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

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

18 Plaintiff,

19 v.

20 AMERICAN TEXTILE
 21 COMPANY, INC.

22 Defendant.

Case No. 3:23-cv-01879-CAB-SBC

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

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INTRODUCTION

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

11 2. Unfortunately, Defendant’s labeling is false and misleading.
12 Independent laboratory testing using the industry standard testing methodology
13 revealed that the Sealy Products only have a thread count of 234.² Accordingly,
14 Defendant’s thread count claim is inaccurate.

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

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

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

28 ² See **Exhibit A** attached hereto.

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JURISDICTION AND VENUE

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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:



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



19
20 **TESTING REVEALS THAT DEFENDANT’S THREAD COUNT CLAIMS ARE FALSE**

21 12. Independent laboratory testing shows that Defendant’s thread count
22 claims are false.³

23 13. On October 2, 2023, a Sealy Product labeled as having a “1250
24 Thread Count” was sent to the IDFL Laboratory and Institute (“IDFL”) in Salt
25 Lake City, Utah for laboratory analysis. IDFL “is one of the global leaders in
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28 ³ See **Exhibit A** attached hereto.

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1 auditing and testing for filled textiles” and “one of the largest filled-textile
2 laboratories in the world.”⁴

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

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

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

14 16. Consumers who purchase bed sheets rely on a product’s thread counts
15 as an indication of quality.⁶ Products with higher thread counts are more expensive
16 than products with lower thread counts.⁷ This is because “[h]igher-thread-count
17 sheets are made with finer (thinner) yarns. The more yarns that fit into a square
18 inch, the smoother, denser, and more durable the fabric. Fine yarn is also more
19 expensive to produce, thus resulting in pricier sheets.”⁸ “When it comes to buying
20

21 ⁴ <https://idfl.com/about/>

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

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

25 ⁷ *Id.*

26 ⁸ Jackie Reeve, *What Is a Good Thread Count for Sheets?*, NEW YORK TIMES
27 (Updated Feb. 11, 2020), available at
28 <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.”⁹

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.”¹⁰ 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.¹¹

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.”¹² 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.”¹³

20 _____
21 ⁹ *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 ¹⁰ *Id.*

24 ¹¹ 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 and attached hereto as **Exhibit B**.

27 ¹² *Id.*

28 ¹³ *Id.*

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

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

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

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

28 ¹⁵ *Id.*

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PLAINTIFF’S EXPERIENCES

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22. Plaintiff Kenya Nelson purchased a queen size set of Defendant’s Sealy bed sheets in approximately January of 2023 from a JC Penny store located in Escondido, California. Plaintiff Nelson paid approximately \$80 for the Product. Plaintiff Nelson saw and relied on the “1250 Thread Count” claim on the label of the Product. Plaintiff reasonably expected that Defendant used an industry standard thread counting methodology to determine that the Product has a “1250 Thread Count” instead of an obscure thread counting methodology that Defendant made up to deceive consumers.

23. 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.” However, after purchasing the Product, Plaintiff discovered that the Product is lower quality, not as soft, and less durable than other bed sheet products that Plaintiff has purchased. For example, Plaintiff has purchased Bella Coterie bed sheets with a 400 thread count claim and found the Bella Coterie bed sheets to be higher quality, softer, and more durable than the Sealy bed sheets with the purported “1250 Thread Count.”

24. 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

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1 Nelson is unable to rely on the Products’ advertising and labeling when deciding
2 in the future whether to purchase the Products.

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

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

10 26. Plaintiff and putative class members are entitled to damages and
11 restitution for the purchase price of the Products that were falsely labeled and
12 advertised. Consumers, including Plaintiff, would not have purchased Defendant’s
13 Products, or would have paid less for the Products, if they had known the Products
14 have an inflated thread count. Defendant charges a premium for the Products.
15 Because Defendant represents that the Products have a “1250 Thread Count,”
16 Defendant is able to charge consumers more money for the Products. Bed sheet
17 products with advertised thread counts between 200 and 300 sell for a much lower
18 price than the Sealy Products that are sold with a false “1250 Thread Count” claim.
19 For example, a queen size set Essential Sateen bed sheets with a “300 Thread
20 Count” are sold at pottery barn for \$38.50.¹⁶ A queen size set of 300 thread count
21 sheets manufactured by Threshold are sold at Target for \$25.00.¹⁷ A 200 thread
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23 ¹⁶ https://www.potterybarn.com/products/pb-essential-300-thread-count-flat-sheet/?sku=111252&cm_ven=PLA&cm_ite=111252_14751347029&cm_cat=Google&cm_pla=Local&gad_source=1&gclid=CjwKCAiA98WrBhAYEiwA2WvhOrQJMWWyJtfqahenAluphIqFjUbomw3g8iNXp00Wk-Affhmm2sAOJBoCdAAQAvD_BwE (last visited Dec. 7, 2023).

26 ¹⁷ https://www.target.com/p/full-300-thread-count-ultra-soft-fitted-sheet-white-threshold-8482/-/A-14196334?ref=tgt_adv_xsp&AFID=google&fndsrc=tgtao&DFA=71700000012510694&CPNG=PLA_Bedding%2BShopping%7CBedding_Ecomm_Home&adgroup=SC_Threshold+Sheets&LID=700000001170770pgs&LNM=PRODUCT_GROUP&network=g&device=c&location=9031330&targetid=pla-

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1 count queen size sheet set manufactured by Linteum Textile are sold at Walmart
2 for \$17.99.¹⁸

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

12 **NO ADEQUATE REMEDY AT LAW**

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

18 29. The scope of actionable misconduct under the unfair prong of the
19 UCL is broader than the other causes of action asserted herein. It includes
20 Defendant’s overall unfair marketing scheme to promote and brand the Products,
21 across a multitude of media platforms, including the product labels, packaging,
22 and online advertisements, over a long period of time, in order to gain an unfair
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24 [1707406141084&ds_rl=1246978&ds_rl=1247068&gad_source=1&gclid=CjwKCAiA98WrBhAYEiwA2WvhOihuE2fkFB7mBGk6H1hJEc55ZVG_LDO0SlcloT5uvzL20ojaowiBIhoCQVsQAvD_BwE&gclsrc=aw.ds&preselect=14196336](https://www.walmart.com/ip/Queen-Flat-Sheets-90-x110-1-Pack-White-200-Thread-Count/2669368209?wmlspartner=wlp&selectedSellerId=9656)
25 (last visited Dec. 6, 2023).

27 ¹⁸ <https://www.walmart.com/ip/Queen-Flat-Sheets-90-x110-1-Pack-White-200-Thread-Count/2669368209?wmlspartner=wlp&selectedSellerId=9656> (last
28 visited Dec. 7, 2023).

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1 advantage over competitor products. Plaintiff and class members may also be
2 entitled to restitution under the UCL, while not entitled to damages under other
3 causes of action asserted herein (e.g., the CLRA is limited to certain types of
4 plaintiffs (an individual who seeks or acquires, by purchase or lease, any goods or
5 services for personal, family, or household purposes) and other statutorily
6 enumerated conduct).

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

27 31. It is premature to determine whether an adequate remedy at law
28 exists. This is an initial pleading and discovery has not yet commenced and/or is

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1 at its initial stages. No class has been certified yet. No expert discovery has
2 commenced and/or completed. The completion of fact/non-expert and expert
3 discovery, as well as the certification of this case as a class action, are necessary
4 to finalize and determine the adequacy and availability of all remedies, including
5 legal and equitable, for Plaintiff’s individual claims and any certified class or
6 subclass. Plaintiff therefore reserves her right to amend this complaint and/or
7 assert additional facts that demonstrate this Court’s jurisdiction to order equitable
8 remedies where no adequate legal remedies are available for either Plaintiff and/or
9 any certified class or subclass. Such proof, to the extent necessary, will be
10 presented prior to the trial of any equitable claims for relief and/or the entry of an
11 order granting equitable relief.

12 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

4 36. Numerosity: Class Members are so numerous that joinder of all
5 members is impracticable. Plaintiff believes that there are thousands of consumers
6 who are Class Members described above who have been damaged by Defendant’s
7 deceptive and misleading practices.

8 37. Commonality: There is a well-defined community of interest in the
9 common questions of law and fact affecting all Class Members. The questions of
10 law and fact common to the Class Members which predominate over any questions
11 which may affect individual Class Members include, but are not limited to:

- 12 a. Whether Defendant is responsible for the conduct alleged herein
- 13 which was uniformly directed at all consumers who purchased the Products;
- 14 b. Whether Defendant’s misconduct set forth in this Complaint
- 15 demonstrates that Defendant engaged in unfair, fraudulent, or unlawful business
- 16 practices with respect to the advertising, marketing, and sale of the Products;
- 17 c. Whether Defendant made misrepresentations concerning the
- 18 Products that were likely to deceive the public;
- 19 d. Whether Plaintiff and the Class are entitled to injunctive relief;
- 20 e. Whether Plaintiff and the Class are entitled to money damages and/or
- 21 restitution under the same causes of action as the other Class Members.

22 38. Typicality: Plaintiff is a member of the Class that Plaintiff seeks to
23 represent. Plaintiff’s claims are typical of the claims of each Class Member in that
24 every member of the Class was susceptible to the same deceptive, misleading
25 conduct and purchased the Products. Plaintiff is entitled to relief under the same
26 causes of action as the other Class Members.

27 39. Adequacy: Plaintiff is an adequate Class representative because
28 Plaintiff’s interests do not conflict with the interests of the Class Members Plaintiff

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1 seeks to represent; the consumer fraud claims are common to all other members of
2 the Class, and Plaintiff has a strong interest in vindicating the rights of the class;
3 Plaintiff has retained counsel competent and experienced in complex class action
4 litigation and Plaintiff intends to vigorously prosecute this action. Plaintiff has no
5 interests which conflict with those of the Class. The Class Members' interests will
6 be fairly and adequately protected by Plaintiff and proposed Class Counsel.
7 Defendant has acted in a manner generally applicable to the Class, making relief
8 appropriate with respect to Plaintiff and the Class Members. The prosecution of
9 separate actions by individual Class Members would create a risk of inconsistent
10 and varying adjudications.

11 40. The Class is properly brought and should be maintained as a class
12 action because a class action is superior to traditional litigation of this controversy.
13 A class action is superior to the other available methods for the fair and efficient
14 adjudication of this controversy because:

15 a. The joinder of hundreds of individual Class Members is
16 impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or
17 litigation resources;

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

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

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

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

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1 f. This class action will assure uniformity of decisions among Class
2 Members;

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

5 h. Class Members’ interests in individually controlling the prosecution
6 of separate actions is outweighed by their interest in efficient resolution by single
7 class action;

8 41. Additionally or in the alternative, the Class also may be certified
9 because Defendant has acted or refused to act on grounds generally applicable to
10 the Class thereby making final declaratory and/or injunctive relief with respect to
11 the members of the Class as a whole, appropriate.

12 42. Plaintiff seeks preliminary and permanent injunctive and equitable
13 relief on behalf of the Class, on grounds generally applicable to the Class, to enjoin
14 and prevent Defendant from engaging in the acts described, and to require
15 Defendant to provide full restitution to Plaintiff and the Class members.

16 43. Unless the Class is certified, Defendant will retain monies that were
17 taken from Plaintiff and Class members as a result of Defendant’s wrongful
18 conduct. Unless a classwide injunction is issued, Defendant will continue to
19 commit the violations alleged and the members of the Class and the general public
20 will continue to be misled.

21 **FIRST CLAIM FOR RELIEF**

22 **Violation of California’s Consumers Legal Remedies Act**

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

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

26 45. Plaintiff brings this claim under the CLRA individually and on behalf
27 of the Class against Defendant.

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1 46. At all times relevant hereto, Plaintiff and the members of the Class
2 were “consumer[s],” as defined in California Civil Code section 1761(d).

3 47. At all relevant times, Defendant was a “person,” as defined in
4 California Civil Code section 1761(c).

5 48. At all relevant times, the Products manufactured, marketed,
6 advertised, and sold by Defendant constituted “goods,” as defined in California
7 Civil Code section 1761(a).

8 49. The purchases of the Products by Plaintiff and the members of the
9 Class were and are “transactions” within the meaning of California Civil Code
10 section 1761(e).

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

20 a) Defendant represented that the Products have characteristics,
21 ingredients, uses, and benefits which they do not have (Cal. Civ. Code §
22 1770(a)(5));

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

25 c) Defendant advertised the Products with an intent not to sell the
26 Products as advertised (Cal. Civ. Code § 1770(a)(9)); and
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1 d) Defendant represented that the subject of a transaction has been
2 supplied in accordance with a previous representation when it has not (Cal. Civ.
3 Code § 1770(a)(16)).

4 51. Defendant violated the CLRA because the Products were prominently
5 advertised as having a certain thread count, but, in reality, the Products have a
6 lower than advertised thread count. Defendant knew or should have known that
7 consumers would want to know the actual thread count of the Products. For
8 example, Defendant placed the thread count representation on the front of the
9 packaging. Defendant had exclusive knowledge of the actual thread counts of the
10 Products, and Defendant failed to disclose this fact. Defendant actively concealed
11 this material fact. The fact that the Products have a lower than advertised thread
12 count is material to consumers because reasonable consumers would deem this
13 fact important in determining whether to buy the Products.

14 52. Defendant’s actions as described herein were done with conscious
15 disregard of Plaintiff’s and the Class members’ rights and were wanton and
16 malicious.

17 53. Defendant’s wrongful business practices constituted, and constitute,
18 a continuing course of conduct in violation of the CLRA, since Defendant is still
19 representing that the Products have characteristics which they do not have.

20 54. Pursuant to California Civil Code section 1782(d), Plaintiff and the
21 members of the Class seek an order enjoining Defendant from engaging in the
22 methods, acts, and practices alleged herein, actual damages, punitive damages, and
23 attorneys’ fees and costs.

24 55. Pursuant to California Civil Code section 1782, Plaintiff sent a pre-
25 suit demand letter to Defendant on October 13, 2023 via certified mail, return
26 receipt requested. Plaintiff’s letter notified Defendant of the alleged violations of
27 the CLRA and demanded that Defendant rectify the problems associated with the
28 actions detailed above and give notice to all affected consumers of their intent to

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1 so act. More than 30 days have passed since Defendant received Plaintiff’s letter
2 and Defendant has failed to take any corrective action. Accordingly, Plaintiff seeks
3 actual damages, punitive damages, injunctive relief, and attorneys’ fees and costs
4 for Defendant’s violations of the CLRA.

5 56. Pursuant to section 1780(d) of the CLRA, attached is an affidavit
6 showing that this action was commenced in a proper forum.

7 **SECOND CLAIM FOR RELIEF**

8 **Violation of California’s Unfair Competition Law**

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

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

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

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

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

25 61. Defendant committed “unfair” business acts or practices by: (1)
26 engaging in conduct where the utility of such conduct is outweighed by the harm
27 to Plaintiff and the members of the a Class; (2) engaging in conduct that is
28 immoral, unethical, oppressive, unscrupulous, or substantially injurious to

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1 Plaintiff and the members of the Class; and (3) engaging in conduct that
 2 undermines or violates the intent of the consumer protection laws alleged herein.
 3 There is no societal benefit from deceptive advertising. Plaintiff and the other
 4 Class members paid for a Product that is not as advertised by Defendant. Further,
 5 Defendant failed to disclose a material fact (that the Products have a lower than
 6 advertised thread count) of which they had exclusive knowledge. While Plaintiff
 7 and the other Class members were harmed, Defendant was unjustly enriched by its
 8 false misrepresentations and material omissions. As a result, Defendant’s conduct
 9 is “unfair,” as it offended an established public policy. There were reasonably
 10 available alternatives to further Defendant’s legitimate business interests, other
 11 than the conduct described herein. For example, several of Defendant’s
 12 competitors accurately label the thread counts of their linen products.

13 62. Defendant committed “fraudulent” business acts or practices by
 14 making the representations of material fact regarding the Products set forth herein.
 15 Defendant’s business practices as alleged are “fraudulent” under the UCL because
 16 they are likely to deceive customers into believing the Products have accurate
 17 thread count claims on the labels.

18 63. Plaintiff and the other members of the Class have in fact been
 19 deceived as a result of their reliance on Defendant’s material representations and
 20 omissions. This reliance has caused harm to Plaintiff and the other members of the
 21 Class, each of whom purchased Defendant’s Products. Plaintiff and the other Class
 22 members have suffered injury in fact and lost money as a result of purchasing the
 23 Products and Defendant’s unlawful, unfair, and fraudulent practices.

24 64. Defendant’s wrongful business practices and violations of the UCL
 25 are ongoing.

26 65. Plaintiff and the Class seek pre-judgment interest as a direct and
 27 proximate result of Defendant’s unfair and fraudulent business conduct. The
 28 amount on which interest is to be calculated is a sum certain and capable of

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1 calculation, and Plaintiff and the Class seek interest in an amount according to
2 proof.

3 66. Unless restrained and enjoined, Defendant will continue to engage in
4 the above-described conduct. Accordingly, injunctive relief is appropriate.
5 Pursuant to California Business & Professions Code section 17203, Plaintiff,
6 individually and on behalf of the Class, seek (1) restitution from Defendant of all
7 money obtained from Plaintiff and the other Class members as a result of unfair
8 competition; (2) an injunction prohibiting Defendant from continuing such
9 practices in the State of California that do not comply with California law; and (3)
10 all other relief this Court deems appropriate, consistent with California Business
11 & Professions Code section 17203.

12 **THIRD CLAIM FOR RELIEF**

13 **Breach of Express Warranty**

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

16 68. Plaintiff brings this claim for breach of express warranty individually
17 and on behalf of the Class against Defendant.

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

22 70. Plaintiff and the Class reasonably relied on Defendant’s
23 misrepresentations, descriptions and specifications regarding the Products’ thread
24 count, quality, durability, and fitness of the products.

25 71. Defendant’s representations were part of the description of the goods
26 and the bargain upon which the goods were offered for sale and purchased by
27 Plaintiff and Members of the Class.

28

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

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

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

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

8 **JURY DEMAND**

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

11
12
13 Dated: December 11, 2023

CROSNER LEGAL, P.C.

14 By: /s/ Michael T. Houchin

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