular price and market
14 value were *less* than what they paid. Thus, Defendant’s false advertisements harm
15 consumers by depriving them of their reasonable expectations to which they are entitled.

16 49. In addition, consumers are more likely to buy the product if they believe
17 that the product is on sale and that they are getting a substantial discount. Consumers
18 that are presented with discounts are substantially more likely to make the purchase.
19 “Nearly two-thirds of consumers surveyed admitted that a promotion or a coupon often
20 closes the deal, if they are wavering or are undecided on making a purchase.”² And,
21 “two-thirds of consumers have made a purchase they weren't originally planning to make
22 solely based on finding a coupon or discount,” and “80% [of consumers] said they feel
23 encouraged to make a first-time purchase with a brand that is new to them if they found
24 an offer or discount.”³ Similarly, when consumers believe that an offer is expiring soon,
25

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

28 ³ [RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases Online, Especially Among Millennial Buyers \(prnewswire.com\)](#).

1 the sense of urgency makes them more likely to buy a product.⁴ Thus, Defendant's
2 advertisements harmed Plaintiffs and class members by inducing them to make
3 purchases they would not have otherwise made based on false information.

4 50. In addition, by the same mechanisms, Defendant's advertisements
5 artificially increase consumer demand for Defendant's Products. This puts upward
6 pressure on the prices that Defendant can charge for its Products. As a result,
7 Defendant can charge a price premium for its Products, that it would not be able to
8 charge absent the misrepresentations described above. So, due to Defendant's
9 misrepresentations, Plaintiffs and the class paid more for the Products they bought than
10 they otherwise would have.

11 **D. Plaintiffs were misled by Defendant's misrepresentations.**

12 51. On January 21, 2019, Mr. Barr bought 2" SelectWave Cordless Faux Wood
13 Blinds and 1" Signature Aluminum Blinds from Defendant's website while living in
14 Camarillo, California. The Products were prominently advertised as being on sale—50%
15 off—for a limited time. Defendant's website published a regular price for the Products
16 that Mr. Barr ordered, and a discounted price. Mr. Barr's invoice also represented that
17 he was receiving a substantial discount for the items that he ordered. Ex. 1.

18 52. On April 24, 2021, Ms. Montes de Oca bought 13 sets of Classic Roman
19 Shades from Defendant's website while living in Elk Grove, California. The Products
20 were prominently advertised as being on sale—30% off, plus 20% off for orders over
21 \$2,000—for a limited time. Defendant's website published a regular price for the
22 Products that Ms. Montes de Oca ordered, and a discounted price. Ms. Montes de Oca's
23 invoice also represented that she was receiving a substantial discount for the items that
24 she ordered. Ex. 2.

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

1 53. On March 1, 2022, Ms. Fernandez bought six sets of 2” SelectWave
2 Cordless Faux Wood Blinds from Defendant’s website while living in Modesto,
3 California. The Products were prominently advertised as being on sale—30% off, plus
4 15% off for orders over \$750, and an additional 5% off—for a limited time.
5 Defendant’s website published a regular price for the Products that Ms. Fernandez
6 ordered, and a discounted price. Ms. Fernandez’s invoice also represented that she was
7 receiving a substantial discount for the items that she ordered. Ex. 3.

8 54. Plaintiffs read and relied on the representations on the website that the
9 Products had the published regular price, and that they were receiving a discount as
10 compared to the regular price. In particular, each Plaintiff relied on 1) the regular prices
11 that were prominently advertised throughout the website, including in strikethrough
12 font; 2) the purported discounts (e.g., “50% off”) and savings (e.g., the negative numbers
13 in red font denoting the purported dollar-denominated savings) and 3) the
14 representations that the sales were time-limited. Plaintiffs would not have purchased the
15 Products, or would have paid less for the Products, if they knew that they were not on
16 sale, and that they were not receiving the promised discounts.

17 55. At the time that Plaintiffs purchased the Products, they did not know that
18 Defendant’s sales were not real, that the discounts were fake, and that the sales were not
19 ending soon. Nor did they have any reason to suspect that the sales were fake when
20 they purchased the Products. Plaintiff Barr did not discover Defendant’s deception until
21 September 2022, when he learned that Defendant’s Products are always discounted, and
22 that, as a result, he did not receive the sale he was promised.

23 56. Plaintiffs face an imminent threat of future harm. Plaintiffs would
24 purchase Products from Defendant again in the future if they could feel sure that
25 Defendant’s regular prices accurately reflected Defendant’s former prices and the market
26 value of the Products, and that its discounts were truthful. But without an injunction,
27 Plaintiffs have no realistic way to know which—if any—of Defendant’s regular prices,
28 discounts, and sales are not false or deceptive. Accordingly, Plaintiffs are unable to rely

1 on Defendant's advertising in the future, and so cannot purchase Products they would
2 like to purchase.

3 **E. Defendant breached its contracts.**

4 57. When Plaintiffs purchased and paid for the SelectBlinds Products that they
5 bought as described above, they accepted offers that Defendant made, and thus,
6 contracts were formed at the time that they made the purchases. The offer was to
7 provide Products having a particular listed regular price, market value and MSRP, and to
8 provide those Products at the discounted prices advertised on the website.

9 58. For example, for Mr. Barr, the offer was to provide (among other things)
10 2" SelectWave Cordless Faux Wood Blinds having a regular unit price of \$52.64, for a
11 discounted price of \$29.48 plus tax, and to provide a discount of \$23.16 off of the
12 regular price.

13 59. For Ms. Montes de Oca, the offer was to provide (among other things)
14 Classic Roman Shades having a regular unit price of \$305.48, for a discounted price of
15 \$171.07 plus tax, and to provide a discount of \$134.41 off of the regular price.

16 60. For Ms. Fernandez, the offer was to provide (among other things) 2"
17 SelectWave Cordless Faux Wood Blinds having a regular unit price of \$165.51, for a
18 discounted price of \$93.56 plus tax, and to provide a discount of \$71.95 off of the
19 regular price.

20 61. Each Plaintiff and Defendant entered a contract. The contracts were
21 memorialized in Defendant's order confirmations. The order confirmations list the
22 market value of the items that Defendant promised to provide, and also specified the
23 dollar amount of the discount off the regular price that Defendant promised to provide
24 Plaintiffs.

25 62. The regular price, market value, and MSRP of the Products Plaintiffs would
26 receive, and the amount of the discount that they would be provided off of those prices,
27 were specific and material terms of the contracts. Plaintiffs performed their obligations
28 under the contracts by providing Defendant with the payment of the offer prices.

1 63. Defendant breached its contracts by failing to provide Plaintiffs with
2 Products with a market value, regular price, and MSRP equal to the price displayed on its
3 website, and by failing to provide the discount promised.

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

5 64. Plaintiffs seek damages and, in the alternative, restitution. Plaintiffs are
6 permitted to seek equitable remedies in the alternative because they have no adequate
7 remedy at law.

8 65. A legal remedy is not adequate if it is not as certain as an equitable
9 remedy. The elements of Plaintiffs' equitable claims are different and do not require the
10 same showings as Plaintiffs' legal claims. For example, Plaintiffs' FAL claim under
11 Section 17501 (an equitable claim) is predicated on a specific statutory provision, which
12 prohibits advertising merchandise using a former price if that price was not the
13 prevailing market price within the past 90 days. Cal. Bus. & Prof. Code § 17501.
14 Plaintiffs may be able to prove these more straightforward factual elements, and thus
15 prevail under the FAL, while not being able to prove one or more elements of their legal
16 claims. As a second example, to obtain damages under the CLRA, a plaintiff must show
17 that they complied with the CLRA's notice requirement for damages. No such
18 requirements exist to obtain restitution. Because a plaintiff must make this additional
19 showing to obtain damages, rather than restitution, the legal remedies are more
20 uncertain.

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

24 **V. Class Action Allegations.**

25 67. Plaintiffs bring the asserted claims on behalf of the proposed class of:

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

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

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

Numerosity

69. The proposed class contains members so numerous that separate joinder of each member of the class is impractical.

70. It is estimated that there are hundreds of thousands of proposed class members or more.

Commonality

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

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

1 78. Plaintiffs bring this cause of action on behalf of themselves and members
2 of the California Subclass.

3 79. Defendant has violated Sections 17500 and 17501 of the Business and
4 Professions Code.

5 80. Defendant has violated, and continues to violate, Section 17500 of the
6 Business and Professions Code by disseminating untrue and misleading advertisements
7 to Plaintiffs and subclass members.

8 81. As alleged more fully above, Defendant advertises former prices on its
9 website along with discounts. Defendant advertises former prices on its website by
10 using words and phrases such as “Unit Price,” and/or displaying discounts using words
11 and phrases such as “Discount” or “Today’s Sale Price,” and by crossing out a higher
12 price (e.g., ~~\$25.99~~) or displaying a regular price next to the discount price. Defendant
13 also does this by publishing a purported regular price (e.g., \$25.99), and stating that a
14 discount will be provided during the sale (e.g., “40%,” or publishing a “Discount” with a
15 specific discount amount). Reasonable consumers would understand prices denoted as
16 “regular” prices from which time-limited discounts are calculated to denote “former”
17 prices, i.e., the prices that Defendant charged before the time-limited discount went into
18 effect.

19 82. Defendant has violated, and continues to violate, Section 17501 of the
20 Business and Professions Code by advertising former prices that were not the prevailing
21 market price within three months next immediately preceding the advertisement. As
22 explained above, Defendant’s advertised “regular” prices, which as explained above
23 reasonable consumers would understand to denote former prices, were not the true
24 former prices of the Products. Accordingly, Defendant’s statements about the former
25 prices of their Products were untrue and misleading.

26 83. In addition, Defendant’s former prices did not state clearly, exactly, and
27 conspicuously when, if ever, the former prices prevailed. Defendant does not indicate
28 whether or when the purported former prices were offered at all.

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

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

7 95. Defendant violated, and continues to violate, Section 1770 of the California
8 Civil Code.

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

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

18 98. And Defendant violated, and continues to violate section 1770(a)(13) by
19 making false or misleading statements of fact concerning reasons for, existence of, or
20 amounts of, price reductions on its website, including by (1) misrepresenting the regular
21 prices of the Products, (2) advertising discounts and savings that are exaggerated or
22 nonexistent, (3) misrepresenting that the discounts and savings are unusually large, when
23 in fact they are regularly available, (4) misrepresenting the limited-time nature of the sale
24 (e.g., displaying a countdown clock indicating that they sales will end soon even though
25 the sales do not actually expire), and (5) making false statements regarding the reasons
26 for the sale (e.g., “Labor Day Sale,” when in fact the sale is ongoing and not limited to
27 Labor Day).

28

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

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

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

11 102. Defendant's misrepresentations were a substantial factor and proximate
12 cause in causing damages and losses to Plaintiffs and the California Subclass.

13 103. Plaintiffs and the California Subclass were injured as a direct and proximate
14 result of Defendant's conduct because (a) they would not have purchased SelectBlinds
15 Products if they had known that the discounts, regular prices, and/or the limited-time
16 offer were not real, and/or (b) they would have paid less for the Products, and/or (c)
17 they received products with market values lower than the promised market values.

18 104. Accordingly, pursuant to California Civil Code § 1780(a)(2), Plaintiffs, on
19 behalf of themselves and all other members of the California Subclass, seek injunctive
20 relief.

21 105. CLRA § 1782 NOTICE. On September 29, 2022, Mr. Barr sent a CLRA
22 demand letter to Defendant's Arizona headquarters via certified mail (return receipt
23 requested), that provided notice of Defendant's violations of the CLRA and demanded
24 that Defendant correct the unlawful, unfair, false and/or deceptive practices alleged
25 here. On, April 13, 2023, out of an abundance of caution, Ms. Montes de Oca and Ms.
26 Fernandez sent a second and a third CLRA demand letter to Defendant's Arizona
27 headquarters via certified mail (return receipt requested), that provided notice of
28 Defendant's violation of the CLRA and demanded that Defendant correct the unlawful,

1 unfair, false, and/or deceptive practices alleged here. Defendant does not have a
2 California headquarters. It has been more than 30 days since Defendant received notice
3 of its CLRA violations. In that time, it has not corrected the problem for Plaintiffs or
4 for members of the subclass. Accordingly, Plaintiffs seek all monetary relief available
5 under the CLRA.

6 106. Plaintiffs' CLRA venue declarations are attached.

7 **Third Cause of Action:**

8 **Violation of California's Unfair Competition Law**
9 **(by Plaintiffs and the California Subclass)**

10 107. Plaintiffs incorporate each and every factual allegation set forth above.

11 108. Plaintiffs bring this cause of action on behalf of themselves and the
12 California Subclass.

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

16 ***The Unlawful Prong***

17 110. Defendant engaged in unlawful conduct by violating the CLRA and FAL,
18 as alleged above and incorporated here. In addition, Defendant engaged in unlawful
19 conduct by violating the FTCA. The FTCA prohibits "unfair or deceptive acts or
20 practices in or affecting commerce" and prohibits the dissemination of false
21 advertisements. 15 U.S.C. § 45(a)(1), 15 U.S.C. § 52(a). As the FTC's regulations make
22 clear, Defendant's false pricing schemes violate the FTCA. 16 C.F.R. § 233.1, § 233.2,
23 § 233.3. Among other things, the regulations explain that a manufacturer or retailer
24 must "act honestly and in good faith in advertising a list price ... and not with the
25 intention of establishing a basis ... for a deceptive comparison." *Id.* at § 233.3. Here,
26 Defendant dishonestly advertised regular prices that it knows its Products have never
27 been sold at so that it could deceive consumers into thinking they were getting a good
28 deal. In addition, Defendant dishonestly advertises bad faith, fictitious "MSRPs" that

1 are not actually the manufacturer’s suggested retail prices and do not correspond to
2 prices at which a substantial number of sales of the articles in question are made.

3 ***The Deceptive Prong***

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

7 112. Defendant’s representations were misleading to Plaintiffs and other
8 reasonable consumers.

9 113. Plaintiffs relied upon Defendant’s misleading representations and
10 omissions, as detailed above.

11 ***The Unfair Prong***

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

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

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

23 117. Plaintiffs and the California Subclass could not have reasonably avoided
24 this injury. As alleged above, Defendant’s representations were deceptive to reasonable
25 consumers like Plaintiffs.

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

28 * * *

1 the invoice. They also required that Defendant provide Plaintiffs and class members
2 with the discount listed in the invoice. These were specific and material terms of the
3 contract.

4 128. The specific discounts were a specific and material term of each contract,
5 and were displayed to Plaintiffs and class members at the time they placed their orders.
6 The discounts were further memorialized in the order confirmations that Defendant
7 emailed to customers after they had placed their orders.

8 129. Plaintiffs and the class members paid Defendant for the Products they
9 ordered, and satisfied all other conditions of their contracts.

10 130. Defendant breached the contracts with Plaintiffs and class members by
11 failing to provide Products that had a market value equal to the regular price displayed
12 on its website, and by failing to provide the promised discount. Defendant instead
13 charged Plaintiffs and class members the full market price of the Products they ordered.
14 Defendant did not provide the discount that it had promised.

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

18 **Fifth Cause of Action:**

19 **Breach of Express Warranty**

20 **(by Plaintiffs and the Nationwide Class)**

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

22 133. Plaintiffs bring this count individually and for the Nationwide Class. In the
23 alternative, Plaintiffs bring this cause of action on behalf of themselves and the
24 California subclass.

25 134. Defendant, as the designer, manufacturer, marketer, distributor, supplier,
26 and/or seller of the SelectBlinds Products, issued material, written warranties by
27 advertising that the Products had a market value equal to the regular price displayed on
28

1 Defendant's website. This was an affirmation of fact about the Products (i.e., a
2 representation about the market value) and a promise relating to the goods.

3 135. Defendant also issues material, written warranties by advertising that the
4 Products sold to Plaintiffs and class members were being sold at a specific discounted
5 price.

6 136. These warranties were part of the basis of the bargain and Plaintiffs and the
7 class members of the class relied on this warranty.

8 137. In fact, the SelectBlinds Products did not have the stated market value.
9 And, Plaintiffs and class members did not receive the Products at the discounted price
10 promised them. Thus, Defendant's warranties were breached.

11 138. Mr. Barr provided Defendant with notice of its breach of warranty, by
12 mailing a notice letter to Defendant's headquarters, on September 21, 2022.

13 139. Ms. Montes de Oca provided Defendant with notice of its breach of
14 warranty, by mailing a notice letter to Defendant's headquarters, on April 13, 2023.

15 140. Ms. Fernandez provided Defendant with notice of its breach of warranty,
16 by mailing a notice letter to Defendant's headquarters, on April 13, 2023.

17 141. Plaintiffs and the class were injured as a direct and proximate result of
18 Defendant's breach, and this breach was a substantial factor in causing harm, because (a)
19 they would not have purchased SelectBlinds Products if they had known that the
20 warranties were false, or (b) they overpaid for the Products due to the warranties.

21 **Sixth Cause of Action:**

22 **Quasi-Contract/Unjust Enrichment**

23 **(by Plaintiffs and the Nationwide Class)**

24 142. Plaintiffs incorporate each and every factual allegation set forth above.

25 143. Plaintiffs allege this claim individually and on behalf of the Nationwide
26 Class. In the alternative, Plaintiffs bring this cause of action on behalf of themselves and
27 the California Subclass.

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