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

16 SHANAN GOLDSMITH,
17 individually and on behalf of all others
18 similarly situated,

19 *Plaintiff,*

20 v.

21 BROOKLYN BEDDING LLC,

22 *Defendant.*

Case No. 5:24-cv-491

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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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. Section 17500 of California’s False Advertising Law prohibits businesses
10 from making statements they know or should know to be untrue or misleading. Cal. Bus.
11 & Prof. Code § 17500. This includes statements falsely suggesting that a product is on
12 sale, when it actually is not.

13 4. Moreover, section 17501 of California’s False Advertising Law provides that
14 “[n]o price shall be advertised as a former price ... unless the alleged former price was
15 the prevailing market price ... within three months next immediately preceding” the
16 advertising. Cal. Bus. & Prof. Code § 17501. So, in addition to generally prohibiting
17 untrue and misleading fake discounts, it also specifically prohibits this particular flavor of
18 fake discount (where the advertised former price is not the prevailing price during the
19 specified timeframe).

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

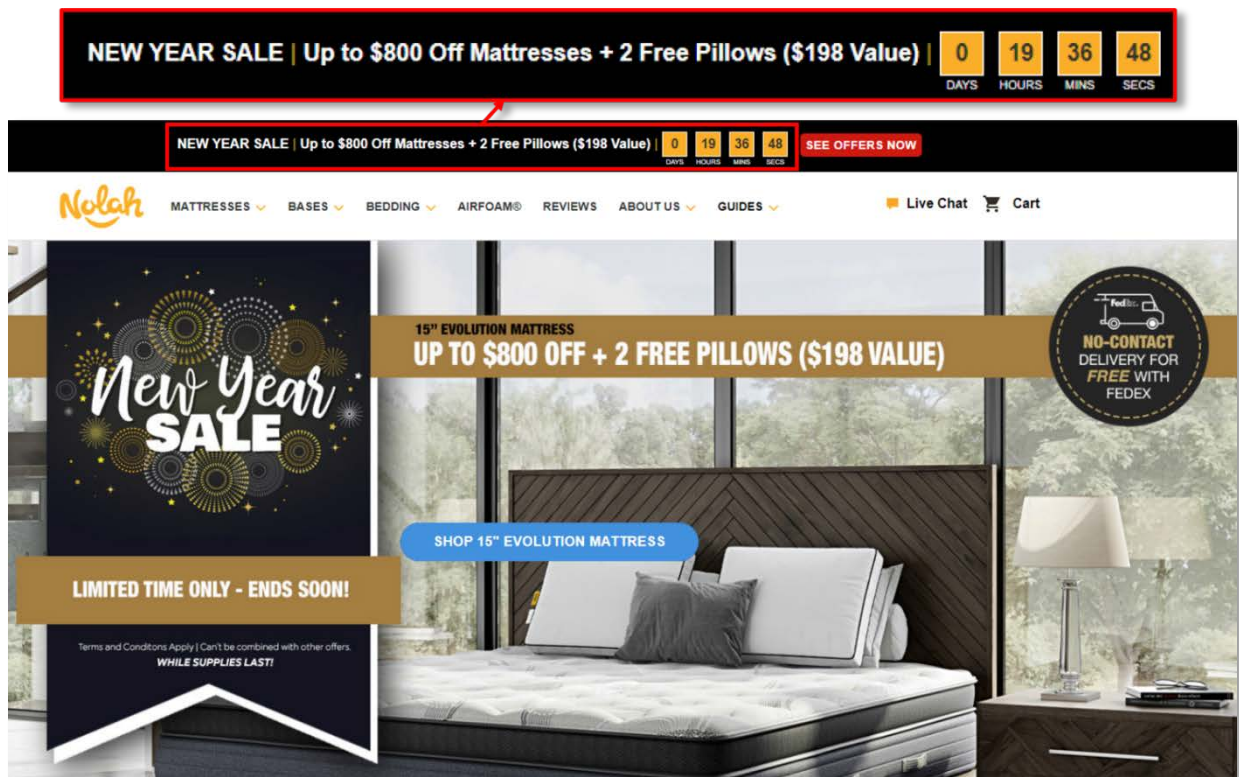
24 6. Moreover, the Federal Trade Commission’s regulations prohibit false or
25 misleading “former price comparisons,” for example, making up “an artificial, inflated
26 price ... for the purpose of enabling the subsequent offer of a large reduction” off that
27 price. 16 C.F.R. § 233.1. They also prohibit false or misleading “retail price
28 comparisons” and “comparable value comparisons,” for example, ones that falsely

1 suggest that the seller is “offer[ing] goods at prices lower than those being charged by
2 others for the same merchandise” when this is not the case. 16 C.F.R. § 233.1.

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

6 8. Defendant Brooklyn Bedding LLC (“Defendant” or “Nolah”) sells and
7 markets mattresses and bedding products online through the Nolah brand and website,
8 www.nolahmattress.com (“Nolah Products” or “Products”).

9 9. On its website, Defendant lists prices and advertises purported time-limited
10 discounts from those listed prices. These include “LIMITED TIME ONLY” discounts
11 offering “up to \$X off” or “X% off.” Defendant uses countdown clocks to represent
12 that its sales are on the verge of ending. Defendant also advertises that its Products have
13 a lower discount price as compared to a higher, regular price shown in grey and/or
14 strikethrough font. *See* these examples:



SPRING SALE | Up to \$700 Off Mattresses + 2 Free Pillows | 1 23 34 59
DAYS HOURS MINS SECS

SPRING SALE | Up to \$700 Off Mattresses + 2 Free Pillows | 1 23 34 59 **SEE OFFERS NOW**
DAYS HOURS MINS SECS



MATTRESSES ▾ BASES ▾ BEDDING ▾ PILLOWS ▾ AIRFOAM™ REVIEWS ABOUT US ▾ GUIDES ▾

Live Chat Cart

Rated No 1 Mattress for Side Sleepers 2021 [Learn More](#)

Spring
SALE

All Mattresses

up to
\$700 OFF
+ 2 FREE PILLOWS

Terms and Conditions Apply | Can't be combined with other offers. WHILE SUPPLIES LAST!

NO-CONTACT DELIVERY FOR FREE WITH FEDEX

BEST FOR EDGE SUPPORT

Thickness: 11 | Firmness: 6/10



Nolah Original Hybrid

Our advanced AirFoam™ meets deep, targeted support from HDMax™ Tri-Zone™ coils. The Original Hybrid is our most affordable hybrid model and our best mattress for edge support.

Starting at
\$899 ~~\$1,299~~

As low as
\$75/mo

SHOP NOW

OUR BEST-SELLING MATTRESS

Thickness: 15 | Firmness: 4-5, 6-7, or 8/10



Nolah Evolution

This premium nine-layer mattress features all the latest technology, including graphite-infused AirFoamICE™ and HDMax™ Tri-Zone™ coils for responsive, targeted support.

Starting at
\$1,049 ~~\$1,499~~

As low as
\$87/mo

SHOP NOW

1 10. Far from being time-limited, however, Defendant’s discounts are *always*
2 available. As a result, everything about Defendant’s price and purported discount
3 advertising is false. The list prices Defendant advertises are not actually Defendant’s
4 regular prices (the prices it usually charges), because Defendant’s Products are *always*
5 available for less than that. The purported discounts Defendant advertises are not the
6 true discount the customer is receiving, and are often not a discount at all, because
7 customers can *always* buy Defendant’s Products at the discount price. Nor are the
8 purported discounts “LIMITED TIME ONLY” or ending after the countdown clock
9 runs out—quite the opposite, they are always available.

10 11. As described in greater detail below, Ms. Goldsmith bought Products from
11 Defendant from its website, nolahmattress.com. When Ms. Goldsmith made her
12 purchase, Defendant advertised that a limited-time sale was going on, and so Defendant
13 represented that the Products Ms. Goldsmith purchased were being offered at a steep
14 discount from its purported regular price that Defendant advertised in strikethrough font.
15 And based on Defendant’s representations, Ms. Goldsmith believed that she was
16 purchasing Products whose regular price and market value were the purported list price
17 that Defendant advertised, that she was receiving a substantial discount, and that the
18 opportunity to get that discount was time-limited. These reasonable beliefs are what
19 caused Ms. Goldsmith to buy from Defendant when she did.

20 12. In truth, however, the representations Ms. Goldsmith relied on were not
21 true. The purported list prices were not the true regular prices, the purported discounts
22 were not the true discounts, and the discounts were not time-limited. Had Defendant
23 been truthful, Ms. Goldsmith and other consumers like her would not have purchased
24 the Products, or would have paid less for them.

25 13. Ms. Goldsmith brings this case for herself and the other customers who
26 purchased Defendant’s Products.

27 **II. Parties.**

28 14. Plaintiff Shanan Goldsmith is domiciled in Joshua Tree, California.

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

2 16. Defendant Brooklyn Bedding LLC is an Arizona limited liability company
3 with its principal place of business at 5301 W Bethany Home Road, Glendale, Arizona
4 85301.

5 **III. Jurisdiction and Venue.**

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

10 18. This Court has personal jurisdiction over Defendant. Defendant does
11 business in California. It advertises and sells its Products in California, and serves a
12 market for its Products in California. Due to Defendant's actions, its Products have been
13 marketed and sold to consumers in California, and harmed consumers in California.
14 Plaintiff's claims arise out of Defendant's contacts with this forum. Due to Defendant's
15 actions, Plaintiff purchased Defendant's Products in California, and was harmed in
16 California.

17 19. Venue is proper under 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1391(d)
18 because Defendant would be subject to personal jurisdiction in this District if this
19 District were a separate state. Defendant advertises and sells its Products to customers in
20 this District, serves a market for its Products in this District, and Plaintiff's claims arise
21 out of Defendant's contacts in this forum. Venue is also proper under 28 U.S.C.
22 § 1391(b)(2) because a substantial part of the events giving rise to the claim occurred
23 here.

24 **IV. Facts.**

25 **A. Defendant's fake prices and fake discounts.**

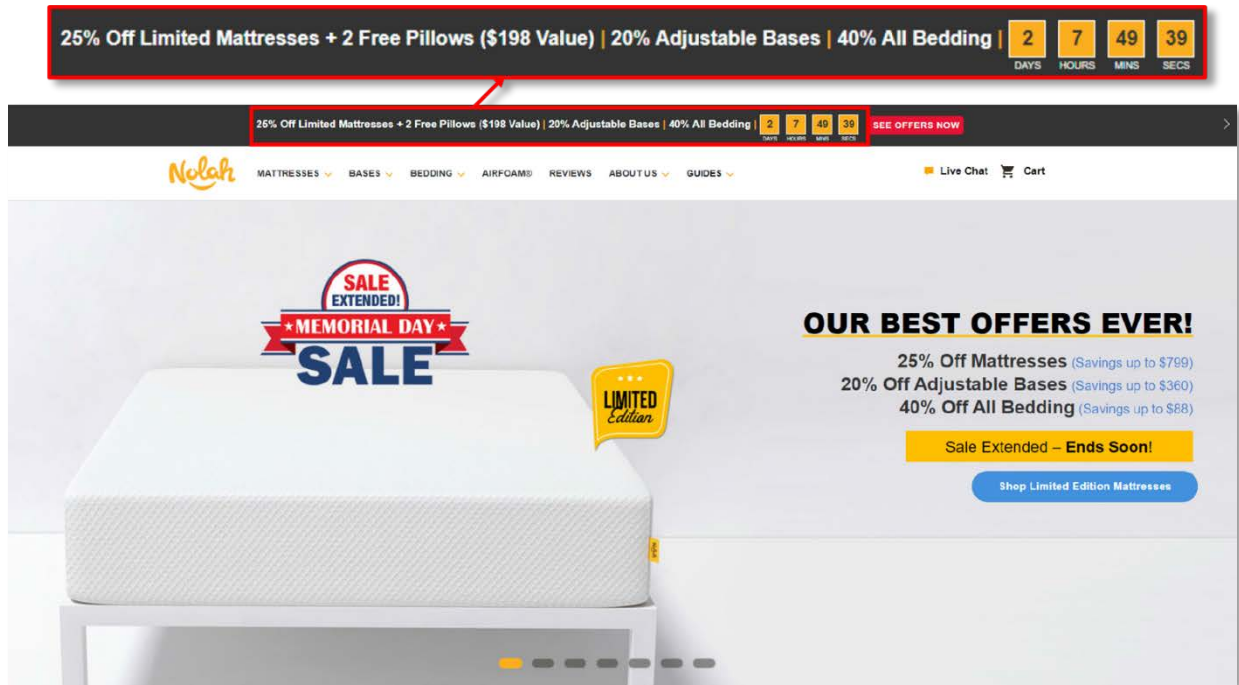
26 20. Defendant Brooklyn Bedding distributes, markets, and sells mattresses and
27 bedding products. Defendant sells its Products directly to consumers through its
28 website, www.nolahmattress.com.

1 21. On its website, Defendant creates the false impression that its Products’
2 regular prices are higher than they truly are.

3 22. At any given time, on its website, Defendant advertises steep discounts on
4 its Products. These discounts always offer “\$X” or “X%” off. Reasonable consumers
5 reasonably interpret Defendant’s advertisements to mean that they will be getting a
6 discount “off” of the prices that Defendant usually charges for its Products. Even
7 though in truth these discounts run in perpetuity, Defendant prominently represents they
8 will expire after the countdown clock runs out. And it advertises these discounts
9 extensively: on an attention-grabbing banner on every webpage of its website; on the
10 products listing pages, on the individual product pages for each Product; and on the
11 checkout pages. It advertises them by touting “\$X off”; by advertising list prices in
12 strikethrough font next to lower, purported discount prices; with graphics such as “\$350
13 OFF” next to the list prices and purported discount prices; and by identifying the
14 supposed savings that customers are supposedly receiving by using list prices in
15 strikethrough font next to lower, purported discount prices, during checkout. *See* these
16 example screenshots:

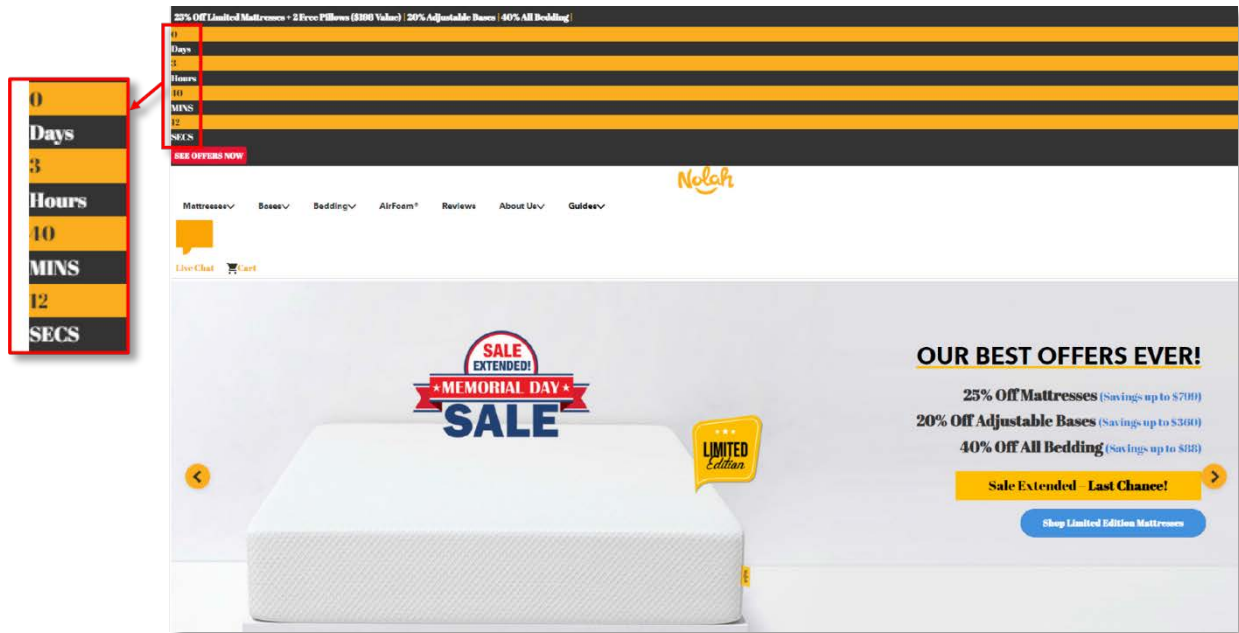
17 23. For example, on June 4, 2020, Defendant represented on its website that a
18 time-limited sale of “25% Off Limited Mattresses + 2 Free Pillows (\$198 Value)”
19 was running until the countdown runs out in “2 Days 7 Hours 49 Mins 39 Secs.”
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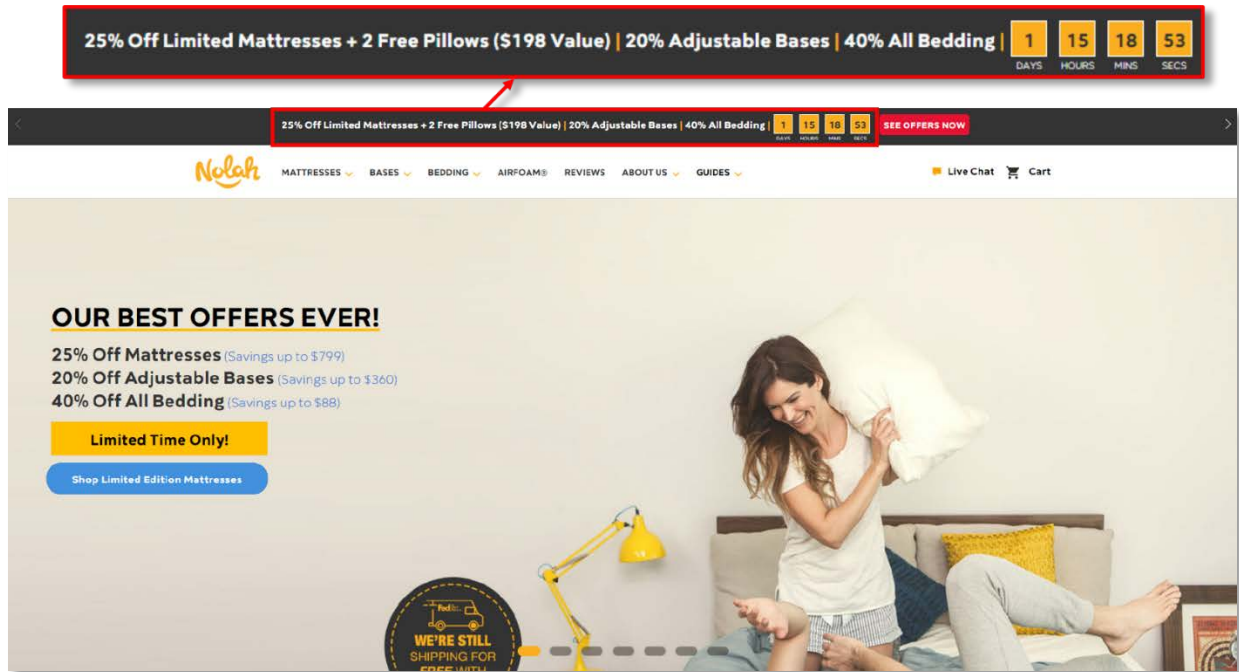
Captured on June 4, 2020

24. On June 10, 2020, Defendant again represented on its website that a time-limited sale of “25% Off Limited Mattresses + 2 Free Pillows (\$198 Value) . . .” was running until the countdown runs out in “0 Days 3 Hours 40 Mins 12 Secs.”



Captured on June 10, 2020

1 25. But the next day, the sale did not expire. Instead, it persisted. On June 11,
2 2020, Defendant represented on its website that a time-limited sale of “25% Off Limited
3 Mattresses + 2 Free Pillows (\$198 Value)” was running until the countdown “1 Days
4 15 Hours 18 Mins 53 Secs.” On that same day, Defendant also represented on its
5 website that the sale was “OUR BEST OFFERS EVER!” with an emphasis on the sale
6 being for a “Limited Time Only!” See screenshot:



Captured on June 11, 2020

19 26. The sales have persisted for months, and years.

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NEW YEAR SALE | Up to \$800 Off Mattresses + 2 Free Pillows (\$198 Value) 0 19 36 48
DAYS HOURS MINS SECS

NEW YEAR SALE | Up to \$800 Off Mattresses + 2 Free Pillows (\$198 Value) 0 19 36 48 **SEE OFFERS NOW**
DAYS HOURS MINS SECS

Nolah MATTRESSES BASES BEDDING AIRFOAM® REVIEWS ABOUT US GUIDES Live Chat Cart

New Year SALE

15" EVOLUTION MATTRESS
UP TO \$800 OFF + 2 FREE PILLOWS (\$198 VALUE)

NO-CONTACT DELIVERY FOR FREE WITH FEDEX

SHOP 15" EVOLUTION MATTRESS

LIMITED TIME ONLY - ENDS SOON!

Terms and Conditions Apply | Can't be combined with other offers. WHILE SUPPLIES LAST!

Captured on January 12, 2021

Summer Sale ☀️ | Up to \$700 Off Mattresses + 2 Free Pillows (\$198 Value) 2 18 1 33
DAYS HOURS MINS SECS

Summer Sale ☀️ | Up to \$700 Off Mattresses + 2 Free Pillows (\$198 Value) 2 18 1 33 **SEE OFFERS NOW**
DAYS HOURS MINS SECS

Nolah MATTRESSES BASES BEDDING PILLOWS AIRFOAM™ REVIEWS ABOUT US GUIDES Live Chat Cart

SUMMER SALE!

12" SIGNATURE MATTRESS

UP TO \$300 OFF

+ 2 FREE PILLOWS (\$198 VALUE)

NO-CONTACT DELIVERY FOR FREE WITH FEDEX

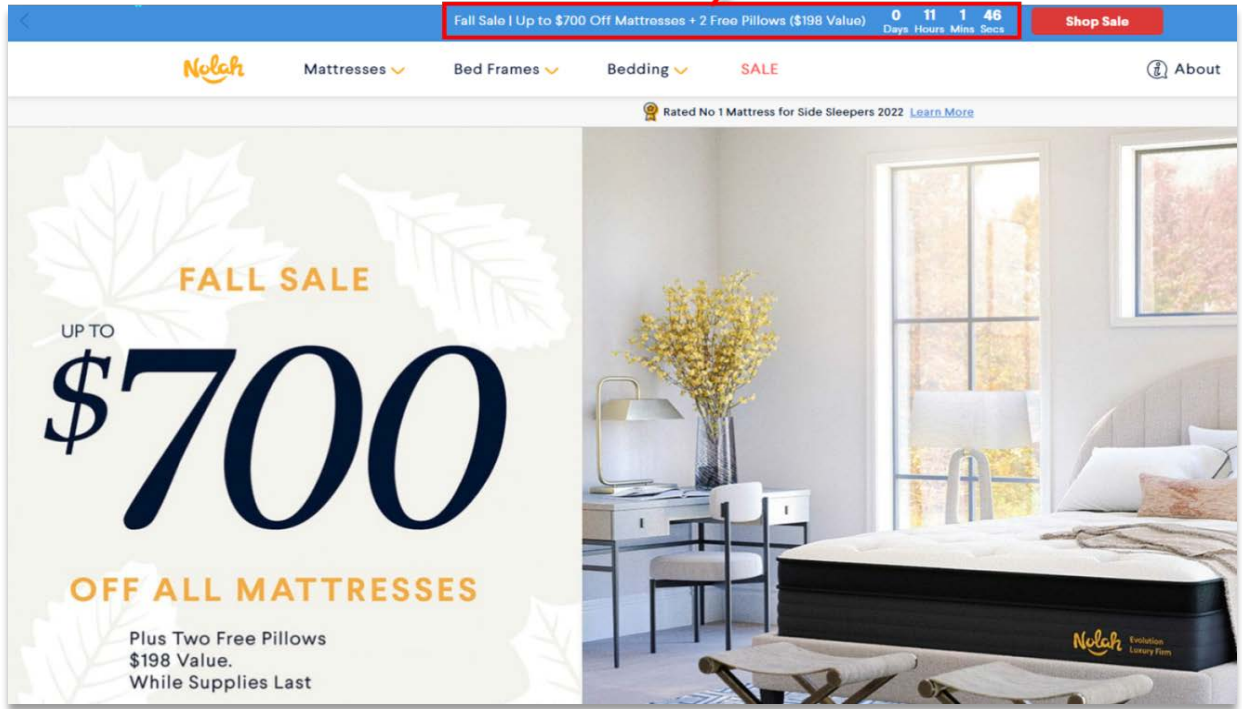
Captured on July 16, 2021

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The screenshot shows the Nolah website's promotional banner for a 'Sleep Week Sale'. At the top, a purple banner with a red border contains the text 'Sleep Week Sale | Up to \$700 Off Mattresses + 2 Free Pillows' and a countdown timer showing 2 days, 14 hours, 41 minutes, and 26 seconds. Below this, a navigation bar includes the Nolah logo, menu items (MATTRESSES, BASES, BEDDING, PILLOWS, AIRFOAM™, REVIEWS, ABOUT US, GUIDES), and links for 'Live Chat' and 'Cart'. A small badge indicates the brand is 'Rated No 1 Mattress for Side Sleepers 2021'. The main banner features the text 'Sleep Awareness Sale' and 'STRESS LESS, REST MORE.' followed by 'UP TO \$700 OFF ALL MATTRESSES'. Below this, it states 'PLUS TWO FREE PILLOWS \$198 value. While Supplies Last.' The background of the banner shows a woman sleeping peacefully on a mattress.

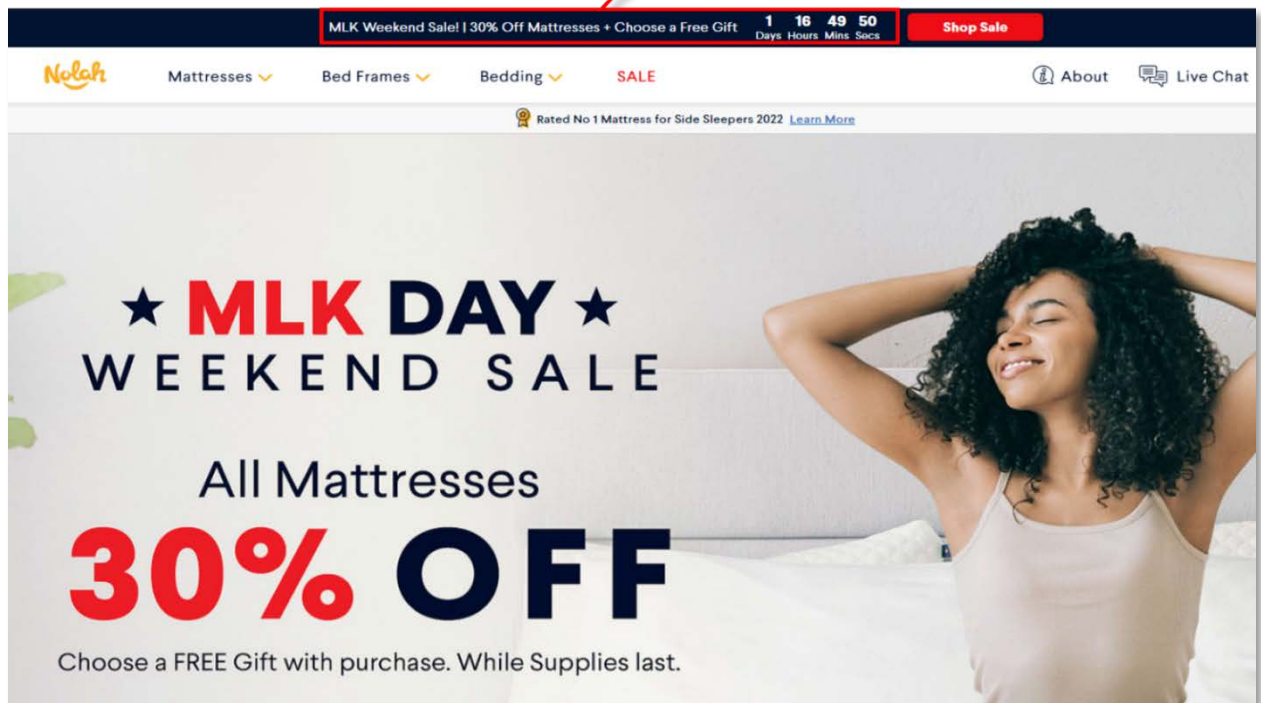
Captured on March 18, 2022

Fall Sale | Up to \$700 Off Mattresses + 2 Free Pillows (\$198 Value) 0 11 1 46
Days Hours Mins Secs



Captured on September 17, 2022

MLK Weekend Sale! | 30% Off Mattresses + Choose a Free Gift 1 16 49 50
Days Hours Mins Secs



Captured on January 15, 2023

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Spring Sale | 35% Off Mattresses + 2 Free Pillows | Our Largest Discount Ever! 0 23 53 13
Days Hours Mins Secs

The screenshot shows the Nolah website's homepage during a spring sale. At the top, a green banner with white text reads "Spring Sale | 35% Off Mattresses + 2 Free Pillows | Our Largest Discount Ever!" followed by a countdown timer showing "0 23 53 13" for "Days Hours Mins Secs". Below the banner is a navigation bar with the Nolah logo, menu items for "Mattresses", "Bed Frames", and "Bedding", a "SALE" indicator, and an "About" link. The main content area features a large promotional graphic on the left with the text "Enjoy a Spring Break for your Wallet", a leaf icon, "All Mattresses 35% OFF", "Our Largest Discount Ever! Up To \$1000 in Savings", and "Plus Two Free Pillows. \$198 Value. While Supplies Last." A green "SHOP NOW" button is at the bottom of this graphic. To the right is a photograph of a bedroom with a Nolah mattress, a lamp, and a plant. A small badge above the photo says "Rated No 1 Mattress for Side Sleepers 2023 Learn More".

Captured on April 4, 2023

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Winter Sale! | Up to \$1000 off mattresses + FREE Fluffy Pillows 0 10 44 54 Days Hours Mins Secs

Meet Our Mattresses
Explore Nolah's premium mattresses by type and materials.

Hybrid Mattresses

Nolah Original Hybrid
BEST FOR EDGE SUPPORT
Thickness: 11 | Firmness: 6/10
Starting at **\$899** ~~\$1,299~~
As low as **\$75/mo** affirm
SHOP NOW
Includes Free Shipping & 120-Night Trial

Nolah Evolution
OUR BEST-SELLING MATTRESS
Thickness: 15 | Firmness: 4-5, 6-7, or 8/10
Starting at **\$1,049** ~~\$1,499~~
As low as **\$87/mo** affirm
SHOP NOW
Includes Free Shipping & 120-Night Trial

Hybrid Mattress Advantages
Hybrid mattresses pair cushioning top layers with flexible coils underneath. This multilayer design combines the contouring and pressure-relieving benefits of foam mattresses with the deep support, structure, and durability of innerspring models.

- Contouring, pressure-relieving comfort layers
- Responsive, ultra-supportive coils
- Highly durable and breathable construction

Best Mattress for Back Pain
Good Morning America 2023

Captured on January 22, 2024

Winter Sale! | Up to \$1000 off mattresses + FREE Fluffy Pillows 0 10 42 47 Days Hours Mins Secs

Nolah Original 10"
OUR MOST VERSATILE MATTRESS
Up to \$700 off + FREE Fluffy Pillows
★★★★★ 4.7 out of 5.0
~~\$1,199~~ **\$849** As low as \$71/mo with affirm

Description Benefits Top Awards

The Nolah Original 10" Mattress offers exceptional comfort and support at an unbeatable price. It's our most affordable and versatile mattress with gentle contouring, soothing pressure relief, and a medium-firmness feel. The Original features breathable layers of resilient foam, including our zoned AirFoam™ with targeted flexibility and firmness for side sleepers. Meanwhile, the Tencel™ cover wicks moisture to keep hot sleepers contently cool.

\$350 OFF

\$350 OFF **\$1,199** **\$849**

Mattress: Nolah Original 10

SELECT SIZE: **Twin XL (38"x80")** ~~\$499~~ **\$849**

Captured on December 1, 2022

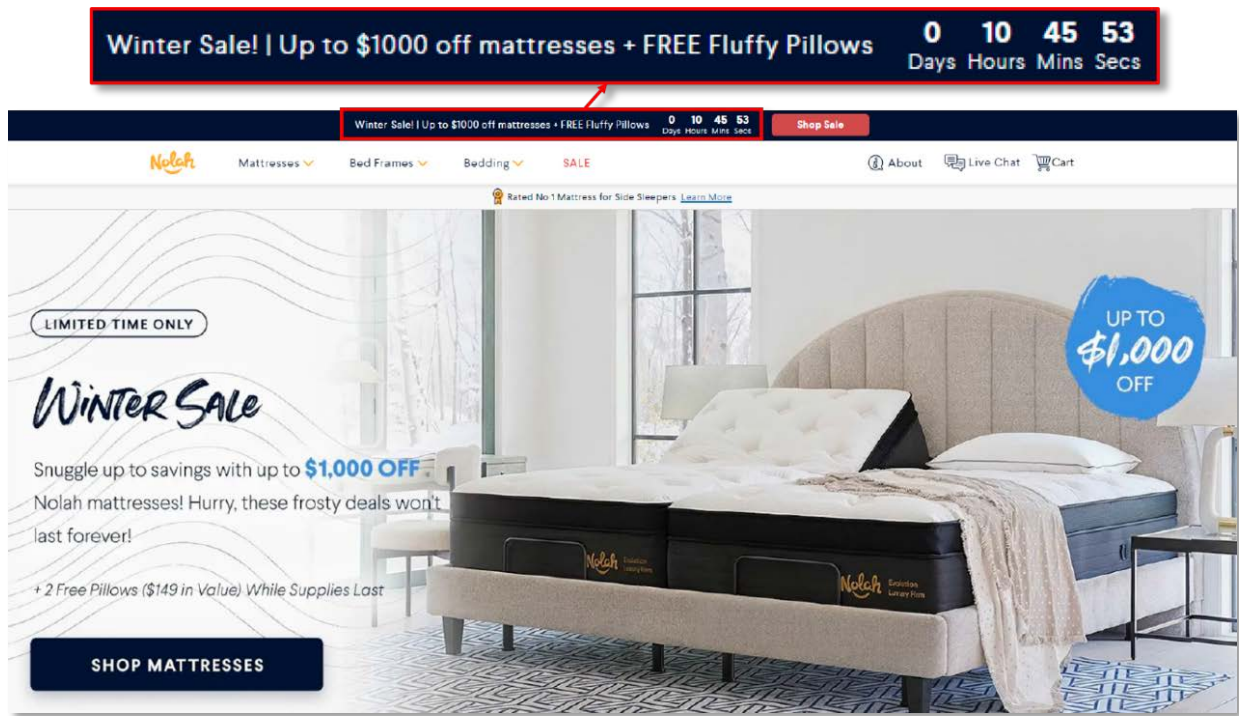
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	Nolah Evolution 15 Queen / Luxury Firm (-\$874.65)	\$2,499.00 \$1,624.35
	Fluffy Pillow Promo Pillow 2pack - Queen FREE GIFT WITH PURCHASE (-\$149.00)	\$149.00 Free
	Promo Bundle - Gift with Purchase Sheets and Protector Set White Queen FREE GIFT WITH PURCHASE (-\$167.00)	\$167.00 Free
Total Savings		\$1190.65
<hr/>		
<input type="text" value="Discount code or gift card"/>		<input type="button" value="Apply"/>
<hr/>		
Subtotal		\$1,624.35
Shipping		\$10.50
Estimated taxes		\$166.49
Total		USD \$1,801.34

Captured on November 14, 2023

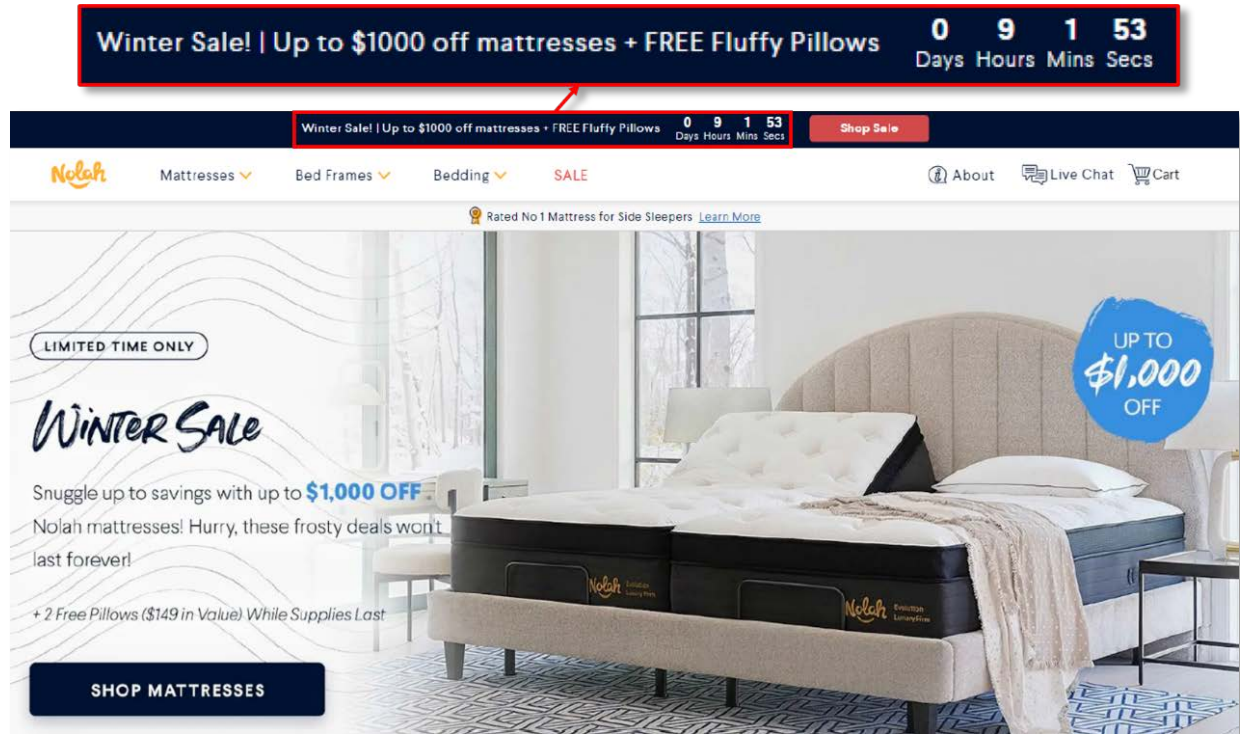
27. Defendant represents that these discounts will only be available for a limited time, but in reality, they continue indefinitely. For example, as depicted below, Defendant represents that its sales expire after the countdown clock at the top of its website runs out, for example: “0 Days 10 Hours 45 Mins 53 Secs.” To reasonable consumers, this means that after the countdown expires, Defendant’s Products will no longer be on sale and will retail at their purported list price. But immediately after each purportedly time-limited sale ends, Defendant generates another similar or identical discount, with a new expiration date.

28. For example, on January 22, 2024, Defendant advertised a purported “LIMITED TIME ONLY” sale that would end in “0 Days 10 Hours 45 Mins 53 Secs” on www.nolahmattress.com:



Captured on January 22, 2024

29. However, on January 23, 2024, the day that the time-limited sale was supposed to have ended, Defendant advertised the same sale with a new countdown clock.



Captured on January 23, 2024

30. To confirm that Defendant always offers discounts off purported regular prices, Plaintiff's counsel performed an investigation of Defendant's advertising practices using the Internet Archive's Wayback Machine (available at www.archive.org).¹ That investigation confirms that Defendant's sales have persisted continuously since at least January 12, 2021 (and likely earlier). For example, 63 randomly selected screenshots of Defendant's website, nolahmattress.com, were collected from the Internet Archive's Wayback Machine, from the 2021-2023 period. One hundred percent of the 63 randomly selected screenshots of Defendant's website, captured on the Wayback Machine and directly on the website, displayed a purportedly time-limited discount. In addition to the 63 randomly selected screenshots, all three additional screenshots of the Defendant's website taken from June 2020, captured on Wayback Machine and directly on the website, displayed a purportedly time-limited discount.

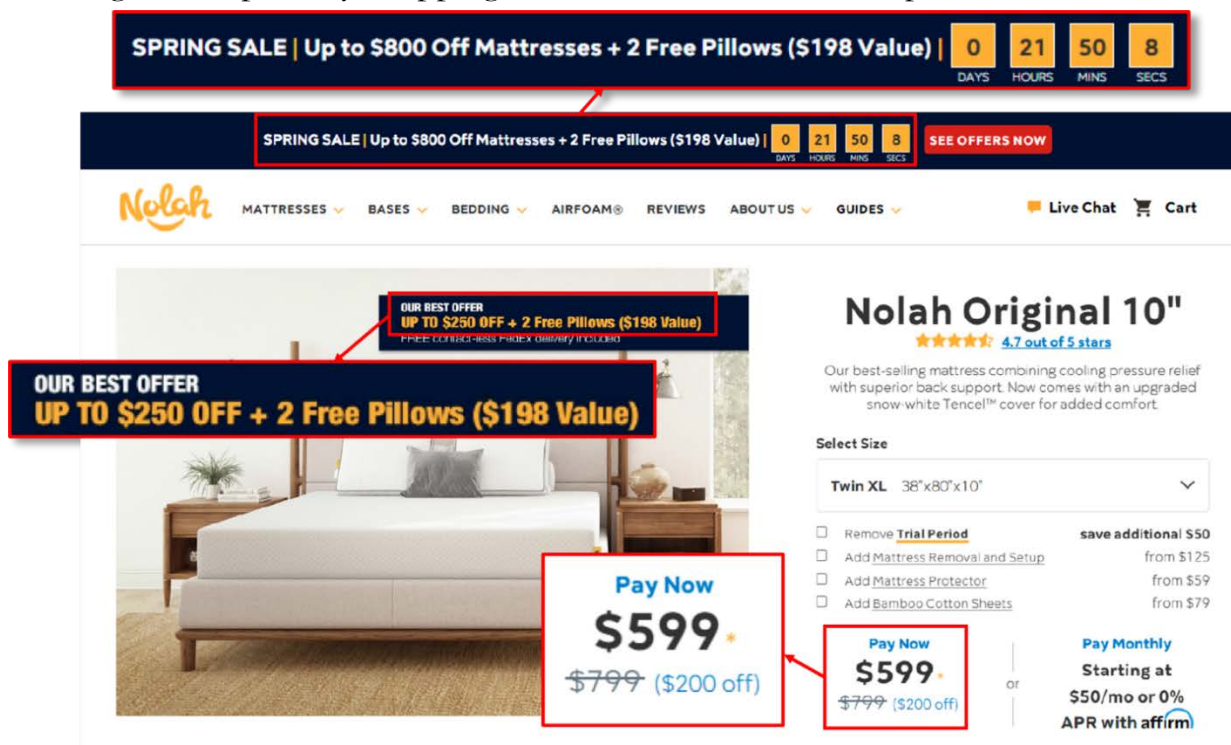
31. Reasonable consumers do not realize the fake nature of the sale. It is not apparent from merely purchasing the Products, because the sale appears to be a bona fide

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

1 sale. Consumers do not have any reason to go back to the site day after day to discover
2 that there is still a sale. And, even a consumer who occasionally checks the website
3 would reasonably believe that there happened to be another sale. Discovering
4 Defendant's deception required extensive mining of internet archives, which revealed
5 that the sale is not limited in time, that the discounts are fake, and that the advertised
6 regular prices are fake.

7 32. In addition, Defendant's website lists fake regular prices (that is, prices
8 reflecting the list price or value of an item) and fake discounts.

9 33. For example, on April 20, 2021, Defendant advertised a purported time
10 limited sale of "[u]p to \$800 Off Mattresses + 2 Free Pillows (\$198 Value)" on
11 nolahmattress.com. As part of this discount, Defendant listed purported regular prices in
12 strikethrough font and represented that consumers would receive "\$X" off by purchasing
13 during the promotion. For example, Defendant represented that the Nolah Original 10"
14 Twin XL Mattress had a regular list price of \$799, that consumers would get "\$200 off"
15 of that regular list price by shopping now, and that the discount price was \$599:



Captured on April 20, 2021

1 34. But the truth is, the Nolah Original 10” Twin XL Mattress’s listed regular
2 price of \$799 is not its regular price. Instead, it is always at a discount from the
3 purported regular price of \$799 (*e.g.*, on May 24, 2021, it was priced at \$599, and on
4 September 20, 2021, it again was priced at \$599), and the customer is not receiving the
5 advertised discount by buying during the purported sale.

6 35. Using these tactics, Defendant leads reasonable consumers to believe that
7 they will get a discount on the Products they are purchasing if they purchase during the
8 limited-time promotion. In other words, it leads reasonable consumers to believe that if
9 they buy now, they will get a Product worth X at a discounted, lower price Y; and they
10 will get a discount. This creates a sense of urgency: buy now, and you will receive
11 something worth more than you pay for it; wait, and you will pay more for the same thing
12 later.

13 36. Based on Defendant’s advertisements, reasonable consumers reasonably
14 believe that the list prices are Defendant’s regular prices, and its former prices (that is, the
15 price at which the goods were actually offered for sale before the limited-time offer went
16 into effect). In other words, reasonable consumers believe that the list prices Defendant
17 advertises represent the amount that consumers usually have to pay for Defendant’s
18 goods, formerly had to pay for Defendant’s goods, before the limited-time sale began,
19 and will again have to pay for Defendant’s goods when the sale ends. Said differently,
20 reasonable consumers reasonably believe that, prior to the supposedly time-limited sale,
21 consumers had to pay the list price to get the item and did not have the opportunity to
22 get a discount from that list price.

23 37. Reasonable consumers also reasonably believe that the list prices Defendant
24 advertises represent Defendant’s regular prices, and the true market value of the
25 Products, and that they are the prevailing prices for those Products. Reasonable
26 consumers also believe that they are receiving reductions from Defendant’s regular prices
27 in the amounts advertised. In truth, however, Defendant *always* offers discounts off the
28 list prices it advertises. As a result, everything about Defendant’s price and purported

1 discount advertising is false. The list prices Defendant advertises are not actually
2 Defendant's regular or former prices, or the prevailing prices for the Products Defendant
3 sells, and do not represent the true market value for the Products, because Defendant's
4 Products are *always* available for less than that, and customers did not have to formerly
5 pay that amount to get those items. The purported discounts Defendant advertises are
6 not the true discount the customer is receiving. Nor are the purported discounts time
7 limited or expiring after the countdown runs out—quite the opposite, they are always
8 available.

9 **B. Defendant's advertisements are unfair, deceptive, and unlawful.**

10 38. Section 17500 of California's False Advertising Law prohibits businesses
11 from making statements they know or should know to be untrue or misleading. Cal. Bus.
12 & Prof. Code § 17500. This includes statements falsely suggesting that a product is on
13 sale, when it actually is not.

14 39. Moreover, section 17501 of California's False Advertising Law specifically
15 provides that “[n]o price shall be advertised as a former price ... unless the alleged
16 former price was the prevailing market price ... within three months next immediately
17 preceding” the advertising. Cal. Bus. & Prof. Code § 17501.

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

22 41. In addition, the Federal Trade Commission's regulations prohibit false or
23 misleading “former price comparisons,” for example, making up “an artificial, inflated
24 price ... for the purpose of enabling the subsequent offer of a large reduction” off that
25 price. 16 C.F.R. § 233.1. They also prohibit false or misleading “retail price
26 comparisons” and “comparable value comparisons,” for example ones that falsely
27 suggest that the seller is “offer[ing] goods at prices lower than those being charged by
28 others for the same merchandise” when this is not the case. 16 C.F.R. § 233.1.

1 42. And finally, California’s unfair competition law bans unlawful, unfair, and
2 deceptive business practices. *See* Cal. Bus. & Prof. Code § 17200.

3 43. Here, as described in detail above, Defendant makes untrue and misleading
4 statements about its prices. Defendant advertises regular prices that are not its true
5 regular prices, or its former prices, and were not the prevailing market price in the three
6 months immediately preceding the advertisement. In addition, Defendant advertised
7 goods or services with the intent not to sell them as advertised, for example, by
8 advertising goods having certain former prices and/or market values without the intent
9 to sell goods having those former prices and/or market values. Defendant made false or
10 misleading statements of fact concerning the reasons for, existence of, and amounts of
11 price reductions, including the existence of steep discounts, and the amounts of price
12 reductions resulting from those discounts. And Defendant engaged in unlawful, unfair,
13 and deceptive business practices.

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

15 44. Based on Defendant’s advertisements, reasonable consumers would expect
16 that the listed regular prices are the regular prices at which Defendant usually sells its
17 Products; that these are former prices that Defendant sold its Products at before the
18 time-limited discount was introduced.

19 45. Reasonable consumers would also expect that, if they purchase during the
20 sale, they will receive an item whose regular price and/or market value is the advertised
21 regular price and that they will receive the advertised discount from the regular purchase
22 price.

23 46. In addition, consumers are more likely to buy the product if they believe
24 that the product is on sale and that they are getting a product with a higher regular price
25 and/or market value at a substantial discount.

26 47. Consumers that are presented with discounts are substantially more likely to
27 make the purchase. “Nearly two-thirds of consumers surveyed admitted that a
28 promotion or a coupon often closes the deal, if they are wavering or are undecided on

1 making a purchase.”² And, “two-thirds of consumers have made a purchase they weren’t
2 originally planning to make solely based on finding a coupon or discount,” while “80%
3 [of consumers] said they feel encouraged to make a first-time purchase with a brand that
4 is new to them if they found an offer or discount.”³

5 48. Similarly, when consumers believe that an offer is expiring soon, the sense
6 of urgency makes them more likely to buy a product.⁴

7 49. Thus, Defendant’s advertisements harm consumers by inducing them to
8 make purchases based on false information. In addition, by this same mechanism,
9 Defendant’s advertisements artificially increase consumer demand for Defendant’s
10 Products. This puts upward pressure on the prices that Defendant can charge for its
11 Products. As a result, Defendant can charge a price premium for its Products, that it
12 would not be able to charge absent the misrepresentations described above. So, due to
13 Defendant’s misrepresentations, Plaintiff and the class paid more for the Products they
14 bought than they otherwise would have.

15 **D. Plaintiff was misled by Defendant’s misrepresentations.**

16 50. On June 8, 2020, Ms. Goldsmith purchased a Nolah Limited Edition 10”
17 Queen Mattress, and Nolah Foam Pillows from Defendant’s website, nolahmattress.com.
18 She made this purchase while living in Joshua Tree, California.

19 51. At that time, Nolah was running a persistent sale that offered 25% off
20 mattresses.

21 52. As shown above, when Ms. Goldsmith made her purchase, Defendant’s
22 website represented that purchasers would receive “25% Off Limited Mattresses + 2
23

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

26 ³ RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases
Online, Especially Among Millennial Buyers (prnewswire.com).

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

1 Free Pillows (\$198 Value)” This was confirmed in the online order summary that
 2 Defendant sent to Ms. Goldsmith after she made her purchase. In the order summary,
 3 Defendant represented that the Nolah Limited Edition 10” Queen Mattress had a regular
 4 price of \$1,019.00 (in strikethrough font), and that Ms. Goldsmith was receiving a
 5 discount of \$254.75 off. Defendant also represented that the pillows had a regular price
 6 of \$198 and that Ms. Goldsmith was receiving a discount of \$198:

Item	Price
Limited Edition 10 Queen	\$672.54
Nolah Foam Pillow (Queen / 2-Pack)	Free
Opt-Out of 120-Night Trial	Free
Subtotal	\$672.54
Shipping	Free
Taxes	\$52.12
Total	USD \$724.66

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1 53. So, Defendant represented that the Products had a certain regular price and
2 that Ms. Goldsmith was receiving a substantial discount for the items that she purchased.

3 54. Ms. Goldsmith read and relied on Defendant's representations on
4 Defendant's website and online order summary, specifically that the Products were being
5 offered at a discount for a limited time and had higher regular and usual prices, and that
6 she would be receiving a price reduction by buying now. Based on Defendant's
7 representations described and shown above, Ms. Goldsmith reasonably understood that
8 the Products she was purchasing regularly (and before the promotion Defendant was
9 advertising) retailed at the published list prices, that these published list prices were the
10 market value of the Product that she was buying; that she was receiving the advertised
11 discount and a price reduction as compared to the regular price, and that advertised
12 discount was only available for a limited time (during the limited time promotion). She
13 would not have made the purchase if she had known that the Products were not
14 discounted as advertised, and that she was not receiving the advertised discount.

15 55. At the time that Plaintiff purchased the Products, she did not know that
16 Defendant's sales were not real, that the discounts were fake, and that the sales were not
17 ending soon. Nor did she have any reason to suspect that the sales were fake when she
18 purchased the Products. Plaintiff did not discover Defendant's deception until February
19 2024, when she learned that Defendant's Products are always discounted, and that, as a
20 result, she did not receive the sale she was promised.

21 56. Plaintiff faces an imminent threat of future harm. Plaintiff would purchase
22 Nolah Products from Defendant again in the future if she could feel sure that
23 Defendant's list prices accurately reflected Defendant's regular prices and former prices,
24 and the market value of the Products, and that its discounts were truthful. But without
25 an injunction, Plaintiff has no realistic way to know which—if any—of Defendant's list
26 prices, discounts, and sales are not false or deceptive. For example, while she could
27 watch a sale on the day that it is supposed to end to see if the sale is permanent, doing so
28 could result in her missing out on the sale (*e.g.*, if the sale is actually limited in time, and

1 not permanent). Accordingly, Plaintiff is unable to rely on Defendant's advertising in the
2 future, and so cannot purchase the Products she would like to purchase.

3 **E. Defendant breached its contract with and warranties to Ms.**
4 **Goldsmith and the putative class.**

5 57. When Ms. Goldsmith and other members of the putative class purchased
6 and paid for the Products they bought as described and shown above, they accepted
7 offers that Defendant made, and thus, a contract was formed at the time that they made a
8 purchase. The offer was to provide Products having a particular listed regular price and
9 market value, and to provide those Products at the discounted price advertised on the
10 website.

11 58. Defendant's website and order summary list the market value of the items
12 that Defendant promised to provide. Defendant agreed to provide a discount equal to
13 the difference between the regular price listed by Defendant, and the price paid by Ms.
14 Goldsmith and putative class members. For example, Defendant offered to provide Ms.
15 Goldsmith a Nolah Limited Edition 10" Queen Mattress with a regular price and market
16 value of \$1,019.00, for a discounted price of \$764.25 with the application of 25%
17 discount (\$254.75).⁵ Defendant also warranted that the regular price and market value of
18 the Nolah Limited Edition 10" Queen Mattress that Ms. Goldsmith purchased was the
19 amount it identified as the list price (\$1,019.00) and warranted that Ms. Goldsmith was
20 receiving a discount of \$254.75 for the 25% discount.

21 59. The regular price and market value of the items Ms. Goldsmith and the
22 putative class members would receive, and the amount of the discount they would be
23 provided off the regular price of the item, were specific and material terms of the
24 contracts. They were also affirmations of fact about the Products and a promise relating
25 to the goods.

26
27
28 ⁵ Plaintiff received a further discount of \$91.71 for opting out of the 120-day trial
period, for a final product price of \$672.54.

1 60. Ms. Goldsmith and other members of the putative class performed their
2 obligations under the contracts by paying for the items they purchased.

3 61. Defendant breached its contract by failing to provide Ms. Goldsmith and
4 other members of the putative class with Products that have a regular price and market
5 value equal to the regular price displayed, and by failing to provide the discount it
6 promised. Defendant also breached warranties for the same reasons.

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

8 62. Plaintiff seeks damages and, in the alternative, restitution. Plaintiff is
9 permitted to seek equitable remedies in the alternative because she has no adequate
10 remedy at law.

11 63. A legal remedy is not adequate if it is not as certain as an equitable
12 remedy. The elements of Plaintiff's equitable claims are different and do not require the
13 same showings as Plaintiff's legal claims. For example, Plaintiff's FAL claim under
14 section 17501 (an equitable claim) is predicated on a specific statutory provision, which
15 prohibits advertising merchandise using a former price if that price was not the prevailing
16 market price within the past three months. Cal. Bus. & Prof. Code § 17501. Plaintiff
17 may be able to prove these more straightforward factual elements, and thus prevail under
18 the FAL, while not being able to prove one or more elements of her legal claims.

19 64. In addition, to obtain a full refund as damages, Plaintiff must show that the
20 Products she bought has essentially no market value. In contrast, Plaintiff can seek
21 restitution without making this showing. This is because Plaintiff purchased Products
22 that she would not otherwise have purchased, but for Defendant's representations.
23 Obtaining a full refund at law is less certain than obtaining a refund in equity.

24 65. Furthermore, the remedies at law available to Plaintiff are not equally
25 prompt or otherwise efficient. The need to schedule a jury trial may result in delay. And
26 a jury trial will take longer, and be more expensive, than a bench trial.

27 **V. Class action allegations.**

28 66. Plaintiff brings the asserted claims on behalf of the proposed class of:

- 1 • Nationwide Class: all persons who, within the applicable statute of
2 limitations period, purchased one or more Nolah Products advertised at a
3 discount on Defendant's website.
- 4 • California Subclass: all persons who, while in the state of California and
5 within the applicable statute of limitations period, purchased one or more
6 Nolah Products advertised at a discount on Defendant's website.

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

16 ***Numerosity & Ascertainability***

17 68. The proposed class contains members so numerous that separate joinder of
18 each member of the class is impractical. There are tens or hundreds of thousands of
19 class members.

20 69. Class members can be identified through Defendant's sales records and
21 public notice.

22 ***Predominance of Common Questions***

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

- 25 (1) whether Defendant made false or misleading statements of fact in its
26 advertisements;
- 27 (2) whether Defendant violated California's consumer protection statutes;
- 28 (3) whether Defendant committed a breach of contract;

- 1 (4) whether Defendant committed a breach of an express warranty;
2 (5) damages needed to reasonably compensate Plaintiff and the proposed class.

3 ***Typicality & Adequacy***

4 71. Plaintiff's claims are typical of the proposed class. Like the proposed class,
5 Plaintiff purchased the Nolah Products advertised at a discount from Defendant. There
6 are no conflicts of interest between Plaintiff and the class.

7 ***Superiority***

8 72. A class action is superior to all other available methods for the fair and
9 efficient adjudication of this litigation because individual litigation of each claim is
10 impractical. It would be unduly burdensome to have individual litigation of millions of
11 individual claims in separate lawsuits, every one of which would present the issues
12 presented in this lawsuit.

13 **VI. Claims.**

14 **First Cause of Action:**

15 **Violation of California's False Advertising Law Bus. & Prof. Code §§ 17500 &**
16 **17501 et. seq.**

17 **(By Plaintiff and the California Subclass)**

18 73. Plaintiff incorporates each and every factual allegation set forth above.

19 74. Plaintiff brings this cause of action on behalf of herself and members of the
20 California Subclass.

21 75. Defendant has violated sections 17500 and 17501 of the Business and
22 Professions Code.

23 76. Defendant has violated, and continues to violate, section 17500 of the
24 Business and Professions Code by disseminating untrue and misleading advertisements to
25 Plaintiff and subclass members.

26 77. As alleged more fully above, Defendant advertises steep discounts on its
27 Products. Defendant does this, for example, by offering "\$X" or "X%" off, by running
28 these discounts in perpetuity while prominently representing that the discounts will

1 expire after the countdown clock runs out, and by identifying the supposed savings that
2 customers are supposedly receiving by using list prices in strikethrough font by lower,
3 purported discount prices, during checkout.

4 78. Furthermore, Defendant advertises former prices along with discounts.
5 Defendant does this, for example, by crossing out a higher price (*e.g.*, \$1019.00) and
6 displaying it by a lower, discounted price. Reasonable consumers would understand
7 prices denoted as regular prices from which time-limited discounts are calculated to
8 denote “former” prices, *i.e.*, the prices that Defendant charged before the time-limited
9 discount went into effect.

10 79. The prices advertised by Defendant are not Defendant’s regular prices. In
11 fact, those prices are never Defendant’s regular prices (*i.e.*, the price you usually have to
12 pay to get the product in question), because there is always a heavily-advertised
13 promotion ongoing entitling consumers to a discount. Moreover, for the same reasons,
14 those prices were not the former prices of the Products. Accordingly, Defendant’s
15 statements about the former prices of its Products, and its statements about its discounts
16 from those former prices, were untrue and misleading. In addition, Defendant’s
17 statements that its discounts are time-limited for a certain time period are false and
18 misleading too.

19 80. In addition, Defendant has violated, and continues to violate, section 17501
20 of the Business and Professions Code by advertising former prices that were not the
21 prevailing market price within three months next immediately preceding the advertising.
22 As explained above, Defendant’s advertised regular prices, which reasonable consumers
23 would understand to denote former prices, were not the prevailing market prices for the
24 Products within three months preceding publication of the advertisement. And
25 Defendant’s former price advertisements do not state clearly, exactly, and conspicuously
26 when, if ever, the former prices prevailed. Defendant’s advertisements do not indicate
27 whether or when the purported former prices were offered at all.

28

1 81. Defendant’s misrepresentations were intended to induce reliance, and
2 Plaintiff saw, read, and reasonably relied on the statements when purchasing Nolah
3 Products. Defendant’s misrepresentations were a substantial factor in Plaintiff’s purchase
4 decision.

5 82. In addition, subclass-wide reliance can be inferred because Defendant’s
6 misrepresentations were material, i.e., a reasonable consumer would consider them
7 important in deciding whether to buy the Nolah Products.

8 83. Defendant’s misrepresentations were a substantial factor and proximate
9 cause in causing damages and losses to Plaintiff and the subclass.

10 84. Plaintiff and the subclass were injured as a direct and proximate result of
11 Defendant’s conduct because (a) they would not have purchased Nolah Products if they
12 had known the truth, and/or (b) they overpaid for the Products because the Nolah
13 Products were sold at a price premium due to the misrepresentations.

14 **Second Cause of Action:**

15 **Violation of California’s Consumer Legal Remedies Act**
16 **(by Plaintiff and the California Subclass)**

17 85. Plaintiff incorporates each and every factual allegation set forth above.

18 86. Plaintiff brings this cause of action on behalf of herself and members of the
19 California Subclass.

20 87. Plaintiff and the subclass are “consumers,” as the term is defined by
21 California Civil Code § 1761(d).

22 88. Plaintiff and the subclass have engaged in “transactions” with Defendant as
23 that term is defined by California Civil Code § 1761(e).

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

28

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

5 91. Defendant violated, and continues to violate, section 1770 of the California
6 Civil Code.

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

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

16 94. And Defendant violated, and continues to violate section 1770(a)(13) by
17 making false or misleading statements of fact concerning reasons for, existence of, or
18 amounts of, price reductions on its website, including by (1) misrepresenting the regular
19 price of Products on its website, (2) advertising discounts and savings that are
20 exaggerated or nonexistent, (3) misrepresenting that the discounts and savings are
21 unusually large, when in fact they are regularly available, and (4) misrepresenting the
22 reason for the sale (*e.g.*, “Memorial Day Sale,” when in fact the sale is ongoing and not
23 limited to Memorial Day).

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

1 96. Defendant’s misrepresentations were intended to induce reliance, and
2 Plaintiff saw, read, and reasonably relied on them when purchasing Nolah Products.
3 Defendant’s misrepresentations were a substantial factor in Plaintiff’s purchase decision.

4 97. In addition, subclass-wide reliance can be inferred because Defendant’s
5 misrepresentations were material, i.e., a reasonable consumer would consider them
6 important in deciding whether to buy the Nolah Products.

7 98. Defendant’s misrepresentations were a substantial factor and proximate
8 cause in causing damages and losses to Plaintiff and the subclass.

9 99. Plaintiff and the subclass were injured as a direct and proximate result of
10 Defendant’s conduct because (a) they would not have purchased Nolah Products if they
11 had known the discounts and/or regular prices were not real, (b) they overpaid for the
12 Products because the Products were sold at a price premium due to the
13 misrepresentation, and/or (c) they received products with market values lower than the
14 promised market values.

15 100. Accordingly, pursuant to California Civil Code § 1780(a)(2), Ms. Goldsmith,
16 on behalf of herself and all other members of the subclass, seeks injunctive relief.

17 101. CLRA § 1782 NOTICE. On February 29, 2024, a CLRA demand letter was
18 sent to Defendant’s Arizona headquarters and registered agent via certified mail (return
19 receipt requested), that provided notice of Defendant’s violations of the CLRA and
20 demanded that Defendant correct the unlawful, unfair, false and/or deceptive practices
21 alleged here. Defendant does not have a California headquarters. If Defendant does not
22 fully correct the problem for Plaintiff and for each member of the California Subclass
23 within 30 days of receipt, Plaintiff and the California Subclass will seek all monetary relief
24 allowed under the CLRA.

25 102. A CLRA venue declaration is attached.
26
27
28

1 **Third Cause of Action:**

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

3 **(by Plaintiff and the California Subclass)**

4 103. Plaintiff incorporates each and every factual allegation set forth above.

5 104. Plaintiff brings this cause of action on behalf of herself and members of the
6 California Subclass.

7 105. Defendant has violated California’s Unfair Competition Law (UCL) by
8 engaging in unlawful, fraudulent, and unfair conduct (i.e., violating each of the three
9 prongs of the UCL).

10 ***The Unlawful Prong***

11 106. Defendant engaged in unlawful conduct by violating the CLRA and FAL, as
12 alleged above and incorporated here. In addition, Defendant engaged in unlawful
13 conduct by violating the FTCA. The FTCA prohibits “unfair or deceptive acts or
14 practices in or affecting commerce” and prohibits the dissemination of false
15 advertisements. 15 U.S.C. § 45(a)(1). As the FTC’s regulations make clear, Defendant’s
16 false pricing schemes violate the FTCA. 16 C.F.R. § 233.1, § 233.2.

17 ***The Deceptive Prong***

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

21 108. Defendant’s representations were misleading to Plaintiff and other
22 reasonable consumers.

23 109. Plaintiff relied upon Defendant’s misleading representations and omissions,
24 as detailed above.

25 ***The Unfair Prong***

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

1 111. Defendant violated established public policy by violating the CLRA, the
2 FAL, and the FTCA, as alleged above and incorporated here. The unfairness of this
3 practice is tethered to a legislatively declared policy (that of the CLRA, the FAL, and the
4 FTCA).

5 112. The harm to Plaintiff and the subclass greatly outweighs the public utility of
6 Defendant's conduct. There is no public utility to misrepresenting the price of a
7 consumer product. This injury was not outweighed by any countervailing benefits to
8 consumers or competition. Misleading consumer products only injure healthy
9 competition and harm consumers.

10 113. Plaintiff and the subclass could not have reasonably avoided this injury. As
11 alleged above, Defendant's representations were deceptive to reasonable consumers like
12 Plaintiff.

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

15 * * *

16 115. For all prongs, Defendant's representations were intended to induce
17 reliance, and Plaintiff saw, read, and reasonably relied on them when purchasing Nolah
18 Products. Defendant's representations were a substantial factor in Plaintiff's purchase
19 decision.

20 116. In addition, subclass-wide reliance can be inferred because Defendant's
21 representations were material, i.e., a reasonable consumer would consider them important
22 in deciding whether to buy Nolah Products.

23 117. Defendant's representations were a substantial factor and proximate cause
24 in causing damages and losses to Plaintiff and the subclass members.

25 118. Plaintiff and the subclass were injured as a direct and proximate result of
26 Defendant's conduct because (a) they would not have purchased the Nolah Products if
27 they had known that they were not discounted, and/or (b) they overpaid for the Products
28 because the Products were sold at the regular price and not at a discount.

Fourth Cause of Action:

Breach of Contract

(by Plaintiff and the Nationwide Class)

119. Plaintiff incorporates each and every factual allegation set forth above.

120. Plaintiff brings this cause of action on behalf of herself and the Nationwide Class. In the alternative, Plaintiff brings this cause of action on behalf of herself and the California Subclass.

121. Plaintiff and class members entered into contracts with Defendant when they placed orders to purchase Products on Defendant's website.

122. The contracts provided that Plaintiff and class members would pay Defendant for the Products purchased.

123. The contracts further required that Defendant provides Plaintiff and class members with Products that have a market value equal to the regular prices displayed on the website. They also required that Defendant provide Plaintiff and class members with a discount equal to the difference between the price paid, and the regular prices advertised. These were specific and material terms of the contract.

124. The specific discounts were a specific and material term of each contract.

125. Plaintiff and class members paid Defendant for the Products they purchased, and satisfied all other conditions of their contracts.

126. Defendant breached its contracts with Plaintiff and class members by failing to provide Products that had a regular price, former price, and/or prevailing market value equal to the regular price displayed on its website, and by failing to provide the promised discount. Defendant did not provide the discount that it had promised.

127. Plaintiff provided Defendant with notice of this breach of contract, by mailing a notice letter to Defendant's headquarters and registered agent, on February 29, 2024.

1 128. As a direct and proximate result of Defendant's breaches, Plaintiff and class
2 members were deprived of the benefit of their bargained-for exchange, and have suffered
3 damages in an amount to be established at trial.

4 **Fifth Cause of Action:**

5 **Breach of Express Warranty**

6 **(by Plaintiff and the California Subclass)**

7 129. Plaintiff incorporates each and every factual allegation set forth above.

8 130. Plaintiff brings this cause of action on behalf of herself and members of the
9 California Subclass.

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

15 132. This warranty was part of the basis of the bargain and Plaintiff and
16 members of the subclass relied on this warranty.

17 133. In fact, the Nolah Products' stated market value was not the prevailing
18 market value. Thus, the warranty was breached.

19 134. Plaintiff provided Defendant with notice of this breach of warranty, by
20 mailing a notice letter to Defendant's headquarters and registered agent, on February 29,
21 2024.

22 135. Plaintiff and the subclass were injured as a direct and proximate result of
23 Defendant's breach, and this breach was a substantial factor in causing harm, because (a)
24 they would not have purchased Nolah Products if they had known that the warranty was
25 false, or (b) they overpaid for the Products because the Products were sold at a price
26 premium due to the warranty.

Sixth Cause of Action:

Quasi-Contract/Unjust Enrichment

(by Plaintiff and the Nationwide Class)

136. Plaintiff incorporates each and every factual allegation in paragraphs 1-56, 62-72 above.

137. Plaintiff brings this cause of action in the alternative to her Breach of Contract claim (Claim IV) on behalf of herself and the Nationwide Class. In the alternative, Plaintiff brings this claim on behalf of herself and the California Subclass.

138. As alleged in detail above, Defendant's false and misleading advertising caused Plaintiff and the class to purchase Nolah Products and to pay a price premium for these Products.

139. In this way, Defendant received a direct and unjust benefit, at Plaintiff's expense.

140. (In the alternative only), due to Defendant's misrepresentations, its contracts with Plaintiff and other class members are void or voidable.

141. Plaintiff and the class seek restitution, and in the alternative, rescission.

Seventh Cause of Action:

Negligent Misrepresentation

(by Plaintiff and the California Subclass)

142. Plaintiff incorporates each and every factual allegation set forth above.

143. Plaintiff brings this cause of action on behalf of herself and members of the California Subclass.

144. As alleged more fully above, Defendant made false representations and material omissions of fact to Plaintiff and subclass members concerning the existence and/or nature of the discounts and savings advertised.

145. These representations were false.

1 146. When Defendant made these misrepresentations, it knew or should have
2 known that they were false. Defendant had no reasonable grounds for believing that
3 these representations were true when made.

4 147. Defendant intended that Plaintiff and subclass members rely on these
5 representations and Plaintiff and subclass members read and reasonably relied on them.

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

9 149. Defendant's misrepresentations were a substantial factor and proximate
10 cause in causing damages and losses to Plaintiff and subclass members.

11 150. Plaintiff and subclass members were injured as a direct and proximate result
12 of Defendant's conduct because (a) they would not have purchased Nolah Products if
13 they had known that the representations were false, and/or (b) they overpaid for the
14 Products because the Products were sold at a price premium due to the
15 misrepresentation.

16 **Eighth Cause of Action:**

17 **Intentional Misrepresentation**

18 **(by Plaintiff and the California Subclass)**

19 151. Plaintiff incorporates each and every factual allegation set forth above.

20 152. Plaintiff brings this cause of action on behalf of herself and members of the
21 California Subclass.

22 153. As alleged more fully above, Defendant made false representations and
23 material omissions of fact to Plaintiff and subclass members concerning the existence
24 and/or nature of the discounts and savings advertised.

25 154. These representations were false.

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

1 156. Defendant intended that Plaintiff and subclass members rely on these
2 representations and Plaintiff and subclass members read and reasonably relied on them.

3 157. In addition, subclass-wide reliance can be inferred because Defendant's
4 misrepresentations were material, i.e., a reasonable consumer would consider them
5 important in deciding whether to buy the Nolah Products.

6 158. Defendant's misrepresentations were a substantial factor and proximate
7 cause in causing damages and losses to Plaintiff and subclass members.

8 159. Plaintiff and subclass members were injured as a direct and proximate result
9 of Defendant's conduct because (a) they would not have purchased Nolah Products if
10 they had known that the representations were false, and/or (b) they overpaid for the
11 Products because the Products were sold at a price premium due to the
12 misrepresentation.

13 **VII. Relief.**

14 160. Plaintiff seeks the following relief for herself and the proposed class:

- 15 • An order certifying the asserted claims, or issues raised, as a class action;
- 16 • A judgment in favor of Plaintiff and the proposed class;
- 17 • Damages, treble damages, and punitive damages where applicable;
- 18 • Restitution;
- 19 • Rescission;
- 20 • Disgorgement, and other just equitable relief;
- 21 • Pre- and post-judgment interest;
- 22 • An injunction prohibiting Defendant's deceptive conduct, as allowed by
23 law;
- 24 • Reasonable attorneys' fees and costs, as allowed by law;
- 25 • Any additional relief that the Court deems reasonable and just.

26 **VIII. Demand for Jury Trial.**

27 161. Plaintiff demands the right to a jury trial on all claims so triable.
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1 Dated: March 5, 2024

Respectfully submitted,

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