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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 LACEY TIMMINS, individually and on behalf
12 of all similarly situated persons,

13 Plaintiff,

14 v.

15 THE HOME DEPOT U.S.A., Inc., a Delaware
16 corporation,

17 Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Lacey Timmins (“Plaintiff”) brings this class action complaint individually and on behalf
2 of all others similarly situated against The Home Depot U.S.A., Inc. (“Defendant” or “Home Depot”).
3 The allegations contained in this class action complaint are based on Plaintiff’s personal knowledge of
4 facts pertaining to herself and upon information and belief, including further investigation conducted by
5 Plaintiff’s counsel, as to the remainder.

6 **I. NATURE OF THE ACTION**

7 1. Defendant has violated California’s “prohibition on advertising non-existent sales.”
8 *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1106 (9th Cir. 2013). “[P]rice advertisements matter.” *Id.*

9 2. This is a class action lawsuit brought to address Defendant’s misleading and unlawful
10 pricing, sales, and discounting practices on its website www.homedepot.com. The products at issue
11 include all goods that have at any time been offered on the website, at a sale or discounted price from a
12 higher reference price, including without limitation: appliances, tools, outdoor equipment, home
13 equipment, furniture, and garden equipment, and many other categories. Defendant advertises false,
14 misleading, and inflated comparison reference prices to deceive customers into a belief that the sale price
15 is a discounted bargain price.

16 3. Anyone visiting the website who buys an item on “sale” from a stricken former or regular
17 price is being misled. This is because that item has not been listed for sale or sold *on the website*, in the
18 recent past and for a substantial time, at the former price. Yet Defendant’s use of inflated reference prices,
19 strikethrough pricing and discounting, and purported limited time sales all lead reasonable consumers to
20 believe that the products in fact had been listed for sale and sold on the website, at the former and regular
21 price, in the recent past, for a substantial period of time.

22 4. On information and belief, all or nearly all the reference prices on the website are false
23 and misleading. They are not former or regular prices at which the products were offered on the website
24 in the recent past for a substantial time. They are inflated prices posted to lure consumers into purchasing
25 items from Defendant.

26 5. Beyond that, on information and belief, Defendant’s products sold on the website not only
27 have a market value lower than the promised former price, but the market value of the products is also
28 lower than the discounted “sale” price. By using false reference pricing and false limited time sales,

1 Defendant artificially drives up demand for the products, and by extension drives up the price of the
2 products. As a result, consumers received a product worth less than the price paid. To illustrate, assume
3 a company knows a product will sell in the marketplace at \$30. But to increase revenue and capture
4 market share, the company advertises the product as having a “regular” price of \$100 and being on “sale”
5 at 60% off (i.e., \$60 off). Because consumers value products based on the regular price, and a purported
6 limited-time sale conveys additional savings, the company can sell that \$30 product for \$40.

7 6. As a result, consumers are deceived into spending money they otherwise would not have
8 spent, purchasing items they would not have purchased, and/or spending more money for an item than
9 they otherwise would have absent deceptive marketing.

10 **II. PARTIES**

11 7. Plaintiff Lacey Timmins is a resident of the State of California and County of Stanislaus.
12 She was present in Stanislaus County at the time she made her purchase from the website.

13 8. Defendant Home Depot is a Delaware corporation. Defendant is an online and brick-and-
14 mortar retailer of home and gardening products, including without limitation appliances, tools, outdoor
15 equipment, home equipment, furniture, garden equipment, and hundreds of other categories. Through the
16 website, Defendant sells its products to consumers in California and nationwide. Defendant is
17 headquartered in Georgia.

18 **III. JURISDICTION AND VENUE**

19 9. This Court has jurisdiction over this lawsuit under the Class Action Fairness Act, 28
20 U.S.C. § 1332(d)(2), because this is a proposed class action in which: (i) there are at least 100 class
21 members; (ii) the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs;
22 and (iii) at least one putative class member and one Defendant are citizens of different states.

23 10. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial part of
24 the events or omissions giving rise to the claims herein occurred in this judicial district. As set forth
25 herein, Defendant owns and operates the website, and marketed, sold, and shipped products to purchasers
26 located in this district, including Plaintiff.

27 11. Further, as set forth herein, Defendant has contacts in this district sufficient to subject it
28 to the personal jurisdiction of this district as if this district were a separate state. Defendant continuously

1 and systematically places goods into the stream of commerce for distribution in California, maintains an
2 interactive commercial website, offers to ship products to California, and allows customers in California
3 to order products. Exercising jurisdiction over Defendant is fair, just, and reasonable considering the
4 quality and nature of Defendant's acts that occur in California and which affect interests located in
5 California. Defendant has purposefully availed itself of the privilege of conducting activities in
6 California, and should reasonably anticipate being haled into court in California.

7 **IV. GENERAL ALLEGATIONS**

8 **A. Company Background**

9 12. On the website's About Us page, Defendant describes itself as "the world's largest home
10 improvement retailer."¹

11 13. Home Depo was "founded in 1978" and now has "more than 2,300 stores across North
12 America."² Specifically: "Today, The Home Depot is the world's largest home improvement retailer with
13 approximately 475,000 orange-blooded associates and more than 2,300 stores in the U.S., Canada and
14 Mexico. The typical store today averages 105,000 square feet of indoor retail space, interconnected with
15 an e-commerce business that offers more than one million products for the DIY customer, professional
16 contractors, and the industry's largest installation business for the Do-It-For-Me customer."

17 14. Defendant, through the website, has sold millions of units of merchandise to consumers
18 in California and nationwide.

19 **B. Defendant's False and Deceptive Pricing Scheme**

20 **1. The Products Are Not Regularly Listed or Sold on the Website at the** 21 **Reference Prices**

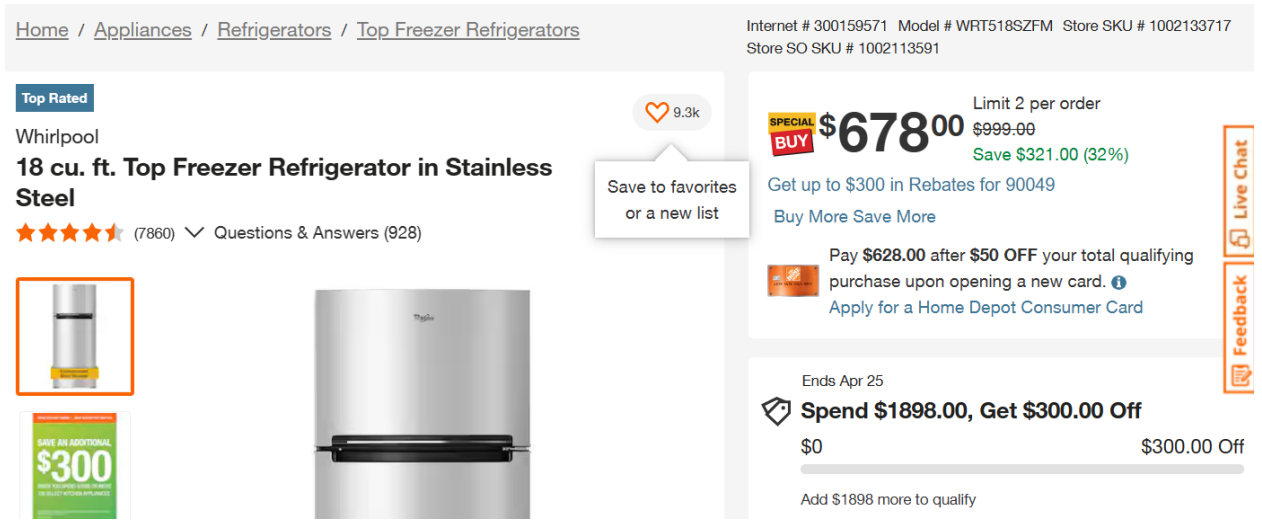
22 15. Defendant's business model relies on deceiving consumers with false or misleading sales.

23 16. On any given date, many products on the website are represented as being discounted
24 from a substantially higher reference price. On individual listing pages, the supposed markdowns are
25 represented to the consumer by prominently displaying a "crossed-out" reference price next to the sale
26

27 ¹ <https://corporate.homedepot.com/page/about-us>

28 ² *Id.*

price, and “Save \$__” or “Save __%”. A representative example is shown below. (For some products, the sale prices are only shown when added to a customer’s cart to further incentivize a purchase.)



17. Defendant employs these deceptive tactics to convey to customers that the product was listed or sold on the website at the reference price, in the recent past and for a substantial period of time, but is now being listed and sold to the customer at a substantial discount. In other words, reasonable consumers would understand that the strikethrough reference price, or the adjacent “Save \$__” or “Save __%”, each independently convey that the product was listed or sold *on the website* at the reference price, in the recent past and for a substantial period of time, but is now being listed and sold to the customer at a substantial discount.

18. However, on information and belief, this reference price is a falsely inflated price because Defendant rarely, if ever, lists or sells items at the reference price. The only purpose of the reference price is to mislead customers into believing that the displayed reference price is a former or regular price at which Defendant usually lists and sells the item in the recent past. As a result, Defendant falsely conveys to customers that they are receiving a substantial markdown or discount. Representative examples of such false and misleading advertising are shown below.

a. 18 cu. ft. Top Freezer Refrigerator in Stainless Steel

i. 04/16/2024: \$678.00 (sale price); \$999.00 (reference price)

Home / Appliances / Refrigerators / Top Freezer Refrigerators

Internet # 300159571 Model # WRT1518S2FM Store SKU # 1002133717
Store SO SKU # 100213591

Top Rated

Whirlpool
18 cu. ft. Top Freezer Refrigerator in Stainless Steel

★★★★★ (7660) Questions & Answers (928)

Save to favorites or a new list

\$678.00 Limit 2 per order
~~\$999.00~~
Save \$321.00 (32%)

Get up to \$300 in Rebates for 90049
Buy More Save More

Pay \$628.00 after \$50 OFF your total qualifying purchase upon opening a new card. Apply for a Home Depot Consumer Card

Ends Apr 25

Spend \$1898.00, Get \$300.00 Off

\$0 \$300.00 Off

Add \$1898 more to qualify

ii. 02/15/2024: \$648.00 (sale price); \$999.00 (reference price)

iii. 01/09/2024: \$648.00 (sale price); \$999.00 (reference price)

iv. 12/17/2023: \$648.00 (sale price); \$999.00 (reference price)

v. 11/19/2023: \$648.00 (sale price); \$999.00 (reference price)

vi. 09/22/2023: \$678.00 (sale price); \$999.00 (reference price)

vii. 06/01/2023: \$648.00 (sale price); \$999.00 (reference price)

b. Electrolux 4.5 cu. ft. Stackable Front Load Washer in Titanium with SmartBoost, Optic Whites, and Pure Rinse

i. 04/16/2024: \$898.00 (sale price); \$1349.00 (reference price)

/ Appliances / Washers & Dryers / Washing Machines / Front Load Washers

Internet # 318268534 Model # ELFW7637AT Store SKU # 10068151
Store SO SKU # 1006740624

lectrolux

.5 cu. ft. Stackable Front Load Washer in Titanium with SmartBoost, Optic Whites, and Pure Rinse

★★★★★ (7525) Questions & Answers (217)

\$898.00 ~~\$1349.00~~
Save \$451.00 (33%)

Get up to \$600 in Rebates for 90049
Electrolux Laundry Savings

\$75.00 /mo† suggested payments with 12 months† financing Apply Now

Ends Apr 25

Buy One, Get One \$100 Off

Main Item + \$100 Off

Shop This Offer

ii. 01/18/2024: \$898.00 (sale price); \$1349.00 (reference price)

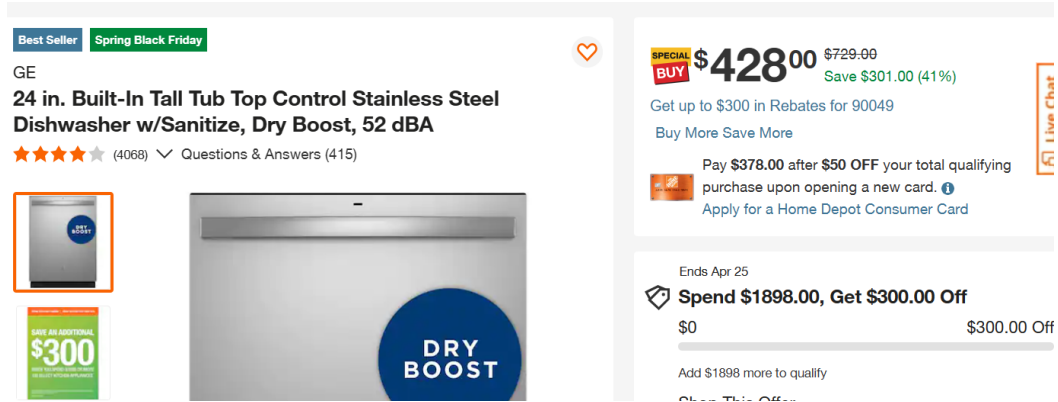
iii. 12/17/2023: \$898.00 (sale price); \$1349.00 (reference price)

iv. 09/01/2023: \$1098.00 (sale price); \$1349.00 (reference price)

1 c. GE 24 in. Built-In Tall Tub Top Control Stainless Steel Dishwasher w/Sanitize, Dry Boost,
2 52 dBA

3 i. [04/16/2024](#): \$428.00 (sale price); \$729.00 (reference price)

4



5 Best Seller Spring Black Friday

6 GE

7 24 in. Built-In Tall Tub Top Control Stainless Steel Dishwasher w/Sanitize, Dry Boost, 52 dBA

8 ★★★★★ (4068) Questions & Answers (415)

9 **SPECIAL BUY \$428.00** ~~\$729.00~~ Save \$301.00 (41%)

10 Get up to \$300 in Rebates for 90049

11 Buy More Save More

12 Pay \$378.00 after \$50 OFF your total qualifying purchase upon opening a new card. Apply for a Home Depot Consumer Card

13 Ends Apr 25

14 **Spend \$1898.00, Get \$300.00 Off**

15 \$0 \$300.00 Off

16 Add \$1898 more to qualify

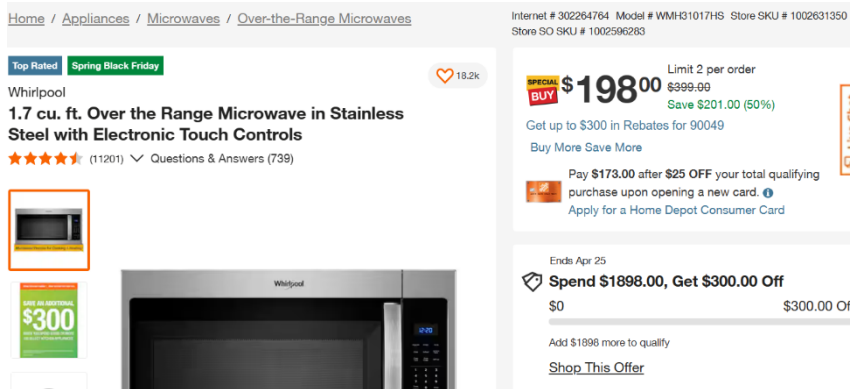
17 ii. [12/16/2023](#): \$428.00 (sale price); \$729.00 (reference price)

18 iii. [09/28/2023](#): \$428.00 (sale price); \$729.00 (reference price)

19 d. Whirlpool 1.7 cu. ft. Over the Range Microwave in Stainless Steel with Electronic Touch
20 Controls

21 i. [04/16/2024](#): \$198.00 (sale price); \$399.00 (reference price)

22



23 Home / Appliances / Microwaves / Over-the-Range Microwaves

24 Top Rated Spring Black Friday

25 Whirlpool

26 1.7 cu. ft. Over the Range Microwave in Stainless Steel with Electronic Touch Controls

27 ★★★★★ (11201) Questions & Answers (739)

28 **SPECIAL BUY \$198.00** ~~\$399.00~~ Save \$201.00 (50%)

29 Get up to \$300 in Rebates for 90049

30 Buy More Save More

31 Pay \$173.00 after \$25 OFF your total qualifying purchase upon opening a new card. Apply for a Home Depot Consumer Card

32 Ends Apr 25

33 **Spend \$1898.00, Get \$300.00 Off**

34 \$0 \$300.00 Off

35 Add \$1898 more to qualify

36 Shop This Offer

37 ii. [01/07/2024](#): \$228.00 (sale price); \$399.00 (reference price)

38 iii. [02/04/2024](#): \$248.00 (sale price); \$399.00 (reference price)

39 iv. [03/03/2024](#): \$228.00 (sale price); \$399.00 (reference price)

40 v. [12/07/2023](#): \$198.00 (sale price); \$399.00 (reference price)

41 vi. [11/07/2023](#): \$198.00 (sale price); \$399.00 (reference price)

42 vii. [06/01/2023](#): \$228.00 (sale price); \$399.00 (reference price)

43 viii. [05/22/2023](#): \$228.00 (sale price); \$399.00 (reference price)

ix. [02/27/2023](#): \$228.00 (sale price); \$399.00 (reference price)

x. [09/28/2019](#): \$228.00 (sale price); \$319.00 (reference price)

e. LG Smart 30 in. W 2 cu. ft. Over the Range Microwave with EasyClean 1,050-Watt in PrintProof Stainless Steel

i. [04/16/2024](#): \$348.00 (sale price); \$459.00 (reference price)

Home / Appliances / Microwaves / Over-the-Range Microwaves

Internet # 321606321 Model # MVEL2033F Store SKU # 1008264967 Store SO SKU # 1008166092

Spring Black Friday

LG

Smart 30 in. W 2 cu. ft. Over the Range Microwave with EasyClean 1,050-Watt in PrintProof Stainless Steel

★★★★★ (835) Questions & Answers (255)

SPECIAL BUY \$348.00 Limit 2 per order \$459.00 Save \$111.00 (24%)

Get up to \$485 in Rebates for 90049 Buy More Save More

Pay \$298.00 after \$50 OFF your total qualifying purchase upon opening a new card. Apply for a Home Depot Consumer Card

Ends Apr 25

Spend \$1898.00, Get \$300.00 Off

\$0 \$300.00 Off

Add \$1898 more to qualify Shop This Offer

ii. [12/05/2023](#): \$298.00 (sale price); \$459.00 (reference price)

iii. [09/29/2023](#): \$298.00 (sale price); \$459.00 (reference price)

iv. [07/03/2023](#): \$298.00 (sale price); \$459.00 (reference price)

v. [03/13/2023](#): \$398.00 (sale price); \$459.00 (reference price)

f. LG 30 in. 6.3 cu. ft. Smart Wi-Fi Enabled Fan Convection Electric Range Oven with AirFry and EasyClean in. Stainless Steel

i. [04/16/2024](#): \$898.00 (sale price); \$1049.00 (reference price)

Home / Smart Home / Smart Appliances / Smart Ranges

Internet # 312460280 Model # LREL6323S Store SKU # 1005567098 Store SO SKU # 1005228164

Best Seller Spring Black Friday

2.1k

LG

30 in. 6.3 cu. ft. Smart Wi-Fi Enabled Fan Convection Electric Range Oven with AirFry and EasyClean in. Stainless Steel

★★★★★ (2037) Questions & Answers (300)

SPECIAL BUY \$898.00 Limit 2 per order \$1049.00 Save \$151.00 (14%)

Get up to \$485 in Rebates for 90049 Buy More Save More

\$75.00/mo+ suggested payments with 12 months+ financing Apply Now

Ends Apr 25

Spend \$1898.00, Get \$300.00 Off

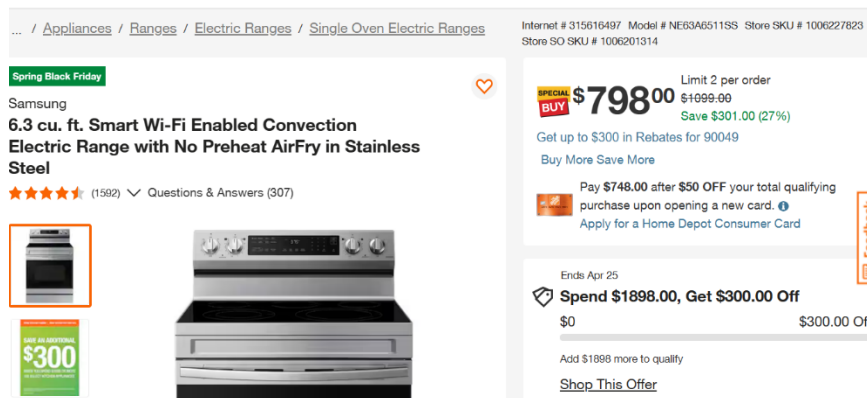
\$0 \$300.00 Off

Add \$1898 more to qualify Shop This Offer

- ii. [03/22/2024](#): \$898.00 (sale price); \$1049.00 (reference price)
- iii. [02/15/2024](#): \$898.00 (sale price); \$1049.00 (reference price)
- iv. [01/04/2024](#): \$898.00 (sale price); \$1049.00 (reference price)
- v. [12/14/2023](#): \$948.00 (sale price); \$1049.00 (reference price)
- vi. [11/03/2023](#): \$798.00 (sale price); \$1049.00 (reference price)
- vii. [09/23/2023](#): \$798.00 (sale price); \$1049.00 (reference price)
- viii. [08/06/2023](#): \$948.00 (sale price); \$1049.00 (reference price)

g. Samsung 6.3 cu. ft. Smart Wi-Fi Enabled Convection Electric Range with No Preheat AirFry in Stainless Steel

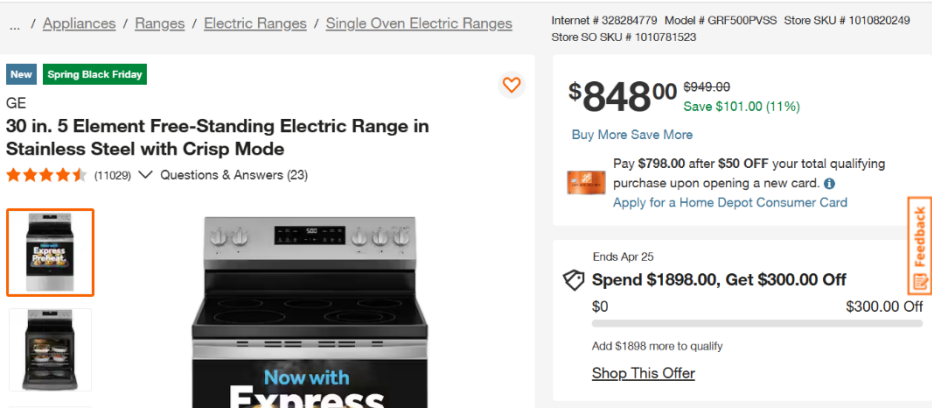
- i. [04/16/2024](#): **\$798.00** (sale price); \$1099.00 (reference price)



- ii. [02/15/2024](#): **\$798.00** (sale price); \$1099.00 (reference price)
- iii. [01/04/2024](#): **\$798.00** (sale price); \$1099.00 (reference price)
- iv. [12/17/2023](#): **\$798.00** (sale price); \$1099.00 (reference price)
- v. [11/03/2023](#): **\$698.00** (sale price); \$1099.00 (reference price)
- vi. [09/21/2023](#): **\$778.00** (sale price); \$1099.00 (reference price)
- vii. [08/25/2023](#): **\$778.00** (sale price); \$1099.00 (reference price)

h. GE 30 in. 5 Element Free-Standing Electric Range in Stainless Steel with Crisp Mode

i. [04/16/2024](#): \$848.00 (sale price); \$949.00 (reference price)



ii. [01/04/2024](#): \$848.00 (sale price); \$949.00 (reference price)

iii. [12/14/2023](#): \$698.00 (sale price); \$949.00 (reference price)

iv. [11/03/2023](#): \$678.00 (sale price); \$949.00 (reference price)

v. [09/25/2023](#): \$648.00 (sale price); \$949.00 (reference price)

vi. [08/25/2023](#): \$648.00 (sale price); \$949.00 (reference price)

19. On information and belief, this is not a new or isolated sales practice by Defendant, but continued regularly throughout at least 2024, 2023, and years earlier.

20. These pricing and advertising practices are deceptive and pressure consumers into purchasing products from Defendant at an inflated price. Defendant intends to mislead consumers into believing that they are getting a bargain by buying products from the website on sale and at a substantial and deep discount. For many products, Defendant does not offer or sell the products on the website at the reference price for a substantial time. The reference price is, therefore, artificially inflated, and the advertised discounts are deceiving.

2. The Reference Prices are not the Market Price of the Products, Including During the Rolling 90-Day Period Prior to Offering

21. Separately, Defendant cannot claim that the reference price for all products is the prevailing market price of the products.

22. On information and belief, the reference prices are unsubstantiated and based on an undisclosed formula, or are outdated, or are cherrypicked and thus not representative of the prevailing

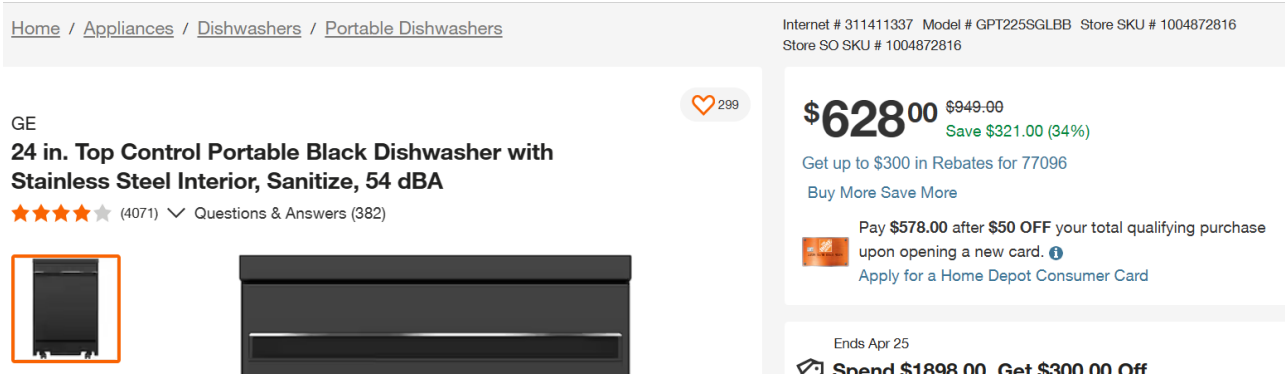
1 market prices. On information and belief, Defendant does not independently verify that the reference
2 prices are the prevailing market prices at which the products are listed for sale by other retailers for a
3 substantial period of time and in substantial quantities. And on information and belief, Defendant does
4 not update the references prices on a daily basis.

5 23. On information and belief, Defendant’s advertised reference prices are higher than the
6 prevailing market prices for the identical products. Because Defendant consistently sells the products at
7 issue at prices significantly (i.e., 25% or more) lower than its advertised former prices, there is no
8 reasonable basis to believe that Defendant consistently sells its products at prices below the prevailing
9 market prices. In competitive markets, the actual prices offered by vendors selling the same item tend to
10 converge on the market price.

11 **C. Plaintiff’s Purchase from the Website**

12 24. On February 17, 2024, Plaintiff visited the website and purchased a GE 24-inch Top
13 Control Portable Black Dishwasher with Stainless Steel Interior. Based on and consistent with archived
14 copies of the website, Plaintiff saw on the listing page a strikethrough regular price of \$949.00, an
15 adjacent “Save 36%,” and a sale price of \$598.00. She then proceeded to purchase the product for
16 \$598.00 with the understanding that she was receiving all advertised discounts off the former and regular
17 price charged by Home Depot. The product was shipped to her address in Stanislaus County, California.

18 25. A screenshot of the product listing dated April 17, 2024 is below. As of that date, the
19 product is still on sale, now for \$628.00 with a strikethrough reference price of \$949.00.



1
2 26. That sale was false and misleading. Based on archived copies of the website, the product
3 was regularly offered on the website at a discounted price.

- 4 a. 04/14/2024 - \$628.00 (sale price) / \$949.00 (regular price)
- 5 b. 04/10/2024 - \$628.00 (sale price) / \$949.00 (regular price)
- 6 c. 12/09/2023 - \$598.00 (sale price) / \$949.00 (regular price)
- 7 d. 10/03/2023 - \$598.00 (sale price) / \$949.00 (regular price)
- 8 e. 03/13/2023 - \$628.00 (sale price) / \$949.00 (regular price)

9 27. Plaintiff thus viewed and relied on the website’s purported current and limited-time sale
10 promotion. She relied on the above representations that the product (1) had a former and regular price
11 of the stated reference price, and (2) had been offered for sale *on the website* at the stated reference price,
12 in the recent past, on a regular basis and for a substantial time. And she relied on the representations that
13 the products were truly on sale and being sold at a substantial markdown and discount for a limited time.

14 28. The above-listed product Plaintiff purchased was not substantially marked down or
15 discounted, and any discount she was receiving had been grossly exaggerated.

16 29. For at least the 90-day period prior to Plaintiff’s purchase, and on information and belief
17 months and years more, Defendant very rarely, if ever, offered any of the discounted items sold on its
18 website at the reference prices.

19 30. Plaintiff would not have purchased the item at the advertised price, or would not have paid
20 as much as she did, had Defendant been truthful. Plaintiff was persuaded to make her purchase because
21 of the misleading sale based on false reference prices.

22 31. Plaintiff continues to be interested in purchasing home goods and products that are
23 available for purchase at Home Depot and offered at discounted prices, but she will be unable to trust
24 and rely on Defendant’s advertising, and so will not purchase the products from HomeDepot.com. Absent
25 injunctive relief, Plaintiff cannot know whether Defendant’s former and regular prices represent honest
26 prices at which the products were listed for sale on the website, on a regular basis for a reasonably
27 substantial period of time, or if Defendant’s sales are perpetual.

28

1 **D. Research Shows That Reference Price Advertising Influences Consumer Behavior**
2 **and Perceptions of Value**

3 32. Academic studies support the effectiveness of Defendant’s deceptive pricing scheme.

4 33. “By creating an impression of savings, the presence of a higher reference price enhances
5 subjects’ perceived value and willingness to buy the product.”³ Thus, “empirical studies indicate that, *as*
6 *discount size increases, consumers’ perceptions of value and their willingness to buy the product increase,*
7 *while their intention to search for a lower price decreases.*”⁴ Indeed, the Ninth Circuit observed that
8 “[m]isinformation about a product’s ‘normal’ price is . . . significant to many consumers in the same way
9 as a false product label would be.” *Hinojos*, 718 F.3d at 1106.

10 34. “[D]ecades of research support the conclusion that advertised reference prices do indeed
11 enhance consumers’ perceptions of the value of the deal.”⁵ According to academic studies, “[c]onsumers
12 are influenced by comparison prices even when the stated reference prices are implausibly high.”⁶

13 35. Another academic journal explains that “[r]eference price ads strongly influence
14 consumer perceptions of value Consumers often make purchases not based on price but because a
15 retailer assures them that a deal is a good bargain. This occurs when . . . the retailer highlights the relative
16 savings compared with the prices of competitors . . . [T]hese bargain assurances (BAs) change consumers’
17 purchasing behavior and may deceive consumers.”⁷

18 36. “[R]esearch has shown that retailer-supplied reference prices clearly enhance buyers’
19 perceptions of value” and “have a significant impact on consumer purchasing decisions.”⁸

21
22 ³ Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative or*
Deceptive?, 11 J. Pub. Pol’y & Mktg. 52, 55 (Spring 1992).

23 ⁴ *Id.* at 56 (emphasis added).

24 ⁵ Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Believe It Or Not*, J. of
Consumer Affairs, Vol. 36, No. 2, at 287 (Winter 2002).

25 ⁶ *Id.*

26 ⁷ Joan Lindsey-Mullikin & Ross D. Petty, *Marketing Tactics Discouraging Price Search:*
27 *Deception and Competition*, 64 J. of Bus. Research 67 (January 2011).

28 ⁸ Praveen K. Kopalle & Joan Lindsey-Mullikin, *The Impact of External Reference Price On*
Consumer Price Expectations, 79 J. of Retailing 225 (2003).

1 37. “[R]eference prices are important cues consumers use when making the decision
2 concerning how much they are willing to pay for the product.”⁹ This study also concluded that
3 “consumers are likely to be misled into a willingness to pay a higher price for a product simply because
4 the product has a higher reference price.”¹⁰

5 38. Accordingly, research confirms that deceptive advertising through false reference pricing
6 is intended to, and does, influence consumer behavior by artificially inflating consumer perceptions of
7 an item’s value and causing consumers to spend money they otherwise would not have, purchase items
8 they otherwise would not have, and/or purchase products from a specific retailer.

9 **E. Consumers Suffered Economic Harm**

10 39. Consumers paid a “price premium” for the products. If the reference prices were omitted
11 from the product listings, then consumers would not have paid as much as they did for the products (or
12 would not have purchased the products), and Defendant would not have been able to charge the prices it
13 ultimately did.

14 40. Defendant’s discounted products sold on the website have a market value lower than the
15 promised “regular” price, and as a result, consumers were harmed. As explained above, the reference
16 prices are false and the products rarely, if ever, offered or sold at the reference price on the website.

17 41. Additionally, Defendant’s products sold on the website not only have a market value lower
18 than the promised regular price, but the value of the products is also lower than the “sale” price. By using
19 false reference pricing and false limited time sales, Defendant artificially drives up demand for the
20 products, and by extension drives up the price of the products. As a result, consumers received a product
21 worth less than the price paid. Reasonable consumers would not have paid the prices charged had they
22 known that the products were rarely, if ever, offered for sale on the website at the reference prices.

23 42. Again, an example illustrates the point. Assume a company knows a product will sell in
24 the marketplace at \$30. But to increase revenue, the company advertises the product as having a “regular”
25

26 ⁹ Jerry B. Gotlieb & Cyndy Thomas Fitzgerald, An Investigation Into the Effects of Advertised
27 Reference Prices On the Price Consumers Are Willing To Pay For the Product, 6 J. of App’d Bus. Res. 1
(1990).

28 ¹⁰ *Id.*

1 price of \$100 and being on “sale” at 60% off (i.e., \$60 off). Because consumers value products based on
2 the regular price, and a sale conveys additional savings, the company can sell that \$30 product for \$40.
3 Defendant has done so.

4 **F. Defendant’s Deceptive Pricing Practice Violates Federal Law**

5 43. The Federal Trade Commission Act (“FTCA”) prohibits “unfair or deceptive acts or
6 practices in or affecting commerce[.]” 15 U.S.C. § 45(a)(1). Under FTC regulations, false former pricing
7 schemes like the ones employed by Defendant are deceptive practices that violate the FTCA.

8 44. Pursuant to 16 C.F.R. § 233.1, entitled Former Price Comparisons:

9
10 (a) One of the most commonly used forms of bargain advertising is to offer a reduction from the
11 advertiser’s own former price for an article. If the *former price* is the actual, bona fide price at
12 which the article was offered to the public on a *regular basis* for a *reasonably substantial period*
13 *of time*, it provides a legitimate basis for the advertising of a price comparison. Where the former
14 price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price
15 being advertised is not bona fide but fictitious – for example, where an *artificial, inflated price*
16 was established for the purpose of enabling the subsequent offer of a large reduction – the
17 “bargain” being advertised is a false one; the purchaser is not receiving the unusual value he
18 expects.

19 (b) A former price is not necessarily fictitious merely because no sales at the advertised price were
20 made. The advertiser should be especially careful, however, in such a case, that the price is one
21 at which the product was openly and actively offered for sale, for a *reasonably substantial period*
22 *of time*, in the *recent*, regular course of her business, honestly and in good faith – and, of course,
23 not for the purpose of establishing a fictitious higher price on which a deceptive comparison might
24 be based.

25 (c) The following is an example of a price comparison based on a fictitious former price. John
26 Doe is a retailer of Brand X fountain pens, which cost him \$5 each. His usual markup is 50 percent
27 over cost; that is, his regular retail price is \$7.50. In order subsequently to offer an unusual
28 “bargain,” Doe begins offering Brand X at \$10 per pen. He realizes that he will be able to sell no,
or very few, pens at this inflated price. But he doesn’t care, for he maintains that price for only a
few days. Then he “cuts” the price to its usual level—\$7.50—and advertises: “Terrific Bargain:
X Pens, Were \$10, Now Only \$7.50!” *This is obviously a false claim*. The advertised “bargain”
is not genuine.

(d) Other illustrations of fictitious price comparisons could be given. An advertiser might use a
price at which he *never offered the article at all*; he might feature a price which was *not used in*
the regular course of business, or which was *not used in the recent past* but at some *remote*
period in the past, without making disclosure of that fact; he might use a price that was not openly
offered to the public, or that was *not maintained for a reasonable length of time*, but was
immediately reduced.

1 45. The FTCA also prohibits the pricing scheme employed by Defendant regardless of
2 whether the product advertisements and representations use the words “regular,” “original,” or “former”
3 price. Under 16 C.F.R. § 233.1:

4
5 (e) If the former price is set forth in the advertisement, *whether accompanied or not* by
6 descriptive terminology such as “Regularly,” “Usually,” “Formerly,” etc., the advertiser should
7 make certain that the former price is not a fictitious one. If the former price, or the amount or
8 percentage of reduction, is not stated in the advertisement, as when the ad merely states, “Sale,”
9 the advertiser must take care that the amount of reduction is not so insignificant as to be
10 meaningless. It should be sufficiently large that the consumer, if he knew what it was, would
believe that a genuine bargain or saving was being offered. An advertiser who claims that an item
has been “Reduced to \$9.99,” when the former price was \$10, is misleading the consumer, who
will understand the claim to mean that a much greater, and not merely nominal, reduction was
being offered.

11 46. The FTCA also prohibits retailers from offering fake limited duration sales. See 16 C.F.R.
12 § 233.5 which provides:

13
14 [Retailers] should not represent that they are selling at “factory” prices when they are not selling
15 at the prices paid by those purchasing directly from the manufacturer.

16 ...

17 They should not offer an advance sale under circumstances where they do not in good faith expect
18 to increase the price at a later date, or make a ‘limited’ offer which, in fact, is not limited.

19 **G. Class Action Allegations**

20 47. Plaintiff brings this action on behalf of herself and all persons similarly situated pursuant
21 to Rule 23(b)(2), 23(b)(3), and 23(c)(4) of the Federal Rules of Civil Procedure and seeks certification
22 of the following class:

23 **California Class:**

24 All persons in California who purchased one or more items from www.HomeDepot.com, during
the Class Period, at a discount from a higher reference price.

25 48. The California Class is collectively referred to as the “Class.” Excluded from the Class
26 are the Defendant, the officers and directors of the Defendant at all relevant times, members of their
27 immediate families and their legal representatives, heirs, successors or assigns and any entity in which
28

1 either Defendant has or had a controlling interest. Also excluded from the Class are persons or entities
2 that purchased products from Defendant for purposes of resale.

3 49. The “Class Period” is the time period beginning on the date established by the Court’s
4 determination of any applicable statute of limitations, after consideration of any tolling, discovery,
5 concealment, and accrual issues, and ending on the date of entry of judgment.¹¹

6 50. Plaintiff reserves the right to expand, limit, modify, or amend the class definitions stated
7 above, including the addition of one or more subclasses, in connection with a motion for class
8 certification, or at any other time, based upon, among other things, changing circumstances, or new facts
9 obtained during discovery.

10 51. **Numerosity.** The Class is so numerous that joinder of all members in one action is
11 impracticable. The exact number and identities of the members of the Class is unknown to Plaintiff at
12 this time and can only be ascertained through appropriate discovery, but on information and belief,
13 Plaintiff alleges that there are in excess of 10,000 members of the Class.

14 52. **Typicality.** Plaintiff’s claims are typical of those of other members of the Class, all of
15 whom have suffered similar harm due to Defendant’s course of conduct as described herein.

16 53. **Adequacy of Representation.** Plaintiff is an adequate representative of the Class and will
17 fairly and adequately protect the interests of the Class. Plaintiff has retained attorneys who are
18 experienced in the handling of complex litigation and class actions, and Plaintiff and his counsel intend
19 to diligently prosecute this action.

20 54. **Existence and Predominance of Common Questions of Law or Fact.** Common
21 questions of law and fact exist as to all members of the Class that predominate over any questions
22 affecting only individual members of the Class. These common legal and factual questions, which do not
23 vary among members of the Class, and which may be determined without reference to the individual
24 circumstances of any member of the Class, include, but are not limited to, the following:

25
26
27 _____
28 ¹¹ The Class Period begins at minimum 4 years from the date of filing of this action, but based on
tolling, may extend beyond that date.

- 1 a. Whether, during the Class Period, Defendant advertised false reference prices on products
2 offered on the website.
- 3 b. Whether, during the Class Period, Defendant advertised price discounts from false
4 reference prices on products offered on the website.
- 5 c. Whether the products listed on Defendant’s website during the Class Period were offered
6 at their reference prices for any reasonably substantial period of time prior to being offered
7 at prices that were discounted from their reference prices.
- 8 d. Whether Defendant’s deceptive pricing scheme using false reference prices constitute an
9 “unlawful,” “unfair,” or “fraudulent” business practice in violation of the California
10 Unfair Competition Law, Cal. Bus & Prof. Code § 17200, et seq.
- 11 e. Whether Defendant’s deceptive pricing scheme using false reference prices constitutes
12 false advertising in violation of the California False Advertising Law under Business &
13 Professions Code § 17500, et seq.
- 14 f. Whether Defendant’s use of false reference prices on products offered on their website
15 during the Class Period was material.
- 16 g. Whether Defendant had a duty to conspicuously disclose to customers that the reference
17 prices were false former/regular prices.
- 18 h. Whether the members of the Class are entitled to damages and/or restitution.
- 19 i. Whether injunctive relief is appropriate and necessary to enjoin Defendant from
20 continuing to engage in false or misleading advertising.
- 21 j. Whether Defendant’s conduct was undertaken with conscious disregard of the rights of
22 the members of the Class and was done with fraud, oppression, and/or malice.

23 55. **Superiority.** A class action is superior to other available methods for the fair and efficient
24 adjudication of this controversy because individual litigation of the claims of all members of the Class is
25 impracticable. Requiring each individual class member to file an individual lawsuit would unreasonably
26 consume the amounts that may be recovered. Even if every member of the Class could afford individual
27 litigation, the adjudication of at least tens of thousands of identical claims would be unduly burdensome
28 to the courts. Individualized litigation would also present the potential for varying, inconsistent, or

1 contradictory judgments and would magnify the delay and expense to all parties and to the court system
2 resulting from multiple trials of the same factual issues. By contrast, the conduct of this action as a class
3 action, with respect to some or all of the issues presented herein, presents no management difficulties,
4 conserves the resources of the parties and of the court system, and protects the rights of the members of
5 the Class. Plaintiff anticipates no difficulty in the management of this action as a class action. The
6 prosecution of separate actions by individual members of the Class may create a risk of adjudications
7 with respect to them that would, as a practical matter, be dispositive of the interests of the other members
8 of the Class who are not parties to such adjudications, or that would substantially impair or impede the
9 ability of such non-party Class members to protect their interests.

10 56. **Substantial Similarity.** The products at issue in the action are substantially similar in all
11 material respects. Namely, the products were all advertised with a false reference price, advertised with
12 a strikethrough reference price, and advertised with a false sale price. The products are also all sold by
13 Defendant on the website and fall under the umbrella of home goods and home improvement products,
14 including appliances, tools, outdoor equipment, home equipment, furniture, garden equipment, and many
15 other categories.

16 **V. TOLLING OF THE STATUTE OF LIMITATIONS AND DELAYED DISCOVERY**

17 57. All applicable statutes of limitations have been tolled by the delayed discovery doctrine.
18 Plaintiff and Class members could not have reasonably discovered Defendant’s practice of running
19 perpetual and/or extended sales, based on deceptive reference prices and deceptive sale prices, at any
20 time prior to commencing this class action litigation.

21 58. A reasonable consumer viewing the website on multiple occasions would simply believe
22 that a product is on sale for the time period represented on the website. Short of visiting and checking
23 the website for months continuously, a reasonable consumer would not suspect that Defendant’s sales
24 and pricing practices were false and misleading. Nor would a reasonable consumer be able to ascertain
25 the market value of the products being sold absent extensive investigation.

26 59. Plaintiff did not learn of Defendant’s deceptive practices alleged herein until commencing
27 this action.

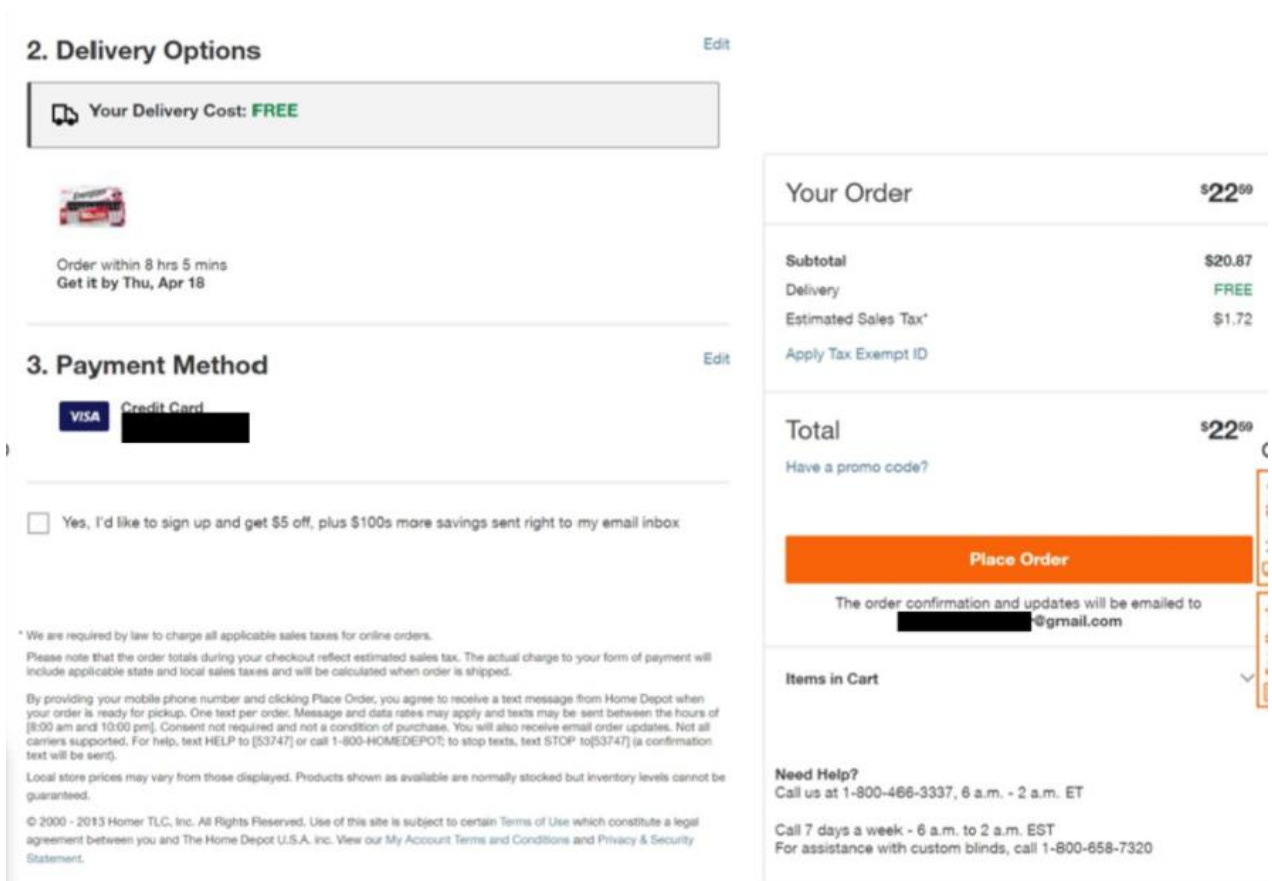
1 60. As a result, any and all applicable statutes of limitations otherwise applicable to the
2 allegations herein have been tolled.

3 **VI. CALIFORNIA LAW APPLIES TO PLAINTIFF'S CLAIMS**

4 61. Plaintiff is a resident of California who purchased the product at issue while present in
5 California and had the product delivered to an address in California. As such, California law applies to
6 Plaintiff's claims.

7 62. Defendant's website includes various terms and conditions, some of which purport to
8 impose Georgia law upon certain disputes between consumers and Home Depot. But this Georgia choice
9 of law provision is unenforceable and/or inapplicable.

10 63. First, on the "Place Order" page during the checkout process, Defendant does not require
11 any affirmative consent to an agreement containing a Georgia choice of law provision. The various terms
12 are also inconspicuously buried at the bottom of the page, in relatively small font, in non-contrasting text,
13 and are not adequately distinguished or emphasized. The various terms are designed to be unobtrusive,
14 easy to overlook, and barely visible to the naked eye.



64. Second, on the “Create Account” page, Defendant’s attempt at affirmative consent is invalid. The various terms are inconspicuously located at the bottom of the page, in relatively small font, and in black non-contrasting text that is not distinguished or emphasized. The various terms are designed to be unobtrusive, easy to overlook, and barely visible to the naked eye. Additionally, none of the hyperlinks at the bottom of the page direct consumers to Defendant’s “Terms of Use,” and instead direct consumers to terms that are inapplicable and/or do not contain a Georgia choice of law provision.



Create an Account

[← Back](#)

Email Address



Please provide your email address.

Password

Show

Phone

Keep me signed in ⓘ
Uncheck if using a public or shared device

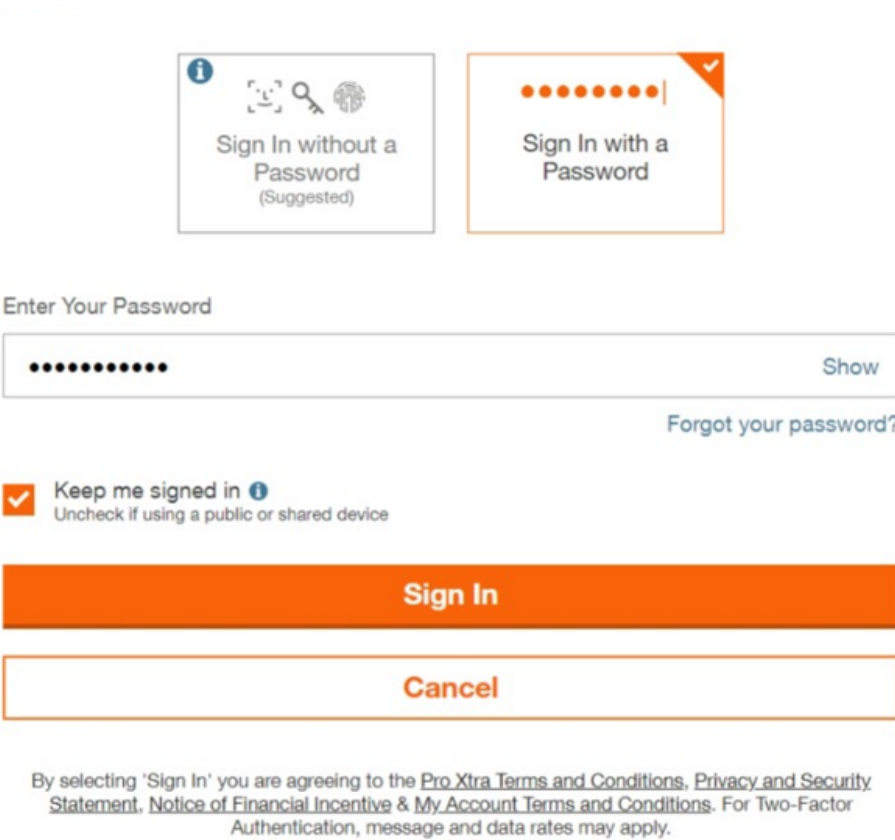
Verify my mobile number via text message or phone call
Message and data rates may apply.

Create an Account

Already Have an Account? [Sign In](#)

By selecting 'Create an Account' you are agreeing to the [Pro Xtra Terms and Conditions](#), [Privacy and Security Statement](#), & [My Account Terms and Conditions](#).

65. Third, the same deficiencies above apply to Defendant’s “Sign In” page.



FIRST CAUSE OF ACTION

**VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE § 17200, et seq.)
(On Behalf of the California Class)**

66. Plaintiff restates the preceding allegations as if set forth herein.

67. California Business and Professions Code section 17200 et seq., known as the California Unfair Competition Law (“UCL”), prohibits acts of “unfair competition,” including any “unfair or fraudulent business act or practice” as well as “unfair, deceptive, untrue or misleading advertising.”

Fraudulent

68. Under the UCL, a business act or practice is “fraudulent” if it actually deceives or is likely to deceive members of the consuming public.

1 69. Reasonable consumers are likely to be deceived by Defendant's conduct as alleged above.
2 Defendant affirmatively misrepresented the reference prices of products which, in turn, misled and
3 deceived consumers into believing that they were buying products at substantially discounted prices.
4 Defendant's deceptive marketing gave consumers the false impression that its products were regularly
5 listed or sold on the website for a substantially higher price.

6 70. Defendant's representations that its products were on sale, that the sale was limited in
7 time, that the products had a specific former and regular price, and that consumers were receiving
8 discounts, were false and misleading.

9 71. Defendant had a duty to disclose the truth about its pricing deception, including that the
10 reference prices advertised on its website were not, in fact, prices at which Defendant's items were listed
11 or sold on the website in the recent past for a reasonably substantial period of time, but in truth, the
12 products never (or rarely) were offered or sold at the reference prices. Reasonable consumers were likely
13 to be deceived by this material omission.

14 72. Defendant's conduct was and continues to be fraudulent because it has the effect of
15 deceiving consumers into believing they are receiving a product that is worth more than it actually is, by
16 presenting a fake sale price.

17 73. Defendant's representations were materially misleading to Plaintiff and other reasonable
18 consumers. Consumers are heavily influenced by price, including significant price reductions of
19 purported limited duration, as employed by Defendant's high-pressure sales tactics.

20 74. Plaintiff relied on Defendant's misleading representations and omissions, as detailed
21 above, believing that she was receiving a genuine discount of limited duration from a prevailing and
22 genuine regular and former price.

23 75. Absent Defendant's misrepresentations, Plaintiff and the Class would not have purchased
24 the items they purchased from Defendant, or, at minimum, they would not have paid as much for the
25 items as they ultimately did. Plaintiff and the Class's reliance was a substantial factor in causing them
26 harm.

27 76. Had the omitted information been disclosed, Plaintiff would have been aware of it and
28 reasonably would have behaved differently. Among other things, Plaintiff would not have purchased the

1 items she purchased from Defendant, or, at minimum, would not have paid as much for the items as she
2 did.

3 77. As a result of Defendant’s fraudulent business acts and practices, Defendant has and
4 continues to fraudulently obtain money from Plaintiff and members of the Class.

5 ***Unfairness***

6 78. Under the UCL, a business act or practice is “unfair” if its conduct is substantially
7 injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous,
8 as the benefits for committing such acts or practices are outweighed by the gravity of the harm to the
9 alleged victims.

10 79. Defendant’s deceptive marketing gave consumers the false impression that their products
11 were regularly listed or sold on the website for a substantially higher price in the recent past than they
12 were and, thus, led to the false impression that Defendant’s products were worth more than they were.

13 80. Defendant’s conduct was and continues to be of no benefit to reasonable consumers. It is
14 misleading, unfair, unlawful, and is injurious to consumers. It is also against public policy, as it harms
15 fair competition. For example, the federal Lanham Act includes prohibitions on “commercial advertising
16 or promotion” that “misrepresents the nature, characteristics, qualities, or geographic origin of his or her
17 or another person’s goods, services, or commercial activities.” 41 U.S.C. § 1125(a). Similarly, the FTCA
18 and implementing regulations prohibit advertising a former price “for the purpose of establishing a
19 fictitious [] price on which a deceptive comparison might be based” (16 C.F.R. § 233.1) and prohibit
20 “offer[ing] an advance sale under circumstances where they do not in good faith expect to increase the
21 price at a later date” (16 C.F.R. § 233.5). Defendant is siphoning sales away from sellers who compete
22 fairly on price and do not promote fake former prices and fake sales of limited duration. Further, there is
23 no benefit to consumers who pay a sale price that is actually a regular price.

24 81. The harm to Plaintiff and members of the California Class outweighs the utility of
25 Defendant’s practices. There were reasonably available alternatives to further Defendant’s legitimate
26 business interests, other than the unfair conduct described herein.

27 82. As a result of Defendant’s unfair business acts and practices, Defendant has and continues
28 to unfairly obtain money from Plaintiff and members of the proposed Class.

1 **Unlawful**

2 83. A cause of action may be brought under the “unlawful” prong of the UCL if a practice
3 violates another law. Such action borrows violations of other laws and treats these violations as unlawful
4 practices independently actionable under the UCL.

5 84. By engaging in false advertising, as well as the false, deceptive, and misleading conduct
6 alleged above, Defendant engaged in unlawful business acts and practices in violation of the UCL,
7 including violations of state and federal laws and regulations. Specifically, as detailed herein, Defendant
8 violated 16 C.F.R. §§ 233.1 and 233.5, and California Business & Professions Code sections 17501.

9 * * *

10 85. In the alternative to those claims seeking remedies at law, Plaintiff and class members
11 allege that there is no plain, adequate, and complete remedy that exists at law to address Defendant’s
12 unlawful and unfair business practices. The legal remedies available to Plaintiff are inadequate because
13 they are not “equally prompt and certain and in other ways efficient” as equitable relief. *American Life*
14 *Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937); *see also United States v. Bluit*, 815 F. Supp. 1314, 1317
15 (N.D. Cal. Oct. 6, 1992) (“The mere existence’ of a possible legal remedy is not sufficient to warrant
16 denial of equitable relief.”); *Quist v. Empire Water Co.*, 2014 Cal. 646, 643 (1928) (“The mere fact that
17 there may be a remedy at law does not oust the jurisdiction of a court of equity. To have this effect, the
18 remedy must also be speedy, adequate, and efficacious to the end in view ... It must reach the whole
19 mischief and secure the whole right of the party in a perfect manner at the present time and not in the
20 future.”). For example, equitable claims may be tried by the court, whereas legal claims are tried by jury,
21 and the need for a jury trial may result in delay and additional expense. Additionally, unlike damages,
22 the Court’s discretion in fashioning equitable relief is very broad and can be awarded in situations where
23 the entitlement to damages may prove difficult. *Cortez v. Purolator Air Filtration Products Co.*, 23
24 Cal.4th 163, 177-180 (2000) (restitution under the UCL can be awarded “even absent individualized
25 proof that the claimant lacked knowledge of the overcharge when the transaction occurred.”). Thus,
26 restitution would allow recovery even when normal consideration associated with damages would not.
27 *See, e.g., Fladeboe v. Am. Isuzu Motors Inc.*, 150 Cal. App. 4th 42, 68 (2007) (noting that restitution is
28 available even in situations where damages may not be available). Furthermore, the standard, showing,

1 and necessary elements for a violation of the UCL “unlawful” and “unfair” prongs are different from
2 those that govern legal claims.

3 86. Plaintiff, on behalf of herself and the members of the Class, seeks restitution and
4 restitutionary disgorgement of all moneys received by Defendant through the conduct described above.

5 87. Plaintiff, on behalf of herself and the members of the Class, seeks an injunction from this
6 Court prohibiting Defendant from engaging in the patterns and practices described herein, including
7 putting a stop to the deceptive advertisements and false reference prices in connection with the sale of
8 products on the website. Plaintiff and class members are entitled to injunctive relief. On information and
9 belief, the dissemination of Defendant’s false and misleading advertising is ongoing.

10 **SECOND CAUSE OF ACTION**

11 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW, CAL. BUS. &**

12 **PROF. CODE § 17500, et seq.**

13 **(On Behalf of the California Class)**

14 88. Plaintiff restates the preceding allegations as if set forth herein.

15 89. The California False Advertising Law, codified at California Business & Professions Code
16 section 17500, et seq. (the “FAL”) provides, in relevant part, that it is unlawful for any business, with
17 intent directly or indirectly to dispose of personal property, to make or disseminate in any “manner or
18 means whatever, including over the Internet, any statement, concerning that . . . personal property . . .
19 which is untrue or misleading, and which is known, or which by the exercise of reasonable care should
20 be known, to be untrue or misleading[.]” Cal. Bus. & Prof. Code § 17500. The “intent” required by
21 section 17500 is the intent to dispose of property, and not the intent to mislead the public in the disposition
22 of such property.

23 90. A separate section of the FAL, Cal Bus. & Prof. Code § 17501, provides:

24
25 For the purpose of this article the worth or value of any thing advertised is the prevailing market
26 price, wholesale if the offer is at wholesale, retail if the offer is at retail, at the time of publication
of such advertisement in the locality wherein the advertisement is published.

27 No price shall be advertised as a *former price* of any advertised thing, unless the alleged former
28 price was the *prevailing market price* as above defined within *three months next immediately*

1 *preceding* the publication of the advertisement or unless the date when the alleged former price
2 did prevail is clearly, exactly and conspicuously stated in the advertisement.

3
4 91. As used in Cal Bus. & Prof. Code § 17501:

- 5 • The term “prevailing market price” refers to the “retail [price] if the offer is at retail.” *Id.*
- 6 • The term “advertised thing” refers to the exact same product offered—*not* an equivalent
7 or similar product. *People v. Superior Ct. (J.C. Penney Corp.)*, 34 Cal. App. 5th 376, 412
8 (2019) (“if the advertisement specifies a precise item—say, by reference to name, brand,
9 or other distinctive features . . . the market and therefore the market price is potentially
10 determined on the basis of sales of *that item only*.”) (emphasis added).
- 11 • The term “‘former price’ . . . includes but is not limited to the following words and phrases
12 when used in connection with advertised prices; ‘formerly—,’ ‘regularly—,’ ‘usually—,’
13 ‘originally—,’ ‘reduced from __,’ ‘was __ now __,’ ‘__% off.’” 4 Cal. Code Regs.,
14 § 1301 (emphasis added).
- 15 • The “the three-month period is properly construed as a ‘*rolling*’ period, that is, one whose
16 beginning and end changes each day, thus requiring a *daily recalculation* of the prevailing
17 market price during the three-month period.” *People v. Superior Ct. (J.C. Penney Corp.)*,
18 34 Cal. App. 5th 376, 416 n.26 (2019) (emphasis added).

16 92. Defendant violated Cal Bus. & Prof. Code § 17500.

17 93. Defendant violated Cal Bus. & Prof. Code § 17501.

18 94. As explained above, Defendant regularly disseminated false and misleading reference
19 prices for the products offered for sale on the website, including to Plaintiff. Defendant rarely, if ever,
20 offered products on the website at the reference prices within the three months immediately preceding
21 the publication of the reference prices. Additionally, the reference prices shown were not the prevailing
22 market prices for the products in the three months immediately preceding the publication.

23 95. Defendant did not verify that the advertised reference prices were the prevailing market
24 prices within the preceding three months. On information and belief, Defendant had no policies or
25 procedures to verify and update the reference prices on a daily basis.

26 96. Defendant’s deceptive marketing practice gave consumers the false impression that their
27 products were regularly offered and sold for a substantially higher price in the recent past than they were
28 and, thus, led to the false impression that Defendant’s products were worth more than they were.

1 97. Defendant knew that its advertised reference prices for the products sold on its website
2 were untrue and/or misleading. Defendant knew that such products had rarely, if ever, been offered or
3 sold on the website at the reference prices.

4 98. As a direct and proximate result of Defendant's misleading and false advertisements,
5 Plaintiff and members of the Class have suffered injury in fact and have lost money. Plaintiff requests
6 restitution and an injunction prohibiting Defendant from continuing its false and misleading advertising
7 practices in violation of California law in the future.

8 99. Plaintiff and Class members are entitled to injunctive relief. On information and belief,
9 the dissemination of Defendant's false and misleading advertising is ongoing.

10 100. In the alternative to those claims seeking remedies at law, Plaintiff and class members
11 allege that there is no plain, adequate, and complete remedy that exists at law to address Defendant's
12 unlawful and unfair business practices. The legal remedies available to Plaintiff are inadequate because
13 they are not "equally prompt and certain and in other ways efficient" as equitable relief. *American Life*
14 *Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937); *see also United States v. Bluit*, 815 F. Supp. 1314, 1317
15 (N.D. Cal. Oct. 6, 1992) ("The mere existence' of a possible legal remedy is not sufficient to warrant
16 denial of equitable relief."); *Quist v. Empire Water Co.*, 2014 Cal. 646, 643 (1928) ("The mere fact that
17 there may be a remedy at law does not oust the jurisdiction of a court of equity. To have this effect, the
18 remedy must also be speedy, adequate, and efficacious to the end in view ... It must reach the whole
19 mischief and secure the whole right of the party in a perfect manner at the present time and not in the
20 future."). For example, equitable claims may be tried by the court, whereas legal claims are tried by jury,
21 and the need for a jury trial may result in delay and additional expense. Additionally, unlike damages,
22 the Court's discretion in fashioning equitable relief is very broad and can be awarded in situations where
23 the entitlement to damages may prove difficult. *Cortez v. Purolator Air Filtration Products Co.*, 23
24 Cal.4th 163, 177-180 (2000) (restitution under the UCL can be awarded "even absent individualized
25 proof that the claimant lacked knowledge of the overcharge when the transaction occurred."). Thus,
26 restitution would allow recovery even when normal consideration associated with damages would not.
27 *See, e.g., Fladeboe v. Am. Isuzu Motors Inc.*, 150 Cal. App. 4th 42, 68 (2007) (noting that restitution is
28 available even in situations where damages may not be available). Furthermore, the standard, showing,

1 and necessary elements for a violation of the FAL under Cal Bus. & Prof. Code § 17501 are different
2 from those that govern legal claims.

3 **THIRD CAUSE OF ACTION**

4 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**

5 **CAL. CIV. CODE § 1750, et seq.**

6 **(On Behalf of the California Class)**

7 101. Plaintiff restates the preceding allegations as if set forth herein.

8 102. The Consumer Legal Remedies Act, Cal. Civ. Code sections 1750 *et seq.* (the “CLRA”),
9 is a California consumer protection statute which allows plaintiffs to bring private civil actions for “unfair
10 methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction
11 . . . which results in the sale or lease of goods or services to any consumer.” Cal. Civ. Code § 1770(a).

12 103. Plaintiff and each member of the Class are “consumers” as defined by California Civil
13 Code section 1761(d). Defendant’s sale of products on the website to Plaintiff and the Class were
14 “transactions” within the meaning of California Civil Code section 1761(e). The products purchased by
15 Plaintiff and the class are “goods” within the meaning of California Civil Code section 1761(a).

16 104. Defendant violated and continues to violate the CLRA by engaging in the following
17 practices prohibited by California Civil Code section 1770(a) in transactions with Plaintiff and the Class
18 which were intended to result in, and did result in, the sale of Defendant’s products:

- 19 a. Making false or misleading statements of fact concerning reasons for, existence of, or
20 amounts of price reductions (Cal. Civ. Code § 1770(a)(13))
- 21 b. Advertising goods or services with intent not to sell them as advertised (Cal. Civ. Code §
22 1770(a)(9))
- 23 c. Misrepresenting that goods are of a particular standard, quality, or grade (Cal. Civ. Code
24 § 1770(a)(7))
- 25 d. Representing that goods do have characteristics they do not actually have (Cal. Civ. Code
26 § 1770(a)(5))

27 105. Regarding section 1770(a)(13), Defendant made false or misleading statements of fact
28 concerning the “existence of” and the “amounts of price reductions” because (a) no true price reductions

1 existed in that Defendant’s merchandise was rarely, if ever, offered for sale and/or sold *on the website* at
2 the higher reference prices, let alone on a regular basis for a reasonably substantial period of time, (b) the
3 reference prices Defendant advertised in connection with its products are not prevailing market prices
4 because, on information and belief, the products were not sold elsewhere at the reference prices for a
5 reasonably substantial period of time, and (c) Defendant falsely represents the products as on sale for
6 limited time when in truth a new substantially equivalent sale is promptly instituted after the expiration
7 of an existing sale.

8 106. With regards to section 1770(a)(9), (7), and (5), Defendant advertised and represented
9 products on the website with the “intent not to sell” them as advertised and misrepresenting product
10 characteristics and standard because, as explained herein, (a) the false reference prices advertised in
11 connection with products offered on the website misled and continue to mislead customers into believing
12 (i) the merchandise was previously offered for sale and/or sold *on the website* at the higher reference
13 prices on a regular basis for a reasonably substantial period of time, and (ii) were valued in the market at
14 the advertised “regular” price, and (b) Defendant falsely represents the products as on sale for limited
15 time when in truth a new substantially equivalent sale is promptly instituted after the expiration of an
16 existing sale.

17 107. In addition, Defendant had a duty to conspicuously disclose the truth about its pricing
18 deception, including that the reference prices advertised on the website were not prices at which
19 Defendant’s items were listed or sold on the website in the recent past on a regular basis for a reasonably
20 substantial period of time, and in truth, Defendant’s products are typically not offered or sold on the
21 website (and/or in the marketplace) at the advertised reference prices. Defendant also failed to disclose
22 that the expiration of any given sale would be followed by a substantially equivalent sale. Reasonable
23 consumers were likely to be deceived by Defendant’s failure to disclose material information.

24 108. Plaintiff and the Class reasonably relied on Defendant’s representations. Absent
25 Defendant’s misrepresentations, Plaintiff and the Class would not have purchased the items they
26 purchased from Defendant, or, at the very least, they would not have paid as much for the items as they
27 did. Plaintiff and the Class’s reliance was a substantial factor in causing them harm.

28

1 109. Had the omitted information been disclosed, Plaintiff and the Class reasonably would have
2 been aware of it and behaved differently. Among other things, Plaintiff and the Class would not have
3 purchased the items they purchased from Defendant or, at the very least, would not have paid as much
4 for the items as they did.

5 110. Plaintiff, through counsel, is providing notice to Defendant pursuant to Cal. Civ. Code §
6 1782(a) via certified mail, but the 30-day response period has not elapsed. Thus, Plaintiff claims no
7 damages pursuant to this count, but will timely amend this Complaint after expiration of the response
8 period to seek money damages and punitive damages under the CLRA. At this time, Plaintiff seeks only
9 injunctive or other equitable relief under the CLRA as described above.

10 **FOURTH CAUSE OF ACTION**

11 **FRAUD (INTENTIONAL MISREPRESENTATION AND OMISSION)**

12 **(On Behalf of the California Class)**

13 111. Plaintiff restates the preceding allegations as if set forth herein.

14 112. Plaintiff pleads this claim under California law.

15 113. Defendant made false or misleading statements of fact concerning the existence of and the
16 amounts of price reductions because, as explained herein, (a) the false reference prices advertised in
17 connection with products offered on the website misled and continue to mislead customers into believing
18 the products were previously offered for sale and/or sold *on the website* at the higher reference prices on
19 a regular basis for a reasonably substantial period of time, and (b) Defendant falsely represents the
20 products as on sale for limited time when in truth a new substantially equivalent sale is promptly instituted
21 after the expiration of an existing sale.

22 114. In addition, Defendant had a duty to conspicuously disclose the truth about its pricing
23 deception, including that the reference prices advertised on the website were not prices at which
24 Defendant's items were listed or sold on the website in the recent past on a regular basis for a reasonably
25 substantial period of time, and in truth, Defendant's products are typically not offered or sold on the
26 website (and/or in the marketplace) at the advertised reference prices. Defendant also failed to disclose
27 that the expiration of any given sale would be followed by a substantially equivalent sale. Reasonable
28 consumers were likely to be deceived by Defendant's failure to disclose material information.

1 115. Defendant knew that its representations were false when made, or at the very least, were
2 made recklessly and without regard for their truth. Defendant knew that the items Plaintiff and the Class
3 purchased had rarely, if ever, been offered or sold on the website at the substantially higher reference
4 price in the recent past.

5 116. Defendant’s representations were made with the intent that Plaintiff and the Class rely on
6 the false representations and spend money they otherwise would not have spent, purchase items they
7 otherwise would not have purchased, and/or spend more money for an item than they otherwise would
8 have absent the deceptive marketing scheme.

9 117. Defendant’s conduct was made with the intent to maximize its profits at the detriment of
10 reasonable consumers.

11 118. Plaintiff and the Class reasonably relied on Defendant’s representations. Absent
12 Defendant’s misrepresentations, Plaintiff and the Class would not have purchased the items they
13 purchased from Defendant, or, at the very least, they would not have paid as much for the items as they
14 ultimately did. Plaintiff and the Class’s reliance was a substantial factor in causing them harm.

15 119. Had the omitted information been disclosed, Plaintiff and the Class reasonably would have
16 behaved differently. Among other things, they would not have purchased the items they purchased from
17 Defendant or, at the very least, would not have paid as much for the items as they ultimately did.

18 120. As a direct and proximate result of the above, Plaintiff and the Class have suffered
19 damages in an amount to be proven at trial.

20 121. Plaintiff and the Class are also entitled to punitive or exemplary damages. Defendant,
21 through its senior executives and officers, undertook the illegal acts intentionally or with conscious
22 disregard of the rights of Plaintiff and the Class, and did so with fraud, malice, and/or oppression. Based
23 on the allegations above, Defendant’s actions were fraudulent because Defendant intended to and did
24 deceive and injure Plaintiff and the Class. Based on the allegations above, Defendant’s conduct was made
25 with malice because Defendant acted with the intent to and did cause injury to Plaintiff and the Class,
26 and because Defendant willfully and knowingly disregarded the rights of Plaintiff and the Class.

27
28

FIFTH CAUSE OF ACTION

UNJUST ENRICHMENT/QUASI-CONTRACT

(On Behalf of the California Class)

122. Plaintiff restates the preceding allegations as if set forth herein.

123. Plaintiff pleads this claim under California law and in the alternative to his remaining claims.

124. California law permits a standalone claim for unjust enrichment, allowing the court to construe the cause of action as a quasi-contract claim. *Astiana v. Hain Celestial Group, Inc.*, 783 F.3d 753, 756 (9th Cir. 2015).

125. California law recognizes a right to disgorgement of profits resulting from unjust enrichment, even where an individual has not suffered a corresponding loss. *In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 599 (9th Cir. 2020).

126. California law requires disgorgement of unjustly earned profits regardless of whether a defendant’s actions caused a plaintiff to directly expend his or her own financial resources or whether a defendant’s actions directly caused the plaintiff’s property to become less valuable.

127. Under California law, a stake in unjustly earned profits exists regardless of the plaintiff’s actual loss.

128. By its wrongful acts and omissions, Defendant was unjustly enriched at the expense of and to the detriment of Plaintiff and the Class and/or while Plaintiff and the Class were unjustly deprived. Defendant’s unlawful and deceptive pricing scheme induced Plaintiff and the Class to spend money they otherwise would not have spent, purchase items they otherwise would not have purchased, and/or spend more money for a product than they otherwise would have absent the deceptive advertising.

129. Plaintiff and members of the Class also conferred a monetary benefit on Defendant in the form of Defendant’s profits generated by the deceptive marketing scheme. Defendant profited from inappropriately and artificially inflated prices.

130. On behalf of the Class, Plaintiff seeks restitution from Defendant and an order disgorging all payments and profits obtained by Defendant from Plaintiff and the Class.

1 131. Plaintiff and the Class seek this equitable remedy because their legal remedies are
2 inadequate. An unjust enrichment theory provides the equitable disgorgement of profits even where an
3 individual has not suffered a corresponding loss in the form of money damages.

4 **SIXTH CAUSE OF ACTION**
5 **NEGLIGENT MISREPRESENTATION**
6 **(On Behalf of the California Class)**

7 132. Plaintiff restates the preceding allegations as if set forth herein.

8 133. Plaintiff pleads this claim under California law.

9 134. Defendant made false or misleading statements of fact concerning the existence of and the
10 amounts of price reductions because, as explained herein, (a) the false reference prices advertised in
11 connection with products offered on the website misled and continue to mislead customers into believing
12 the products were previously offered for sale and/or sold *on the website* at the higher reference prices on
13 a regular basis for a reasonably substantial period of time, and (b) Defendant falsely represents the
14 products as on sale for limited time when in truth a new substantially equivalent sale is promptly instituted
15 after the expiration of an existing sale.

16 135. Defendant had a duty to conspicuously disclose the truth about its pricing deception,
17 including that (1) the reference prices advertised and published on the website were not prices at which
18 Defendant’s items had been offered and/or sold on the website in the recent past on a regular basis for a
19 reasonably substantial period of time, (2) Defendant’s products rarely (if ever) were offered or sold
20 anywhere at the advertised reference prices on a regular basis for a reasonably substantial period of time,
21 and (3) the expiration of any given sale would be followed by a substantially equivalent sale.

22 136. Defendant knew or should have known that its representations were false when made.
23 Defendant knew that the items Plaintiff and the Class purchased had rarely, if ever, been offered or sold
24 on the website at the substantially higher reference price in the recent past. Defendant knew its sales
25 were falsely advertised as being of limited duration. And Defendant knew or should have known that the
26 reference prices were not not the prevailing market prices.

27 137. Defendant had no good faith or reasonable basis to believe that its representations were
28 true when made.

1 138. Defendant’s representations were made with the intent that Plaintiff and the Class rely on
2 the false representations and spend money they otherwise would not have spent, purchase items they
3 otherwise would not have purchased, and/or spend more money for an item than they otherwise would
4 have absent the deceptive marketing scheme.

5 139. Defendant engaged in this fraud to the Plaintiff and the Class’s detriment to increase
6 Defendant’s own sales and profits.

7 140. Plaintiff and the Class reasonably relied on Defendant’s representations. Absent
8 Defendant’s misrepresentations, Plaintiff and the Class would not have purchased the items they
9 purchased from Defendant, or, at the very least, they would not have paid as much for the items as they
10 ultimately did. Plaintiff and the Class’s reliance was a substantial factor in causing them harm.

11 141. Had the omitted information been disclosed, Plaintiff and the Class reasonably would have
12 behaved differently. Among other things, they would not have purchased the items they purchased from
13 Defendant or, at the very least, would not have paid as much for the items as they did.

14 142. As a direct and proximate result of the above, Plaintiff and the Class have suffered
15 damages in an amount to be proven at trial.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, individually and on behalf of the proposed Class, respectfully prays for
18 following relief:

- 19 a. Certification of this case as a class action on behalf of the proposed Class and any
- 20 subclasses defined above, appointment of Plaintiff as Class representative, and
- 21 appointment of their counsel as Class counsel;
- 22 b. An award to Plaintiff and the proposed Class and subclasses of restitution and/or other
- 23 equitable relief, including, without limitation, restitutionary disgorgement of all profits
- 24 Defendant obtained from Plaintiff and the proposed Class as a result of its unlawful, unfair
- 25 and fraudulent business practices described herein;
- 26 c. An injunction ordering Defendant to cease the false advertising and unfair business
- 27 practices complained of herein;
- 28

- d. An award of all economic, monetary, actual, consequential, and compensatory damages caused by Defendant’s conduct;
- e. An award of nominal, punitive, and statutory damages where available;
- f. Reasonable expenses and attorneys’ fees;
- g. Pre- and post-judgment interest, to the extent allowable; and
- h. For such further relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, individually and on behalf of the proposed Class, demands a trial by jury for all claims so triable.

Dated: April 17, 2024

MILBERG COLEMAN BRYSON PHILLIPS
GROSSMAN, PLLC

By: /s/ Alexander E. Wolf
ALEXANDER E. WOLF
Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 2:24-cv-01141-CSK Document 1-1 Filed 04/17/24 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.