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14 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

15 COUNTY OF ALAMEDA

17 OMAR MASRY, an individual; ELLIOT
 MASS, an individual, on behalf of
 18 themselves and all others similarly situated,

19 Plaintiffs,

20 v.

21 LOWE'S COMPANIES, INC. a North
 Carolina corporation; LOWE'S HOME
 22 CENTERS, LLC, a North Carolina limited
 liability company; and DOES 1 through
 23 100, inclusive,

24 Defendants.

No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 COMPLAINT

2 Plaintiffs Omar Masry and Elliot Mass, by and through their undersigned counsel, on their
3 own behalf and on behalf of all other persons similarly situated (residents of California only)
4 (collectively, “Plaintiffs”), sue Lowe’s Companies, Inc.; Lowe’s Home Centers, LLC (collectively
5 “Lowe’s”); and DOES 1 through 100 (“Doe Defendants”) (Lowe’s and Doe Defendants are
6 collectively referred to herein simply as the “Defendants”) and for this Complaint, allege upon
7 information and belief, and based on the investigation to date of their counsel, as follows:

8 INTRODUCTION

9 1. This is a class action brought for the benefit and protection of Plaintiffs, and all other
10 similarly situated consumers who are residents of California and who used or completed sales
11 transactions via Defendants’ website, “lowes.com”, or accessed Defendants’ advertisements,
12 related services, mobile applications, or any APIs or plugins (collectively the “Sites”).

13 2. By way of this action, Plaintiffs, and all others similarly situated, seek damages,
14 restitution, injunctive relief, public injunctive relief, and other relief necessitated by Defendants’
15 unlawful and unfair actions in violation of California Civil Code section 1670.8 and California
16 Business and Professions Code section 17200. Plaintiffs on behalf of themselves and all others
17 similarly situated seek an order permanently enjoining Defendants from engaging in these ongoing
18 unlawful and unfair practices, and civil penalties and damages available under California law.

19 3. Because of the current power of the internet and social media platforms to publicize
20 a company’s offerings of goods or services—and the potential harm to corporate interests when
21 negative consumer statements “go viral”—Defendants have a significant incentive to minimize the
22 negative publicity they receive, including in the form of negative online reviews and comments.
23 Some companies have gone so far as to attempt to prohibit customers and potential customers from
24 making negative statements about the goods or services they offer, to the detriment of consumers,
25 potential consumers, and the public of the State of California. Fortunately, California Civil Code
26 section 1670.8 was enacted to protect the right of California consumers to voice their opinions,
27 observations, and experiences about the products and services delivered or offered to California
28 consumers, as well as the citizens of the State of California. The California Legislature reasonably

1 and correctly determined that such freedom is important to keep the public informed and keep large
2 corporations honest about the quality of the goods or services they offer to consumers.

3 4. Section 1670.8(a) provides as follows: “(1) **A contract or proposed contract** for
4 the sale or lease of consumer goods or services **may not include a provision waiving the**
5 **consumer’s right to make any statement** regarding the seller or lessor or its employees or agents,
6 or concerning the goods or services” and “(2) **It shall be unlawful to threaten or seek to enforce**
7 **a provision made unlawful under this section, or to otherwise penalize a consumer for making**
8 **any statement protected under this section.**” Section 1670.8’s protections are so important that
9 the statute expressly provides that “**any waiver of the provisions of this section is contrary to**
10 **public policy, and is void and unenforceable.**”

11 5. In order to use and benefit from the Sites, visitors, or users, of the Sites are informed
12 that they must agree to Defendants’ Terms and Conditions of Use (“Terms”). Defendants assert
13 that simply using the Sites “constitutes . . . unconditional agreement to be bound by these terms and
14 conditions” as well as related privacy and security statements—regardless of whether users are
15 simply visiting the Sites or are actual purchasers or registered members of the Sites.

16 6. While conducting substantial business with California consumers, the Terms
17 Defendants impose upon their customers and prospective customers clearly violate Section 1670.8.
18 Pursuant to the Terms that Defendants impose upon their customers for the privilege of accessing
19 the goods and/or services offered and promoted on the Sites, Defendants require users to agree they
20 will not post any content to the Sites that “defame[s], misrepresent[s], or contain[s] disparaging
21 remarks about Lowe’s Organization or its products, or other people, products, services, or
22 companies” Lowe’s further threatens to suspend or terminate any user’s right to use the Sites,
23 at Lowe’s sole and absolute discretion, if the user makes any statement that Lowe’s deems “harmful
24 to Lowe’s interests.”

25 7. Defendants’ conduct is unlawful, including among other reasons, because it is aimed
26 to stifle California consumers’ right to free speech, and the right of the California public to hear
27 lawful discourse. Defendants’ strong-arm tactics to silence injured parties were and continue to be
28 intentionally exercised to protect Defendants’ self-promoting public image for commercial and

1 other benefits. Defendants’ unlawful business practices, purposefully designed to maintain and
2 increase their consumers and prop up their stock price, all while denying public, consumers, and
3 potential consumers accurate information so that they may make informed decisions as consumers.

4 8. By way of these provisions, Defendants seek to have users waive their right as
5 consumers to make negative statements regarding Defendants or their employees, agents, products
6 or services, and further threatens to penalize consumers, by “disabling” their access to the Sites, for
7 making such statements. These unlawful restrictions—imposed by Defendants against their own
8 customers and prospective customers—is an important component of Defendants’ business
9 strategy, which relies upon the popularity of their product offerings nationwide to generate
10 significant revenues and profits. But Defendants’ efforts to silence their customers and prospective
11 customers is clearly prohibited by California law, thereby subjecting Defendants to significant
12 penalties, as described herein.

13 **JURISDICTION AND VENUE**

14 9. This Court has jurisdiction over the claims and causes of action asserted herein
15 because such claims arise solely and specifically out of Defendants’ unlawful business practices
16 within the State of California, and relate to at least one statute—California Civil Code section
17 1670.8—that was designed to protect California’s citizens, the application of which is exclusively
18 a matter for the courts of this State.

19 10. Venue is proper in this Court because: Defendants transact business in California
20 and in the County of Alameda based on Plaintiffs’ use of the Sites in this County; Defendants have
21 committed unlawful acts in the County by and through the Sites and associated business
22 transactions within the County; and a substantial part of the events giving rise to the claims alleged
23 herein occurred in this County, where at least one of the Plaintiffs resides.

24 **THE PARTIES**

25 11. At all relevant times, Plaintiff Omar Masry was and has been a citizen of the State
26 of California and a resident of Alameda County. Plaintiff Masry visited and used Defendants’
27 website, lowes.com, within the applicable statute of limitations in Alameda County in the State of
28 California.

1 12. At all relevant times, Plaintiff Elliot Mass was and has been a citizen of the State of
 2 California. Plaintiff Mass visited and used Defendants' website, lowes.com, within the applicable
 3 statute of limitations in the State of California.

4 13. Upon information and belief, Defendants are comprised of affiliated corporate
 5 entities, each of which conducts business in the state of California with California citizens. These
 6 entities, individually or collectively, through an integrated corporate structure (the details of which
 7 Plaintiffs are presently unaware), develop, market, and sell a wide variety of home improvement
 8 goods or services. Defendants operate in California and generate sales through the Sites.

9 14. The true names and/or capacities, whether individual, corporate, partnership,
 10 associate, governmental, or otherwise, of the Doe Defendants, inclusive, and each of them, are
 11 unknown to Plaintiffs at this time, who therefore sues said Doe Defendants by such fictitious names.
 12 Plaintiffs are informed and believe, and thereon allege, that each defendant designated herein as a
 13 Doe Defendant caused injuries and damages proximately thereby to Plaintiffs as hereafter alleged,
 14 and that each Doe Defendant is liable to Plaintiffs for the acts and omissions alleged herein below,
 15 and the resulting injuries to Plaintiffs, and damages sustained by Plaintiffs. Plaintiffs will amend
 16 this Complaint to allege the true names and capacities of said Doe Defendants when that same is
 17 ascertained.

18 **FACTS COMMON TO ALL CLASS MEMBERS**

19 15. At all relevant times, Defendants were and currently are in the business of
 20 advertising, promoting, marketing, selling, and distributing consumer goods or services through the
 21 Sites, all of which are targeted to, and accessible by, the citizenry of California.

22 16. Defendants are well-aware that their public image is vital to maintaining and gaining
 23 customers. If the public sees content posted by users that may be insulting to Defendants, and/or
 24 any of their partners, and/or any their employees, and/or concerning any of their goods or services,
 25 then their current customers and/or prospective customers may shift to a competitor, ultimately
 26 resulting in loss of business and loss of revenue.

27 17. Thus, in order to maintain a positive public image, Defendants have engaged in an
 28 intentional business strategy to silence each and every customer or potential customer who visits

1 their Sites by purporting to bind users to their Terms—immediately upon using any of the Sites.

2 18. Specifically, Defendants’ Terms provide that by using the Sites, users agree that
3 they will not post any content to the Sites that “defame[s], misrepresent[s], or contain[s] disparaging
4 remarks about Lowe’s Organization or its products, or other people, products, services, or
5 companies”

6 19. Lowe’s further threatens to suspend or terminate any user’s right to use the Sites, at
7 Lowe’s sole and absolute discretion, if the user makes any statement that Lowe’s deems “harmful
8 to Lowe’s interests.”

9 20. Defendant has sold and continues to sell hundreds of thousands of products to
10 consumers through the Sites.

11 21. Defendants purport to forbid any California consumers who have purchased, will
12 purchase, or are even considering purchasing products from Defendants through their Sites from
13 making any so-called “disparaging” statements about Defendants themselves, any of their people,
14 products, services, or companies.

15 22. In doing so, Defendants have and continue to engage in unlawful and unfair conduct
16 that is contrary to public policy and in violation of California Civil Code section 1670.8 and
17 California Business and Professions Code section 17200.

18 23. Each of the Plaintiffs specifically identified herein, and millions more similarly
19 situated persons in the State of California, have visited the Sites—either as consumers or potential
20 consumers—and thus have ostensibly been subjected to the unlawful Terms.

21 **CLASS ACTION ALLEGATIONS**

22 24. Pursuant to California Code of Civil Procedure section 382, Plaintiffs bring this
23 class action on their own behalf and on behalf of all other similarly situated consumers in California.
24 The proposed class is defined as follows:

- 25 a. With respect to Count I below, during the fullest period allowed by law, all persons
26 residing in California who used the Sites or completed transactions on the Sites
27 (“Class”); and
28 b. With respect to Count II below, a subclass of the Class, during the fullest period allowed

1 by law, all persons residing in California who completed sales transactions on the Sites
2 (“Subclass”).

3 25. Like Plaintiffs, all Class members are California residents who used or completed
4 sales transactions on the Sites and who were subject to the Terms that limit their right as consumers
5 to make statements regarding Defendants or any of their people, products, services, or companies.

6 26. Excluded from the Class are assigned judges and members of their families within
7 the first degree of consanguinity; Defendants; and Defendants’ subsidiaries, affiliates, officers, and
8 directors.

9 27. The requirements of Code of Civil Procedure section 382 are satisfied for the
10 proposed Class.

11 28. The proposed Class is so numerous that individual joinder of all the members is
12 impracticable because members of the Class number in the tens or hundreds of thousands. The
13 precise number of Class members and their identities are unknown to Plaintiffs at this time but are
14 objectively ascertainable and will be determined through appropriate discovery and other readily
15 available means.

16 29. Defendants possess objective evidence as to the identity of each Class member and,
17 to a reasonable degree of certainty, the harm suffered by each Class member, including without
18 limitation web traffic data evidencing visits to the Sites, sales receipts, phone numbers, names,
19 rewards accounts data, credit card data, customer service complaint forms/emails/date, and other
20 evidence which objectively identifies class members.

21 30. Class members may be notified of the pendency of this action by mail, publication
22 and/or through the records of Defendants.

23 31. There are common questions of law and fact affecting Plaintiffs and Class members.
24 Common legal and factual questions include, but are not limited to:

25 a. Whether each imposition of Defendants’ Terms upon members of the Class constitutes a
26 violation of the provisions of California Civil Code section 1670.8 and, if so, whether each such
27 violation is a “willful, intentional, or reckless” violation;

28 b. Whether Defendants’ Terms are unlawful, contrary to public policy, void and/or

1 unenforceable;

2 c. Whether by the misconduct set forth in this Complaint, Defendants engaged and continue
3 to engage in unfair, fraudulent, or unlawful business practices;

4 d. Whether the Class is entitled to recover statutory attorney's fees;

5 e. Whether Class members are entitled to civil penalties; and

6 f. Whether, as a result of Defendants' misconduct alleged herein, Plaintiffs and Class
7 members are entitled to restitution, injunctive, public injunctive, and/or monetary relief and, if so,
8 the amount and nature of such relief.

9 32. Plaintiffs' claims are typical of the claims of the proposed Class because the rights
10 of Plaintiffs and Class members were violated in the same manner by the same conduct.

11 33. Plaintiffs and Class members are all entitled to recover statutory penalties and other
12 relief arising out of Defendants' violations of statutory law alleged herein.

13 34. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

14 35. Plaintiffs' interests do not conflict with the interests of the Class they seek to
15 represent. Plaintiffs have retained counsel competent and experienced in prosecuting class actions,
16 and Plaintiffs intend to vigorously prosecute this action.

17 36. The class mechanism is superior to other available means for the fair and efficient
18 adjudication of the claims of Plaintiffs and Class members.

19 37. Given the relative value of statutory penalties available to any of the individual Class
20 members, individual litigation is not practicable.

21 38. Individual Class members will not wish to undertake the burden and expense of
22 individual cases.

23 39. In addition, individualized litigation increases the delay and expense to all parties
24 and multiplied the burden on the judicial system. Individualized litigation also presents the potential
25 for inconsistent or contradictory judgments.

26 40. In contrast, the class action device presents far fewer management difficulties and
27 provides the benefits of single adjudication, economy of scale, and comprehensive supervision by
28 a single court.

1 41. Questions of law and fact common to all Class members predominate over any
2 questions affecting only individual Class members. Injuries sustained by Plaintiffs and Class
3 members flow, in each instance, from a common nucleus of operative facts as set forth above.

4 42. In each case, Defendants' actions caused harm to all Class members as a result of
5 such conduct. The resolution of these central issues will be the focus of the litigation and
6 predominate over any individual issues.

7 43. Proposed Class counsel possesses the knowledge, experience, reputation, ability,
8 skill, and resources to represent the Class and should be appointed lead counsel for the Class.

9 **COUNT I— VIOLATION OF CIVIL CODE SECTION 1670.8**

10 44. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 43 of their
11 Complaint. Plaintiffs assert this cause of action on behalf of themselves and all other similarly
12 situated persons residing in California who used the Sites to complete transactions with the
13 Defendants.

14 45. Defendants are in the business of promoting and selling consumer goods or services.

15 46. Plaintiffs and Class members used the Sites or completed sales transactions to
16 purchase goods or services from Defendants via the Sites.

17 47. Pursuant to the Terms on the Sites, Defendants told Plaintiffs and the Class members
18 that they must agree to not distribute, submit or publish any content that may be disparaging to
19 Defendants or any of their people, products, services, or companies.

20 48. By simply accessing or using these Sites, Defendants purport to have charged
21 Plaintiffs and Class members with having read, understood, and agreed to be bound by the Terms.

22 49. By way of their unlawful restriction, Defendants intentionally, willfully, or
23 recklessly sought to have Plaintiffs and the Class members waive their right as consumers to make
24 statements regarding Defendants or any of their people, products, services, or companies, which
25 restriction is prohibited under California Civil Code section 1670.8 and is contrary to public policy.

26 50. Defendants have repeatedly violated California Civil Code section 1670.8 in relation
27 to each of the Plaintiffs and Class members and their respective use of the Sites or sales transactions
28 on the Sites.

1 51. Defendants' conduct has caused Plaintiffs and Class members to suffer harm.

2 52. Plaintiffs and Class members are entitled to restitutionary and injunctive relief,
3 including public injunctive relief.

4 53. Plaintiffs and Class members are also entitled to civil penalties for Defendants'
5 violations of Civil Code section 1670.8.

6 **COUNT II—VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

7 54. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 53 of their
8 Complaint. Plaintiffs assert this second cause of action on behalf of themselves and all other
9 similarly situated within the Subclass.

10 55. By engaging in the above-described conduct, Defendants, and each of them, acted
11 in a manner that is unlawful and unfair—including by virtue of the fact that their conduct violates
12 California Civil Code section 1670.8—and have thus engaged in unfair and unlawful business
13 practices to the extreme detriment of Plaintiffs and Subclass members, which conduct is prohibited
14 under California Business & Professions Code sections 17200, et seq.

15 56. Defendants' unlawful and unfair conduct has allowed for Defendants to enrich
16 themselves at the expense of Plaintiffs and the Subclass, including through Plaintiffs' payment of
17 monies to Defendants, including without limitation through the purchase transactions completed
18 on the Sites.

19 57. Plaintiffs are thus entitled to restitutionary and injunctive relief, including without
20 limitation public injunctive relief and disgorgement of any unlawful gains that Defendants obtained
21 as a result of their unlawful and unfair conduct at the expense of Plaintiffs and Subclass members.

22
23 **PRAYERS FOR RELIEF**

24 **WHEREFORE**, Plaintiffs, on behalf of themselves and the putative Class members, pray
25 for judgment as follows:

26 a. Determining that this action is a proper class action and certifying the Class and Subclass,
27 as defined herein;

28 b. Appointing Plaintiffs as Class and Subclass representatives;

- 1 c. Appointing the undersigned as Class and Subclass counsel;
- 2 d. Finding Defendants liable to Plaintiffs and Class members for damages in such amount(s)
- 3 as the Court or Jury may determine;
- 4 e. Awarding statutorily provided damages to Plaintiffs and Class members as appropriate;
- 5 f. Awarding restitutionary disgorgement and all other forms of equitable monetary relief to
- 6 Plaintiffs, Class members, and Subclass members;
- 7 h. Awarding pre- and post-judgment interest;
- 8 i. Awarding injunctive relief, including public injunctive relief, as claimed herein or as the
- 9 Court may deem proper;
- 10 j. Awarding Plaintiffs, Class members, and Subclass members attorney fees and all
- 11 litigation costs as allowed by; and
- 12 k. Awarding such other and further relief as may be just and proper.

13
14 **DEMAND FOR JURY TRIAL**

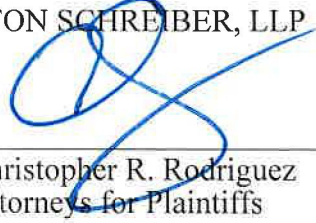
15 Plaintiffs hereby demand a trial by jury on all issues so triable.

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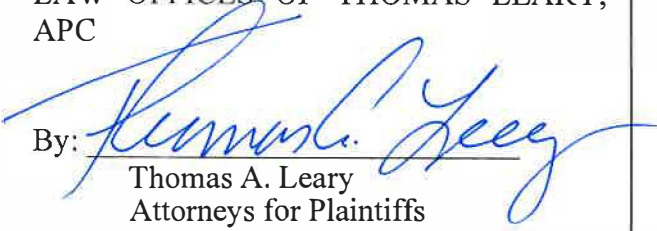
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Dated: November 21, 2023

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