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12  
13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**  
15 **SAN DIEGO DIVISION**

16 KRISTEN KOHLER, *individually and*  
17 *on behalf of all others similarly*  
18 *situated,*

19 Plaintiff,

20 v.

21 WHALECO, INC., a Delaware  
22 Corporation, d/b/a Temu; and DOES 1-  
23 10,

24 Defendants.

Civil Case No.: '24CV0935 BEN DEB

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Kristen Kohler (“Kohler” or “Plaintiff”), individually and on behalf  
2 of all others similarly situated, by and through her counsel, brings the following  
3 Complaint against Defendant WhaleCo, Inc. d/b/a Temu (“Defendant” or “Temu”)  
4 and DOES 1-10.

5 **I. NATURE OF THE ACTION**

6 1. Defendant operates the online megastore www.Temu.com that sells a  
7 myriad of merchandise categories, including but not limited to women’s and men’s  
8 clothing, beauty and health products, home and kitchen products, sports and  
9 outdoors products, appliances, tools and home improvement products, pet supplies,  
10 and toys and games, on its e-commerce retail store, Temu.com, and its downloadable  
11 Application to consumers throughout California and the United States.

12 2. Defendant lures consumers to its Temu website by promising the  
13 opportunity to “shop like a billionaire.”

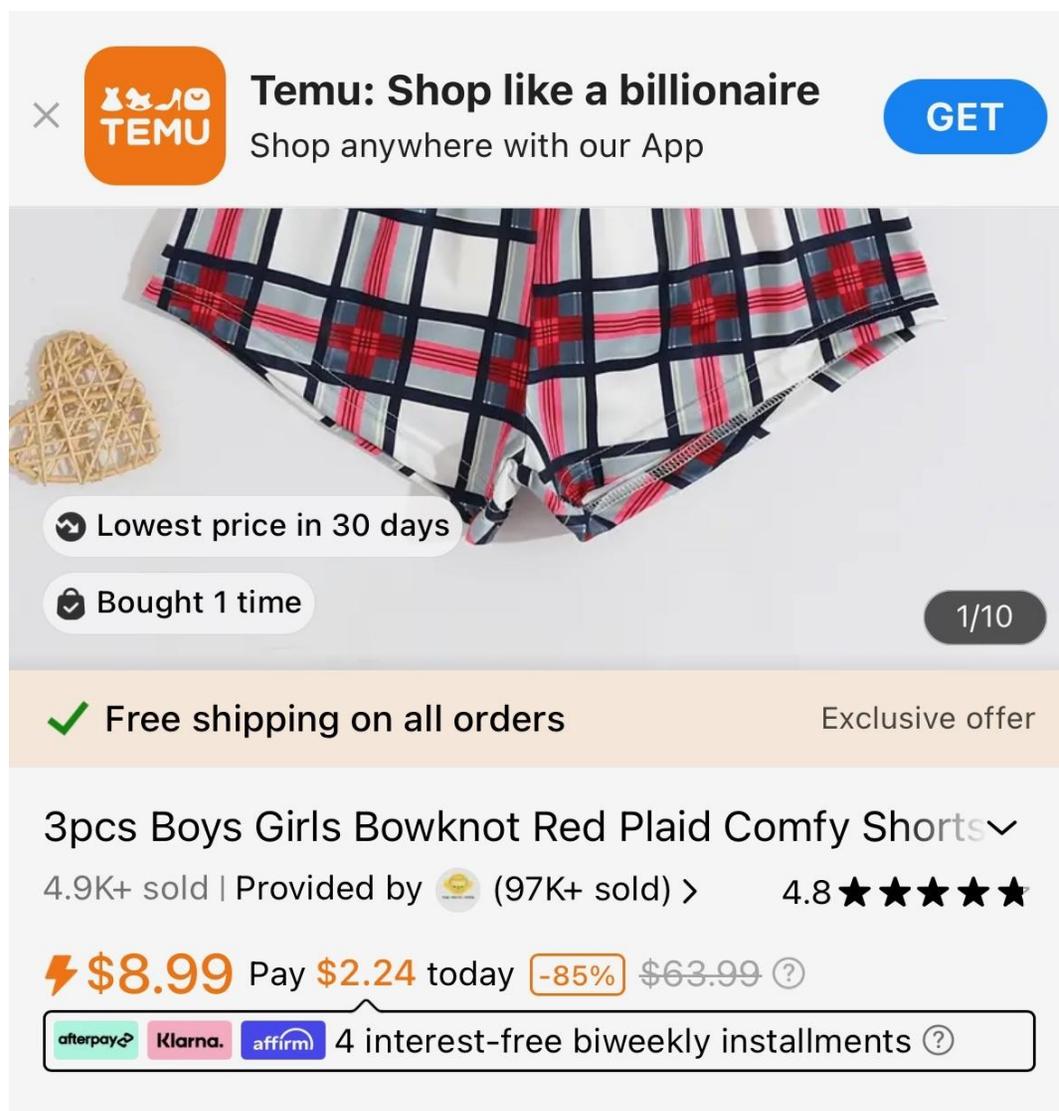


22 3. Defendant creates the illusion of “shopping like a billionaire” by  
23 employing “false reference pricing” to lure consumers into believing they are  
24 purchasing items at a discounted price. To do so, for each item it sells, Defendant  
25 lists a decoy “discounted” sale price (the “Discounted Price”) and a slashed through,  
26 higher, and completely fabricated price for the consumer’s comparison (the  
27 “Reference Price”). The resulting sham price disparity deliberately misleads  
28

1 consumers into believing they are receiving a bargain and induces them to purchase  
2 the product.

3 4. In reality, by artificially raising the Reference Price, and with it the  
4 value ascribed to these products by consumers, this practice inflates the true market  
5 price for these items. Retailers drastically benefit from employing false reference  
6 pricing schemes and experience increased sales because consumers use advertised  
7 reference prices to make purchase decisions. Consumers frequently lack full  
8 information about the true retail value of a product and, as a result, rely on  
9 representations made by sellers to make purchase decisions.

10 5. For example, pictured below is a screenshot of the Temu advertisement  
11 for “3pcs Boys Girls Bowknot Red Plaid Comfy Shorts”:



1 The product is advertised to have a Reference Price of \$63.99 and an alleged  
2 Discounted Price of \$8.99, implying a discount of 85% (the “Highlighted  
3 Discount”).

4 6. Defendant misrepresents the existence, nature, and amount of price  
5 discounts on products sold on its website by purporting to offer discounts from a  
6 falsified Reference Price. As addressed in detail below, Plaintiff and other  
7 reasonable consumers typically understand the Reference Price to be the former,  
8 original, or regular retail price of the item accompanying the item’s image and  
9 description.

10 7. Defendant advertises next to the product descriptions of its  
11 merchandise on the Temu website Reference Prices which are overstated and do not  
12 represent a bona fide price at which the products were previously sold. Nor are the  
13 advertised Reference Prices prevailing market retail prices within three months  
14 immediately preceding the publication of the advertised former prices, as required  
15 by California law.

16 8. Based upon the difference between the Reference Price and the  
17 Discounted Price, Plaintiff believed, and reasonable consumers would believe, that  
18 the Discounted Prices represent bona fide discounts on true former Temu prices or  
19 a true market retail price. However, the claimed Reference Prices are a sham.

20 9. Defendant makes no effort to verify that the Reference Prices displayed  
21 on its Temu website are tied to either actual prices at which the goods were  
22 previously sold on Temu or at which they are sold anywhere else in the retail market.  
23 The Reference Prices and the false Discounted Prices constitute advertisements  
24 under California law. Indeed, the coupling of the Reference Price with the purported  
25 Discounted Price makes a statement to the public as to the existence of a price  
26 discount—the percentage of which Temu prominently highlights in a colored box  
27 next to the false Reference Price—and promotes the purchase on that basis.

28

1           10. The Reference Prices listed on Defendant’s Temu website do not  
 2 represent a former price at all—much less a prevailing market price in the preceding  
 3 three months. Nor is it a price at which principal retail outlets were selling the  
 4 product at a substantial volume in the regular course of business across a substantial  
 5 number of representative communities. Rather, the Reference Prices are fictional  
 6 amounts intentionally displayed so Defendant can advertise fake markdowns and  
 7 “bargains.” The entire price display—indeed the entire discount megastore motif—  
 8 is designed to dupe consumers into believing they are buying main line retail  
 9 products at reduced prices.

10           11. This impression of quality is buoyed by Defendant’s declarations next  
 11 to the prices of Plaintiff’s purchases such as “#1 new arrival in makeup bag” and  
 12 “#11 best provider in beauty tools.” In fact, consumers are buying lower quality  
 13 merchandise that was never offered or sold as genuine quality clothing, accessories,  
 14 and other goods. By designing its pricing information in this way, Temu intended to  
 15 deceive reasonable consumers including Plaintiff.

16           12. The rapid growth of Temu underscores the insidiousness and efficacy  
 17 of Defendant’s sham pricing schemes. Defendant launched its Temu e-commerce  
 18 platform in the United States in September 2022.<sup>1</sup> The following year, Defendant  
 19 expanded the platform by launching in Australia,<sup>2</sup> New Zealand,<sup>3</sup> France, Germany,  
 20 Italy, the Netherlands, Spain, and the United Kingdom.<sup>4</sup> The early 2023 European

21 \_\_\_\_\_  
 22 <sup>1</sup> Temu Marketplace Launches in the U.S., *available at*  
 23 <https://www.marketplacepulse.com/articles/temu-marketplace-launches-in-the-us#:~:text=Since%20Temu%20launched%20in%20the,in%20bulk%20to%20Temu's%20warehouses>, last accessed April 22, 2024.

24 <sup>2</sup> China-backed shopping app that could unseat Kmart, Big W, *available at*  
 25 <https://www.news.com.au/lifestyle/real-life/news-life/chinabacked-shopping-app-that-could-unseat-kmart-big-w/news-story/2d37619c6237afd46895ad004062f6c2>,  
 last accessed April 22, 2024.

26 <sup>3</sup> *Ibid.*

27 <sup>4</sup> PDD’s Temu opens shop in Europe with 6 new markets as it rapidly expands to  
 28 take on rivals Shein, ByteDance, *available at* <https://www.scmp.com/tech/big-tech/article/3218124/pdds-temu-opens-shop-europe-six-new-markets-it-rapidly-expands-take-rivals-shein-bytedance>, last accessed April 22, 2024.

1 launch of Temu generated what has been described as a “meteoric rise in traffic and  
2 sales in Europe.”<sup>5</sup> In 2024, Defendant expanded to South Africa.<sup>6</sup>

3 13. In 2023, Defendant posted a year-on-year net profit jump of over 90  
4 percent to \$8.3 billion, with annual sales reaching \$34.4 billion.<sup>7</sup> That same year,  
5 Defendant surpassed 100 million active users in the United States, over 130 million  
6 application downloads globally, and approximately 420 million monthly website  
7 visits.<sup>8</sup>

8 14. While enjoying 10-figure profits, Defendant was investigated by the  
9 United States House Select Committee on the Chinese Communist Party. The  
10 Committee’s June 2023 report found that Defendant had built an empire around a  
11 loophole allowing it to evade complying with the Uyghur Forced Labor Protection  
12 Act (“UFLPA”) and other prohibitions on forced labor.<sup>9</sup> The UFLPA was enacted  
13 in response to the People’s Republic of China’s detention of more than one million  
14 Uyghur and other primarily Muslim minorities in China’s far western Xianjiang  
15 Uyghur Autonomous Region where an estimated 100,000 Uyghurs may be working  
16 in forced labor camps.<sup>10</sup> The report revealed Defendant was taking advantage of a  
17 U.S. shipping provision that allows them to avoid tariffs on orders and to

18 \_\_\_\_\_  
19 <sup>5</sup> Similarweb, ‘Temu: Analyzing Europe's Ecommerce Rising Star’ (December  
20 2023, accessed on 2 May 2024).

21 <sup>6</sup> Zando launches international unit to counter Shein and Temu in South Africa,  
22 *available at* <https://www.reuters.com/business/retail-consumer/zando-launches-international-unit-counter-shein-temu-south-africa-2024-04-18/#:~:text=Temu%20launched%20in%20South%20Africa,Zando%20said%20in%20a%20statement>, last accessed April 22, 2024.

23 <sup>7</sup> Temu Owner Pinduoduo Nearly Doubles Annual Profit, *available at*  
24 <https://www.barrons.com/articles/temu-owner-pinduoduo-nearly-doubles-annual-profit-c7790e5d>, last accessed April 22, 2024.

25 <sup>8</sup> Temu Revenue and Usage Statistics (2024), *available at*  
26 <https://www.businessofapps.com/data/temu-statistics/>, last accessed April 22,  
27 2024.

28 <sup>9</sup> Select Committee Releases Interim Findings from Shein & Temu Forced Labor Investigation, *available at* <https://selectcommitteeontheccp.house.gov/media/press-releases/select-committee-releases-interim-findings-shein-temu-forced-labor>, last accessed April 22, 2024.

<sup>10</sup> Against Their Will: The Situation in Xianjiang, *available at* <https://www.dol.gov/agencies/ilab/against-their-will-the-situation-in-xinjiang>, last accessed April 22, 2024.

1 “circumvent” the UFLPA.<sup>11</sup> Indeed, Defendant admitted it “does not expressly  
2 prohibit third-party sellers from selling products based on their origin in the Xinjiang  
3 Autonomous Region.”<sup>12</sup>

4 15. In February 2024, Defendant ran multiple Super Bowl ads, leading to a  
5 spike in searches for its name and online traffic.<sup>13</sup> Defendant's Temu application  
6 vaulted to second place among the most downloaded free applications on Apple  
7 devices.<sup>14</sup>



18  
19 16. Defendant’s expansion has also sparked warnings from government  
20 officials about the Temu application harvesting consumers’ personal data.<sup>15</sup> A class

21 \_\_\_\_\_  
22 <sup>11</sup> <https://globalaffairs.org/bluemarble/how-shein-and-temu-get-around-us-labor-laws-ban-products-made-forced-labor>, last accessed May 22, 2024.

23 <sup>12</sup> *Supra*, note 8.

24 <sup>13</sup> What is Temu? What we know about the e-commerce company with multiple Super Bowl ads, *available at*

25 <https://www.usatoday.com/story/money/2024/02/12/what-is-temu-super-bowl/72573203007/>, last accessed April 22, 2024.

26 <sup>14</sup> What is Temu, the company made famous in Super Bowl ads?, *available at* <https://abcnews.go.com/Business/what-is-temu-company-in-super-bowl-ads/story?id=107159833>, last accessed April 22, 2024.

27 <sup>15</sup> Chinese shopping app Temu could be harvesting phone users’ data according to report, *available at* <https://www.thisismoney.co.uk/money/markets/article-12578631/Warning-Chinese-shopping-app-Temu-harvests-data.html>, last accessed  
28 April 22, 2024.

1 action complaint filed in Illinois in November 2023 alleges the Temu application  
2 deploys the “most dangerous” spyware in circulation, allowing Defendant to gain  
3 access to “literally everything on your phone” once the application is downloaded.<sup>16</sup>  
4 In May 2024, the European Consumer Organization BEUC filed a complaint  
5 alleging Temu’s online marketplace fails to comply with the EU Digital Services  
6 Act (EU Regulation 2022/2065) after 17 companies accused it of “manipulative  
7 practices” and lack of transparency.<sup>17</sup>

8 17. Like these other questionable and allegedly unlawful business  
9 practices, Defendant’s false reference pricing scheme allows it to take advantage of  
10 the consuming public.

11 18. Plaintiff thus brings this action pursuant to: (i) California’s Business &  
12 Professions Code §§ 17200, *et seq.* (the Unfair Competition Law or “UCL”); (ii)  
13 California’s Business and Professions Code §§ 17500, *et seq.* (the False Advertising  
14 Law or “FAL”); and (iii) California Civil Code §§ 1750, *et seq.* (the Consumer Legal  
15 Remedies Act or “CLRA”). Plaintiff brings this action on behalf of a California class  
16 for damages, restitution, and injunctive relief, and any other relief deemed  
17 appropriate by the court to which this case is assigned.

## 18 II. JURISDICTION AND VENUE

19 19. This Court has subject matter jurisdiction pursuant to the Class Action  
20 Fairness Act, 28 U.S.C § 1332(d), as Plaintiff (California) and Temu (Delaware) are  
21 diverse, there are over 100 class members, and the amount in controversy exceeds  
22 \$5 million.

23 20. This Court has personal jurisdiction over Defendant because Defendant  
24 is a corporation or other business entity authorized to conduct and does conduct  
25 business in the State of California. Defendant conducts sufficient business with

26 <sup>16</sup> *Ziboukh v. Whaleco, Inc.*, Case No. 1:23-cv-15653 (N.D. Ill.), Docket No. 1, ¶¶  
27 5, 7 (filed 11/03/23).

28 <sup>17</sup> <https://news.sky.com/story/temu-faces-legal-challenge-over-manipulative-practices-13136498>, last accessed May 22, 2024.

1 sufficient minimum contacts in California, and/or otherwise intentionally avails  
2 itself of the California market through its promotion, sales, distribution, and  
3 marketing within this State to render the exercise of jurisdiction by this Court  
4 permissible.

5 21. Venue is proper under 28 U.S.C. § 1391(b)(2) because Defendant  
6 transacts substantial business in this District. A substantial part of the events giving  
7 rise to Plaintiff's claims arose here.

### 8 III. PARTIES

9 22. Plaintiff Kristen Kohler is, and at all times mentioned herein was, an  
10 individual citizen of the State of California and resident of San Diego County. On or  
11 about February 24, 2024, she purchased seven items through the Temu website that  
12 were labeled with false, deceptive, and/or misleading Reference Prices. The marked  
13 Reference Prices for the products Kohler purchased from Temu were not former  
14 prices at all. Similarly, they were neither prevailing market prices in the preceding  
15 three months, nor actual prices at which significant sales of those products were  
16 made at other retail stores. Plaintiff purchased these products in reliance on  
17 Defendant's false, deceptive, and misleading advertising, marketing, and pricing  
18 schemes, which she would not otherwise have purchased absent those schemes.  
19 Kohler has lost money and/or property and has been damaged as a result.

20 23. Plaintiff would like to buy Defendant's products in the future, if and  
21 when they are sold without an artificially inflated pricing scheme. She can no longer  
22 rely on the accuracy of the Reference Prices and Highlighted Discounts in deciding  
23 whether to purchase products on Temu.

24 24. Defendant WhaleCo Inc. d/b/a Temu is a Delaware business  
25 corporation with its principal place of business in Massachusetts, doing business in  
26 all 50 States and the District of Columbia.

27 25. Plaintiff does not know the true names or capacities of the persons or  
28 entities sued herein as DOES 1-10, inclusive, and therefore sues such defendants by

1 such fictitious names. Plaintiff is informed and believes, and upon such information  
 2 and belief alleges, that each of the DOE Defendants is in some manner legally  
 3 responsible for the damages suffered by Plaintiff as alleged herein. Plaintiff will  
 4 amend this Complaint to set forth the true names and capacities of these Defendants  
 5 when they have been ascertained, along with appropriate charging allegations, as  
 6 may be necessary.

#### 7 IV. FACTUAL ALLEGATIONS

8 26. On or about February 24, 2024, Plaintiff purchased the following seven  
 9 items from the Temu website based on the advertised Reference Prices:

10 Item	Reference Price	Listed Discount Price	Listed Highlighted % Discount	Final Purchase Price
11 Simple Chenille Letter Makeup Zipper Bag	\$46.99	\$6.77	85%	\$6.97
12 Face Wash Foam Maker Facial Cleanser	\$2.99	\$2.24	25%	\$2.47
13 3 pcs Boys Girls Bowknot Red Plaid Comfy Shorts	\$63.99	\$8.99	85%	\$8.99
14 Cute Rainy Cloud Earrings Drop Oil Ear Jewelry	\$12.00	\$1.79	85%	\$1.79
15 Hawaii Print Crew Neck T-Shirt, Casual Short	\$21.99	\$8.99	59%	\$8.09
16 6 Pairs/Set Pink Butterfly Duck Dice Pin Lollipop Earrings	\$9.99	\$2.48	75%	\$1.99
17 1 Set Mini Earring Holder, Hanging Acrylic Earrings	\$11.69	\$2.67	77%	\$2.58
18 Totals	\$169.64	\$33.93		\$32.88

#### 19 **Temu Makes Consistent Use Of Reference Prices**

20 In the pricing display for each item sold on the Temu website, consumers are clearly  
 21 presented in bold black type with the Discount Price, the struck-through Reference  
 22 Price, and a purported Highlighted Discount—displayed in a bright orange box and  
 23

1 determined using the item’s Reference Price and the Discount Price. This pricing  
2 display does not clearly indicate what the struck-out Reference Price means.  
3 Consumers are not in any readily observable way presented with how Defendant  
4 devised the Temu Reference Prices. The consumer relies on the Reference Price and  
5 is led to believe that they are actually saving the difference between the sale and  
6 Reference Price as indicated by the Highlighted Discount. *See e.g.*, ¶ 5, *supra*.

7       27. Defendant’s pricing scheme sets up consumers to compare the prices of  
8 Temu’s products with the advertised higher Reference Prices, which Defendant  
9 leads consumers to believe were either previously charged by Temu or were charged  
10 by other merchants for the same products. Temu reinforces this perception by  
11 including in its pricing information a Highlighted Discount that can only be  
12 interpreted by the consumer to be the percentage discount they are supposedly  
13 enjoying when making the purchase.

#### 14 **Reference Prices Are Material to Consumers**

15       28. The misleading comparison pricing employed by Defendant—where a  
16 retailer contrasts its selling price for a product with a much higher reference price—  
17 has become common in the retail market.

18       29. Retailers like Defendant have increasingly employed comparative  
19 reference pricing. The Reference Prices are often accompanied by short tag-line  
20 phrases such as “former price,” “regular price,” “list price,” “MSRP,” or “compare  
21 at.” These marketing phrases are commonly referred to as “semantic cues.”  
22 Consumers are so accustomed to this scheme that they believe they understand that  
23 the struck-through Reference Prices accompanied by the purported percentage  
24 discounts represent a bona fide discount offered by the retailer.

25       30. Marketing research conducted over the last four decades unanimously  
26 concludes that comparative reference prices are material to consumers and influence  
27 their purchasing decisions.

28

1           31. One such oft-cited study by Dhruv Grewal & Larry D. Campeau,  
2 *Comparative Price Advertising: Informative or Deceptive?*, 11 J. of Pub. Pol’y &  
3 Mktg., 52, 55 (Spring 1992) concludes that “[b]y creating an impression of savings,  
4 the presence of a higher reference price enhances [consumers’] perceived value and  
5 willingness to buy [a] product.” In other words, comparative reference prices lead  
6 consumers to believe they are getting a bargain, which increases their willingness to  
7 make purchases.

8           32. The finding that “advertised reference prices do indeed enhance  
9 consumers’ perceptions of the value of the deal” was echoed by a 2022 study  
10 published by Compeau & Grewal in *Comparative Price Advertising: Believe It Or*  
11 *Not*, J. of Consumer Affairs, Vol. 36, No. 2, at 287 (Winter 2002), citing “decades  
12 of research.” Notably, Compeau & Grewal also conclude that “[c]onsumers are  
13 influenced by comparison prices even when the stated reference prices are  
14 implausibly high.” *Id.*<sup>18</sup>

15           33. Even more recently, a 2011 study concluded that, “[r]eference price ads  
16 strongly influence consumer perceptions of value. . . . Consumers often make  
17 purchases not based on price but because a retailer assures them that a deal is a good  
18 bargain. This occurs when . . . the retailer highlights the relative savings compared  
19 with the prices of competitors . . . [T]hese bargain assurances (BAs) change  
20 consumers’ purchasing behavior and may deceive consumers.” Joan Lindsey-

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21  
22 <sup>18</sup> See also, Praveen K. Kopalle & Joan Linsey-Mullikin, *The Impact of External*  
23 *Reference Price On Consumer Price Expectations*, 79 J. of Retailing 225 (2003), (“research has shown that retailer-supplied reference prices clearly enhance buyer’s  
24 perceptions of value” and “have a significant impact on consumer purchasing  
25 decisions.”) and Dr. Jerry B Gotlieb & Dr. Cyndy Thomas Fitzgerald, *An*  
26 *Investigation Into the Effects of Advertised Reference Prices on the Price*  
27 *Consumers Are Willing to Pay For the Product*, 6 J. of App’d Bus. Res. 1 (1990)  
28 (“reference prices are important cues consumers use when making the decision  
concerning how much they are willing to pay for the product.” Further,  
“consumers are likely to be misled into a willingness to pay a higher price for a  
product simply because the product has a higher reference price.”).

1 Mullikin and Ross D. Petty, *Marketing Tactics Discouraging Price Search: Deception and Competition*, 64 J. of Bus. Research 67 (January 2011).

3 34. As has been abundantly demonstrated in marketing research, not only  
4 are reference prices material to consumers' decisions to make purchases, but an  
5 artificially high reference price can also inflate the price a consumer is willing to pay  
6 for an item, even when the reference price is implausibly high.

7 **Defendant Has a Legal Duty to Use Substantiated, Bona Fide Reference Prices**

8 35. The FTC Online Advertising Disclosure Guidelines require advertisers  
9 to "have evidence to back up their claims ('substantiation'). . . Before disseminating  
10 an ad, advertisers must have appropriate support for all express and implied  
11 objective claims that the ad conveys to reasonable consumers. When an ad lends  
12 itself to more than one reasonable interpretation, there must be substantiation for  
13 each interpretation. The type of evidence needed to substantiate a claim may depend  
14 on the product, the claims, and what experts in the relevant field believe is  
15 necessary." Fed. Trade Comm'n, *.com Disclosures: How to Make Effective*  
16 *Disclosures in Digital Advertising* (2013).<sup>19</sup>

17 36. Defendant does not have sufficient evidence to substantiate the validity  
18 of its Reference Prices.

19 37. From the consumer's point of view, it is unclear what the struck-  
20 through Reference Price is supposed to represent. It could be any of the following:  
21 1) a price at which the item was formerly sold at through Temu; 2) a price at which  
22 the exact item was sold in the retail market; 3) a price at which a similar item was  
23 sold in the retail market; or perhaps 4) a manufacturer's suggested retail price  
24 ("MSRP"). In any event, Defendant has not met its burden of price substantiation.

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<sup>19</sup> <https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf>.

1        **a) The Law Regarding Advertising Comparisons to Former Prices**

2            38. To the extent the Reference Prices listed by Defendant on the Temu  
3 website imply they are Defendant’s own former prices for the products, the FTC  
4 requires the former price be the “actual, bona fide price at which the article was  
5 offered to the public on a regular basis for a reasonably substantial period of time”  
6 for it to provide a “legitimate basis for the advertising of a price comparison.” But if  
7 the “former price being advertised is not bona fide but fictitious—for example,  
8 where an artificial, inflated price was established for the purpose of enabling the  
9 subsequent offer of a large reduction—the ‘bargain’ being advertised is a false one;  
10 the purchaser is not receiving the unusual value he expects. In such a case, the  
11 ‘reduced’ price is, in reality, probably just the seller’s regular price.” 10 C.F.R. §  
12 233.1(a).

13            39. For a former price to be legitimate, the price must be “one at which the  
14 product was openly and actively offered for sale, for a reasonably substantial period  
15 of time, in the recent, regular course of his business, honestly and in good faith—  
16 and, of course, not for the purpose of establishing a fictitious higher price on which  
17 a deceptive comparison might be based.” 10 C.F.R. § 233.1(b).

18            40. Under California’s FAL, Section 17501, this requirement is similar, but  
19 more specific. “No price shall be advertised as a former price of any advertised thing,  
20 unless the alleged former price was the prevailing market price as above defined  
21 within three months next immediately preceding the publication of the advertisement  
22 or unless the date when the alleged former price did prevail is clearly, exactly and  
23 conspicuously stated in the advertisement.” Cal. Bus. & Prof. Code § 17501.

24            41. If Defendant is advancing a former pricing scheme—*i.e.*, if Defendant  
25 alleges that the struck-through Reference Prices are prices at which Defendant  
26 formerly listed those items on the Temu website—then Defendant has a legal  
27 obligation to verify that each item’s Reference Price was indeed a former price at  
28 which Temu offered that item for sale withing the preceding three months.

1           42. Defendant does not have such evidence and has not in fact verified that  
2 its Reference Prices were former prices at which Temu offered its items for sale  
3 withing the preceding three months. *See* Cal. Bus. & Prof. Code § 17501.

4           **b) The Law Regarding Advertising Comparisons to the Pricing of Identical**  
5 **Products**

6           43. As with comparisons to their own former prices, the FTC Pricing  
7 Guides provide rules for merchants who compare the price of their goods to the  
8 prices at which identical items are sold by other vendors. *See* 16 C.F.R. § 233.2(a)  
9 (“Another commonly used form of bargain advertising is to offer goods at prices  
10 lower than those being charged by others for the same merchandise in the  
11 advertiser’s trade area (the area in which he [sic] does business).”)

12           44. The FTC Pricing Guides require that when merchants such as Temu use  
13 advertising that compares their prices to higher reference prices for the same  
14 merchandise, “the advertised higher price must be based on fact, and not be fictitious  
15 or misleading.” *Id.* Specifically, the FTC Pricing Guides state:

16           Whenever an advertiser represents that he is selling below the prices being  
17 charged in his area for a particular article, he should be reasonably certain that  
18 the higher price he advertises does not appreciably exceed the price at which  
19 substantial sales of the article are being made in the area - that is, a sufficient  
20 number of sales so that a consumer would consider a reduction from the price  
21 to represent a genuine bargain or saving.

21           *Id.*

22           45. If Temu is advancing a comparative pricing scheme to identical  
23 products, Temu has a duty to provide “appropriate support” for, and “evidence to  
24 back up,” the struck-through Reference Prices and purported percentage discounts  
25 advertised on the Temu website when the item sold is the same as that available at  
26 other retailers.

27  
28

1           46. In such cases, Defendant has a duty to verify that Reference Prices  
2 advertised on its website do not “appreciably exceed the price at which substantial  
3 sales” of products identical to its products have been made in its area of trade.

4           47. Defendant does not have such evidence and has not in fact verified that  
5 its Reference Prices do not “appreciably exceed the price at which substantial sales”  
6 of products identical to its products have been made in its area of trade. *See* 16 C.F.R.  
7 § 233.2(a).

8           **c) The Law Regarding Advertising Comparisons to the Pricing of Similar**  
9 **Products**

10           48. In a related situation—where an advertiser’s comparison price is  
11 purportedly based on prices being charged for similar or “comparable” products—  
12 the FTC Pricing Guides require that the advertiser make “clear to the consumer that  
13 a comparison is being made with other merchandise and the other merchandise is, in  
14 fact, of essentially similar quality and obtainable in the area.” In such a case, “The  
15 advertiser should, however, be reasonably certain, just as in the case of comparisons  
16 involving the same merchandise, that the price advertised as being the price of  
17 comparable merchandise does not exceed the price at which such merchandise is  
18 being offered by representative retail outlets in the area.” 16 C.F.R. § 233.2(c).

19           49. If Defendant is advancing a comparative pricing scheme to products  
20 like its own, then it has a legal obligation to verify with reasonable certainty that the  
21 items were indeed of “essentially similar quality” and that each item’s Reference  
22 Price did not exceed the price at which the item was being listed in representative  
23 retail outlets.

24           50. Defendant does not have such evidence and does not in fact verify with  
25 reasonable certainty that its Reference Prices do not exceed the price at which  
26 comparable merchandise was being advertised in representative retail outlets.

27  
28

1        **d) The Law Regarding Advertising Comparisons To MSRPs**

2            51. In cases where an advertiser’s comparison price is purportedly based  
3 on a MSRP, the FTC Pricing Guides provide as follows:

4            Many members of the purchasing public believe that a manufacturer’s list  
5 price, or suggested retail price, is the price at which an article is generally  
6 sold. Therefore, if a reduction from this price is advertised, many people  
7 will believe that they are being offered a genuine bargain. To the extent  
8 that the list or suggested retail prices do not in fact correspond to prices at  
9 which a substantial number of sales of the article in question are made, the  
10 advertisement of a reduction may mislead the consumer.

11            ...  
12 [T]he widespread failure to observe manufacturers’ suggested or list  
13 prices, and the advent of retail discounting on a wide scale, have seriously  
14 undermined the dependability of list prices as indicators of the exact prices  
15 at which articles are in fact generally sold at retail. . . . Today, only in the  
16 rare case are all sales of an article at the manufacturer’s suggested retail or  
17 list price.

18            16 C.F.R. §233.3(a), (c).

19            52. According to the FTC Pricing Guides, an advertised MSRP:

20            [W]ill not be deemed fictitious if it is the price at which substantial (that  
21 is, not isolated or insignificant) sales are made in the advertiser’s trade area  
22 (the area in which he does business). Conversely, if the list price is  
23 significantly in excess of the highest price at which substantial sales in the  
24 trade area are made, there is a clear and serious danger of the consumer  
25 being misled by an advertised reduction from this price.

26            ...  
27 [B]efore advertising a manufacturer’s list price as a basis for comparison  
28 with his own lower price, the retailer should ascertain whether the list price  
is in fact the price regularly charged by principal outlets in his area.

          16 C.F.R. § 233.3(d), (e).

53. If Defendant is asserting that its Reference Prices are MSRPs for its  
products, then it has a legal obligation to verify with reasonable certainty that each  
price asserted by the manufacturer to Temu was indeed a price at which a substantial

1 number of sales of that product were made and that the asserted MSRP was a price  
2 regularly charged for that product by principal outlets.

3 54. Defendant does not have such evidence and does not in fact verify with  
4 reasonable certainty that it uses asserted MRRPs as Reference Prices and that these  
5 prices were indeed prices at which a substantial number of sales had been made.

6 **e) Temu Was Not Relieved of its Duty to Verify Prices**

7 55. No matter what Defendant’s Reference Prices allegedly represent, the  
8 fact that Defendant operates Temu as a multinational online retailer does not relieve  
9 Defendant of its obligations to set non-fictional reference prices under the FTC  
10 Guides. The principles of the FTC Guides continue to control even when selling at  
11 such a scale. *See, e.g., id.* (“This general principle applies whether the advertiser is  
12 a national or regional manufacturer (or other non-retail distributor), a mail-order or  
13 catalog distributor who deals directly with the consuming public, or a local  
14 retailer.”).

15 56. For national distributors, while the Guides acknowledge that such a  
16 seller cannot be required to “investigate in detail the prevailing prices of his articles  
17 throughout so large a trade area,” a seller opens itself to charges of deceptive  
18 practices when it fails to advertise or disseminate “a list or preticketed price in good  
19 faith (*i.e.*, as an honest estimate of the actual retail price) *which does not appreciably*  
20 *exceed the highest price at which substantial sales are made in [its] trade area[.]*”  
21 16 C.F.R. § 233(g)(emphasis added).

22 57. Illustrating the guidance above, the FTC describes the following as  
23 “good faith” reference pricing on the part of a national retailer:

24 Manufacturer Roe, who makes Brand X pens and sells them throughout  
25 the United States, advertises his pen in a national magazine as having a  
26 “Suggested Retail Price \$10,” a price determined on the basis of a market  
27 survey. *In a substantial number of representative communities, the*  
28 *principal retail outlets are selling the product at this price in the regular*  
*course of business and in substantial volume.* Roe would not be  
considered to have advertised a fictitious “suggested retail price.” If

1 retailer Doe does business in one of these communities, he would not be  
2 guilty of a deceptive practice by advertising, “Brand X Pens,  
3 Manufacturer’s Suggested Retail Price, \$10, Our Price, \$7.50.”

4 16 C.F.R. § 233(h) (emphasis added).

5 58. As such, Defendant has a duty to verify that its struck-through  
6 Reference Prices reflect prices at which its products have been sold in a substantial  
7 volume across a substantial number of representative communities.

8 **Defendant’s Reference Prices Are Not Based on Fact**

9 59. Defendant has “more than 100 categories of merchandise” and  
10 advertises thousands upon thousands of products for sale.

11 60. Whether Defendant’s struck-through Reference Prices were based on  
12 former Temu prices, the price at which other retailers offered identical goods, the  
13 price at which other retailers offered similar goods, or MSRPs, Defendant had a good  
14 faith obligation to verify the Reference Price asserted for each product Temu  
15 advertised.

16 61. As alleged above, Defendant does not meet its good faith obligation to  
17 make sure that its advertised Reference Prices were lawfully related to actual  
18 relevant comparative prices.

19 62. Rather, as discussed more fully below, Defendant admittedly routinely  
20 uses unverified comparative prices—including pricing provided to Defendant by  
21 “merchandise partner[s]”—as comparative Reference Prices for its products.  
22 Defendant does not determine whether its displayed Reference Prices are, in good  
23 faith, not fictitious or misleading; Defendant undertakes no good faith analysis of its  
24 own past prices nor the prices of a substantial volume of the products’ sales. Instead  
25 Defendant’s Reference Prices appreciably exceed the highest price at which  
26 substantial sales of products are made in Defendant’s area of trade.

27 63. Plaintiff is informed and believes, and on that basis alleges, that often  
28 Defendant has not determined or verified the prices other merchants charge for the

1 identical products that Defendant sells. Rather, Defendant has used various  
2 misleading methods to make up prices that it claims other retailers charge for those  
3 products and then claims that its own prices are significantly lower than the struck-  
4 through Reference Prices advertised on Temu.

5         64. Defendant's practice of using unverified Reference Prices, including  
6 supposed MSRPs and those purportedly provided to it by "retail partner[s]," was  
7 likely to deceive consumers, including Plaintiff, by, among other things,  
8 representing that these prices did not, in good faith, appreciably exceed the highest  
9 prices that a substantial number of sales were made of these same products across  
10 retail markets in a substantial number of communities. Defendant's huge advertised  
11 discounts off those implied retail prices make those prices attractive. Defendant's  
12 misrepresentations of the struck-through Reference Prices as actual retail prices at  
13 which substantial sale of these products had been made in a substantial number of  
14 representative communities are deceptive, misleading, unlawful, unfair, and/or  
15 fraudulent.

16 **Temu's Struck-Through Reference Prices Are Misleading, Deceptive, and/or**  
17 **False**

18         65. The result of Defendant's ignorance or willful misrepresentation of the  
19 accuracy of its Reference Prices, and its failure to verify that accuracy, is that  
20 consumers, including Plaintiff, are misled into believing that they are receiving  
21 substantial savings on the purchase of products from Temu when compared to prices  
22 charged for those same products at other retailers. Plaintiff and other Class Members  
23 were misled into paying more for Defendant's products than they would have paid  
24 absent the Reference Prices.

25         66. Plaintiff was presented with the struck-through Reference Prices and the  
26 Highlighted Discount values on the items she purchased from Temu. Plaintiff  
27 believed, like all reasonable consumers would, that the struck-through Reference  
28 Price represented either former Temu prices or the prices at which those products

1 had been sold in substantial volume across a substantial number of representative  
2 communities. The impression created is that these Reference Prices referred to the  
3 then prevailing retail prices for the same items—that if she shopped around for those  
4 same products, she would likely find them elsewhere at the higher Reference Prices  
5 provided by Defendant.

6 67. Defendant, however, advertises Reference Prices to give a false sense  
7 that consumers are getting a bargain to entice them into making purchases they  
8 would not otherwise make.

9 68. Had Plaintiff coincidentally clicked the faint “?” icon to the right of the  
10 struck-through Reference Price displayed for the items she purchased or been savvy  
11 enough to go to Defendant’s Terms of Use and scroll halfway through its legalese,  
12 she would have found what Temu means when offering its struck-through Reference  
13 Prices.

14 69. The following pricing disclosure can only be found on some of  
15 Defendant’s pricing displays on the Temu website. To view the below disclosure, a  
16 consumer must click or hover their cursor over a faint “?” icon to the right of the  
17 struck-through Reference Price. Only then, will the following disclosure appear:

18 Items on Temu.com may display a strikethrough price, which is the  
19 manufacturer’s suggested retail price for the item, the price provided by the  
20 merchandise partners, or the price offered by other retailers at or above that  
21 price in the past 90 days.

22 The price may not necessarily reflect the product’s prevailing market price.  
23 (“Four-Part Disclosure”)

24 70. Additionally, a second, different, and more conclusory pricing  
25 disclosure is embedded in the Temu Terms of Use, and is in no way identified on or  
26 linked to near the merchandise descriptions or pricing information. Instead, a  
27 consumer must either actively enter “Terms of Use” or similar language into the  
28 Search Bar on Defendant’s website to find the Terms of Use, or, once at Temu.com,  
navigate to “Support Center,” select “Policies,” and then select “What is Temu’s

1 terms and conditions policy?” to be taken to a link to the Terms of Use. Once at the  
2 terms, a consumer must scroll down half-way through the Terms of Use to find the  
3 following language embedded in section 10.2 of “Pricing”:

4       You should not rely on the strike-through price in your purchase decision. If  
5       comparing prices is important to your purchase decision, you should do your  
6       own comparison before making a purchase. (“Terms of Use Disclosure”)

7 **Reasonable Consumers Do Not Interpret Defendant’s Struck-Through  
8 Reference Prices to Have No Relationship to its Products’ Market Prices**

9       71. Reasonable consumers, including Plaintiff, do not expect that the  
10       advertised Reference Price and highlighted percentage discount displayed by the  
11       item’s price to “not necessarily” have a relation to the product’s “market price.”  
12       Instead, they expect certainty as to how a Reference Price is determined and expect  
13       that that Reference Price has a good faith relationship to a substantial number of  
14       sales in the marketplace.

15       72. Reasonable consumers, including Plaintiff, would similarly not expect  
16       Defendant’s Four-Part Disclosure (should they even find that disclosure tucked away  
17       under a faint icon next to the bold pricing information) to then be totally abandoned  
18       in a contradictory and presumably overriding Terms of Use disclosure buried three  
19       layers deep in the Temu webpage. There, despite Defendant’s own declaration that  
20       its Reference Prices were determined using one of the three methods listed in its  
21       Four-Part Disclosure, the Terms of Use advise that Reference Prices should not be  
22       relied upon at all.

23       73. Defendant’s display of pricing information, as described herein,  
24       deceptively led consumers, including Plaintiff, to believe that the struck-through  
25       Reference Price with the Highlighted Discount information was either a price at  
26       which Temu had previously sold the product, or the price at which the product was  
27       typically sold in the marketplace, from which Temu offered a discount.

28       74. Nowhere in Defendant’s overtly displayed pricing information is it  
29       made clear to consumers, including Plaintiff, that the advertised struck-through

1 Reference Price may just be a price that a third-party “merchandise partner” has  
2 provided Defendant.

3 75. Nowhere in Defendant’s overtly displayed pricing information is it  
4 made clear to consumers, including Plaintiff, that the advertised struck-through  
5 Reference Price may not reflect the item’s prevailing market price.

6 76. Nowhere in Defendant’s overtly displayed pricing information is it  
7 made clear to consumers, including Plaintiff, that the advertised struck-though  
8 Reference Price may not even be a price at which any retailer ever offered the  
9 particular item at any time or location.

10 77. Nowhere in Defendant’s pricing information are consumers warned or  
11 told that they should do their own comparison shopping before relying on the struck-  
12 though Reference Price.

13 78. Consumers should not have to search all over Defendant’s pricing  
14 information for hidden, misleading, and ambiguous explanations for what  
15 Defendant’s clearly displayed price comparison means.

16 79. Even if a consumer were to come across the faint “?” icon on an item’s  
17 pricing display and discover Defendant’s stated explanation of its Reference Pricing,  
18 it is still not clear from Defendant’s disclosure language what the struck-though  
19 Reference Price actually relates to.

20 80. Based on Defendant’s disclosure language, it could well be that a  
21 particular item, or even a comparable item, was never offered for sale at the struck-  
22 though Reference Price by another retailer, at any time, or in any location.

23 81. Plaintiff and all other Class Members reasonably relied upon  
24 Defendant’s deceptive, misleading, and/or false representations of comparative  
25 Reference Prices and false representations of purported savings, discounts, and  
26 bargains when purchasing merchandise from Temu.

27 82. Therefore, Defendant’s hidden disclosures do not get it off the hook.  
28

1 **No Disclosure Can Obviate Defendant’s Obligation to Comply With the Law**

2 83. As laid out fully above, per FTC and California law, Defendant has a  
3 good faith obligation to verify the Reference Prices for each product sold on the  
4 Temu website.

5 84. Basic principles of advertising law apply to Defendant: its ads must be  
6 truthful and not misleading; it must have evidence to back up its claims; and its  
7 advertisements cannot be unfair.

8 85. If Defendant’s pricing information made express or implied claims that  
9 were likely to be misleading without qualifying information, then that information  
10 needed to be disclosed.

11 86. Importantly here, a disclosure can only serve to qualify or limit a  
12 misleading impression—it cannot relieve a seller of an obligation to comply with a  
13 legal requirement. Even if artfully crafted, a disclosure cannot cure a false claim. “If  
14 a disclosure provides information that contradicts a material claim, the disclosure  
15 will not be sufficient to prevent the ad from being deceptive. In that situation, the  
16 claim itself must be modified.”<sup>20</sup>

17 87. Here, Defendant has a legal requirement to verify its Reference Prices.

18 88. Reference pricing is material to consumers; an artificially high  
19 reference price is able to inflate the price a consumer is willing to pay for an item,  
20 even if the reference price is implausibly high.

21 89. Defendant’s disclosures regarding its Reference Prices directly  
22 contradict what such advertised pricing must legally represent—rather than being a  
23 good faith indication of the highest price at which Temu previously offered the item  
24 for sale or at which a substantial number of sales are made in a substantial number  
25 of representative retail communities, Defendant’s Reference Pricing admittedly did

26 \_\_\_\_\_  
27 <sup>20</sup> Fed. Trade Comm’n, *.com Disclosures: How to Make Effective Disclosures in*  
28 *Digital Advertising* (2013), <https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf> at 5.

1 not “necessarily reflect the product’s prevailing market price” and was merely a  
2 number upon which the consumer should not rely.

3 90. Thus, Defendant’s Reference Pricing was unfair, unlawful, and false.

4 91. Defendant cannot legally disclose away its legal obligations to Plaintiff  
5 and all other Class Members and has engaged in false, misleading, and/or deceptive  
6 advertising.

7 **Even if Temu Could Cure Its Misleading Reference Prices with a Disclosure,**  
8 **Temu’s Attempts At Disclosure Fail**

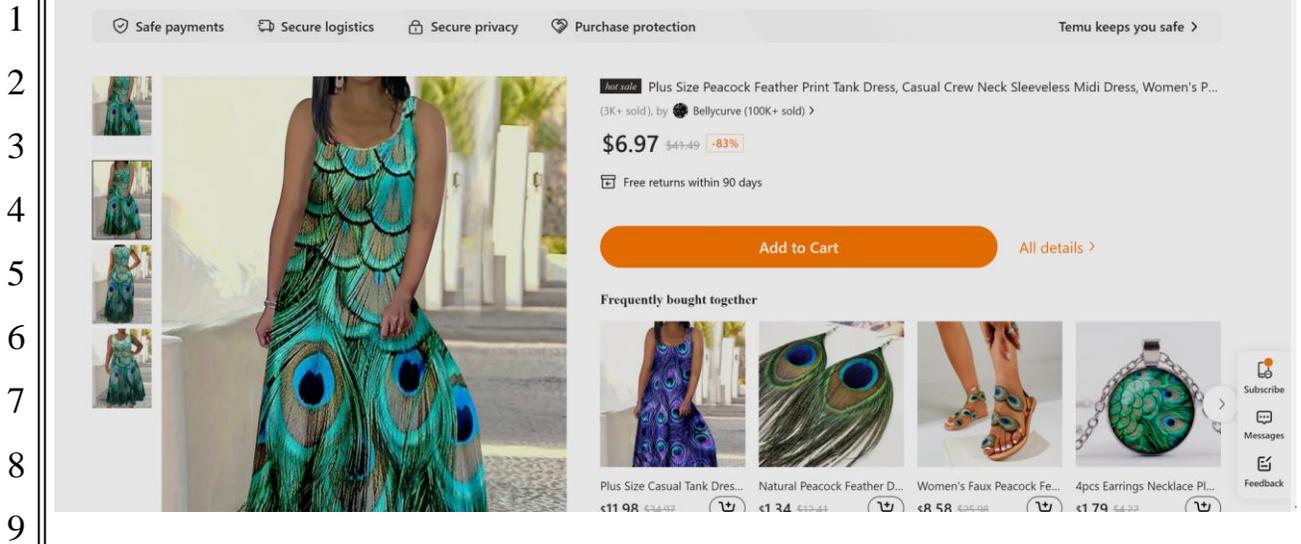
9 92. Defendant attempts to cure its unfair, unlawful, and false Reference  
10 Prices with disclosures. If an ad makes express or implied claims that are likely to  
11 be misleading without qualifying information, that information must be disclosed.  
12 *Id.* Here, since Defendant interprets their Reference Pricing in a way that a  
13 reasonable consumer would not understand, they had a duty to Plaintiff and all other  
14 Class Members to adequately disclose this interpretation.

15 93. Reasonable consumers do not expect a Reference Price to not  
16 necessarily reflect the product’s prevailing market price. Thus, if Defendant’s  
17 Reference Pricing misrepresentations were curable, Defendant had a duty to  
18 appropriately and conspicuously disclose that understanding to Plaintiff and all other  
19 Class Members.

20 94. When Defendant provides the above multi-part ambiguous and  
21 confusing disclosure (which it does not do for all items), it is hidden as a pop-up  
22 under a faint “?” icon next to the bold orange display of the item’s purported  
23 Highlighted Discount. A consumer would have to see that faint icon, identify it as  
24 meaningful against the barrage of proffered pricing information, and then click or  
25 hover a cursor over the icon to reveal the purported disclosure.

26 95. Moreover, when a Temu item is accessed through a Google search, the  
27 product listing is missing that “?” icon with its pop-up disclosure language entirely.

28



96. Then, adding to the confusion, Defendant’s multi-part pricing disclosure frequently, although not always, provided under the “?” icon is contradicted by a different disclosure buried three layers deep on Defendant’s website. That second disclosure advises that Defendant’s Reference Prices should not be relied upon at all.

97. While Defendant has provided disclosures that attempt to qualify its pricing information, one set of disclosures is ambiguous, while the other contradicts the first, and neither are clearly and conspicuously displayed as required by FTC rules.

98. In purchasing merchandise at Defendant’s online store and through its App, Plaintiff and other Class Members reasonably and justifiably acted and relied to their detriment on Defendant’s deceptive comparative prices.

### **Defendant’s Disclosures Do Not Comply with FTC Guidelines**

99. The FTC provides detailed requirements to online retailers concerning the use of purported disclosures in its “.com Disclosures” rules. Fed. Trade Comm’n, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising* (2013).<sup>21</sup>

<sup>21</sup> <https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf>.

1           100. Defendant’s attempts to disclose its definition or interpretation of its  
2 struck-through Reference Pricing on its website are subject to the FTC’s “.com  
3 Disclosures” rules.

4           101. The FTC has a “clear and conspicuous requirement” for advertising  
5 disclosures made online. Depending on the nature of the ad and, in this case, relevant  
6 to Defendant’s advertisement, advertisers must consider: the placement of the  
7 disclosure in the advertisement and its proximity to the claim it is qualifying (here,  
8 the Reference Price); the prominence of the disclosure; the extent to which items in  
9 other parts of the advertisement might distract attention from the disclosure; and  
10 whether the language of the disclosure is understandable to the intended audience.  
11 *Id.* at 7.

12           102. Considering first proximity and placement, a disclosure is most  
13 effective if it is placed near the claim it qualifies (“the triggering claim”).  
14 Recognizing that this can be a challenge for small screens, the FTC clarifies that  
15 hyperlinks can be used if the information disclosed is not an integral part of the  
16 claim, *e.g.*, not related to the basic cost of the item or health and safety information.  
17 *Id.* at 8-10.

18           103. If a hyperlink is used to address the proximity and placement  
19 requirement, the link should be “clearly labeled to communicate the specific nature  
20 of the information to which it leads, *e.g.*, ‘Service plan required. [Get service plan](#)  
21 [prices.](#)’” *Id.* at 10-11. Important considerations for evaluating the effectiveness of a  
22 hyperlinked disclosure include: the labeling of the hyperlink, the consistency of use  
23 of hyperlink styles, the placement and prominence of the hyperlink on the screen,  
24 and the handling of the disclosure on the click-through screen. *Id.* at 11.

25           104. The FTC Guides regarding labeling hyperlinks are clear:

- 26           A. The link should obviously be a hyperlink, *e.g.*, using multiple methods  
27           of identifying it such as an underscore and color.  
28

1 B. The link should be labeled to convey its importance and nature, *i.e.*, it  
2 should use clear and understandable text related to the advertising claim in  
3 question, *e.g.*, “[click for pricing information.](#)”

4 C. The text link should indicate why a claim is qualified or the nature of  
5 the disclosure.

6 D. The link should not be subtle; “[s]ymbols or icons by themselves are  
7 not likely to be effective as hyperlink labels leading to disclosures that are  
8 necessary to prevent deception.”

9 E. Hyperlinks should account for technological differences and limitations.  
10 *Id.* at 11-12.

11 105. Regarding the prominence of a disclosure, it is the advertiser’s  
12 responsibility to make it noticeable to the consumer. Disclosures are most effective  
13 when they are at least as large as the claim to which they relate. Similarly, disclosures  
14 in a color that contrast with the background emphasize the text of the disclosure and  
15 makes it more noticeable. They should not “blend in.” *Id.* at 17.

16 106. Distracting factors in the ad itself must be considered when evaluating  
17 whether a disclosure is clear and conspicuous. “Elements like graphics, text, links  
18 that lead to other screens or sites, or ‘add to cart’ buttons may result in consumers  
19 not noticing, reading, or listening to the disclosure.” *Id.* at 19.

20 107. Finally, under the FTC Guides, disclosures must be understandable to  
21 be effective. “Advertisers should use clear language and syntax and avoid legalese  
22 or technical jargon. Disclosures should be as simple and straightforward as  
23 possible.” *Id.* at 21.

24 108. Defendant’s attempted disclosures fail the FTC’s “clear and  
25 conspicuous” requirement at nearly every turn. Looking first at the disclosure found  
26 in Temu’s Terms of Use, it is nowhere near the triggering claim it seeks to qualify—  
27 the item’s Reference Price. There is absolutely no text near the pricing saying that  
28 the Reference Price cannot be relied upon and that consumers should do their own

1 price research. There is no such text anywhere on the pricing page. Nor is there a  
2 hyperlink directing consumers straight to the Terms of Use Disclosure. Rather, the  
3 Terms of Use Disclosure is buried deep within Temu’s website and not referred to  
4 or linked to at all in any item or pricing descriptions. A reasonable consumer would  
5 not know that the disclaimer existed, much less how to find it. In the language of the  
6 FTC Guide, the ball is completely hidden.

7         109. Defendant’s Four-Part Disclosure for Reference Prices similarly  
8 spectacularly fails the FTC’s “clear and conspicuous” analysis. This disclosure can  
9 be found hidden on some of the Temu pricing displays if one goes directly to  
10 Temu.com. To locate the disclosure, a consumer must hover their cursor over a faint  
11 “?” icon to the right of the struck-through Reference Price. Only then will the  
12 disclosure pop up.

13         110. When the “?” icon appears, it is close to the Reference Price. However,  
14 under the FTC Guides, this icon is not effectively labeled as a hyperlink: there is no  
15 text communicating the nature of the hyperlink (*i.e.*, that it is a disclosure regarding  
16 pricing); the link does not use underlined text or a different color to identify it as a  
17 hyperlink; only an icon is used; and technological differences and limitations have  
18 not been taken into account as the “?” icon does not appear if the item is located  
19 through a Google search.

20         111. The prominence of the Four-Part Disclosure fails as the size of the “?”  
21 icon in Defendant’s product displays is small compared to the pricing information  
22 and is a pale gray against the white background. In contrast, Defendant’s pricing  
23 information and percentage discounts are in bright orange. The “?” is subtle and  
24 completely blends into the background of the product displays.

25         112. The above fact is exacerbated by the distracting nature of Defendant’s  
26 product displays themselves. Using the product display for the shorts purchased by  
27 Plaintiff as an example, the small screen display is awash with colorful information  
28 about the item: “Lowest price in 30 days,” “Free shipping on all orders,” “Exclusive

1 Offer,” “4.9K+ sold,” 4.8 out of 5 stars, “\$8.99,” “Pay \$2.24 today,” “-85%,”  
2 “\$63.99,” “4 interest-free biweekly installments.” Almost all information is in text  
3 larger than the “?” icon, and half of the pricing information, including the assumed  
4 percentage off discount, is in orange. It is nearly impossible to notice the faint, gray,  
5 small “?” against this distracting visual noise.

6 113. Finally, the Four-Part Disclosure is anything but simple and  
7 straightforward. According to this disclosure, Defendant’s struck-through Reference  
8 Price could be a MSRP, or it could be a price provided to Defendant by a “retail  
9 partner,” or it could be a price that the item was offered for sale by other retailers “at  
10 or above that price” in the last 90 days, or it may not necessarily reflect the product’s  
11 “prevailing market price.” It is completely ambiguous and awash with legalese.

12 114. Even if Defendant could disclose away its false pricing claims, both  
13 Defendant’s Terms of Use Disclosure and the Four-Part Disclosure fail to meet the  
14 FTC’s requirements and are neither clear nor conspicuous.

15 **CLASS ACTION ALLEGATIONS**

16 115. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23(a), (b)(2), and  
17 (b)(3) on behalf of herself and all other similarly situated individuals (the “Class”),  
18 defined as follows:

19 All persons who, while in the State of California, purchased one or more  
20 products from Defendant’s Temu website that were represented as discounted  
21 from a higher struck-through reference price from the period of February 24,  
22 2020 to the present (the “Class Period”) and who have not received a refund  
or credit for their purchase(s).

23 116. Excluded from the Class are Defendant, as well as its officers, directors,  
24 or employees; officers, directors, or employees of any entity in which Defendant  
25 currently has or has had a controlling interest; and Defendant’s legal representatives,  
26 heirs, successors, and assigns.

27 117. Plaintiff reserves the right to expand, limit, modify, or amend this class  
28 definition, including the addition of one or more subclasses, in connection with her

1 motion for class certification, or at any other time, based upon, among other things,  
2 changing circumstances and/or new facts obtained during discovery.

3 118. The Class members are so numerous that joinder of all members is  
4 impracticable. Plaintiff is informed and believes that the proposed Class contains  
5 hundreds of thousands of individuals who have been damaged by Defendant's  
6 conduct as alleged herein. The precise number of Class members is unknown to  
7 Plaintiff.

8 119. Each member of the proposed Class herein has been exposed to  
9 Defendant's false and/or misleading pricing and advertising scheme. Each item that  
10 each Class Member purchased from Defendant throughout the Class Period has been  
11 accompanied by the false, deceptive, and/or misleading comparative reference price  
12 advertising described herein.

13 120. Common questions of law and/or fact exist in this case with respect to  
14 the proposed Class, which predominate over any questions affecting individual  
15 members of the Class. The common questions of law and/or fact include, but are not  
16 limited to, the following:

- 17 1. Whether, during the Class Period, Defendant used false reference  
18 price representations and falsely advertised price discounts for their  
19 merchandise;
- 20 2. Whether, during the Class Period, the reference prices advertised by  
21 Defendant were the prevailing market prices for the respective  
22 merchandise sold by Defendant during the three-month period  
23 preceding the dissemination and/or publication of the advertised  
24 former prices and did not appreciably exceed the highest price at  
25 which substantial sales of those products were made in its trade area;
- 26 3. Whether Defendant's use of the price advertising scheme described  
27 herein constituted false advertising under California law;
- 28 4. Whether Defendant engaged in unfair, unlawful, and/or fraudulent

- 1 business practices under California law;
- 2 5. Whether Defendant misrepresented and/or failed to disclose
- 3 material facts about its product pricing and discounts;
- 4 6. Whether Plaintiff and Class members are entitled to damages and/or
- 5 restitution and the proper measure of that loss;
- 6 7. Whether Defendant continues to use false, misleading, and/or illegal
- 7 price comparisons such that an injunction is necessary.

8 121. Plaintiff's claims are typical of the claims of the Class members  
9 because Plaintiff, like all Class members, was deceived by Defendant's false and  
10 deceptive price advertising scheme, as alleged herein, in a typical consumer setting  
11 and sustained damages from Defendant's wrongful conduct.

12 122. Plaintiff will adequately protect the interests of the Class and has  
13 retained counsel who are experienced in litigating complex class actions. Plaintiff  
14 has no interests that conflict with those of the Class.

15 123. A class action is superior to other available methods for the fair and  
16 efficient adjudication of this controversy.

17 124. The prerequisites to maintaining a class action for injunctive or  
18 equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met, as Defendant has acted  
19 or refused to act on grounds that apply generally to the Class so that final injunctive  
20 relief or corresponding declaratory relief is appropriate with respect to the Class as  
21 a whole.

22 125. Defendant's conduct is generally applicable to the Class as a whole and  
23 Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole.  
24 As such, Defendant's systematic practices make declaratory relief with respect to  
25 the Class as a whole appropriate.

26 126. The requirements of Fed. R. Civ. P. 23(b)(3) are met as common issues  
27 predominate over any individual issues, and treatment of this matter as a class action  
28 is superior to numerous individual actions.



1 offended an established public policy of transparency in pricing, and engaged in  
2 immoral, unethical, oppressive, and unscrupulous activities that are substantially  
3 injurious to consumers.

4 133. The harm to Plaintiff and Class members outweighs the utility of  
5 Defendant’s practices. There were reasonably available alternatives to further  
6 Defendant’s legitimate business interests other than the misleading and deceptive  
7 conduct described herein.

8 ***“Fraudulent” Prong***

9 134. A business act or practice is “fraudulent” under the UCL if it is  
10 likely to deceive members of the consuming public.

11 135. Defendant’s acts and practices alleged above constitute fraudulent  
12 business acts or practices as it has deceived Plaintiff and is highly likely to deceive  
13 members of the consuming public. Plaintiff relied on Defendant’s fraudulent and  
14 deceptive representations regarding its struck-through Reference Prices for products  
15 which Temu sells on its e-commerce retail store and App. These misrepresentations  
16 played a substantial role in Plaintiff’s decision to purchase those products at steep  
17 discounts, and Plaintiff would not have purchased those products without  
18 Defendant’s misrepresentations.

19 ***“Unlawful” Prong***

20 136. A business act or practice is “unlawful” under the UCL if it violates any  
21 other law or regulation.

22 137. Defendant’s acts and practices alleged above constitute unlawful  
23 business acts or practices as Defendant has violated state and federal law in  
24 connection with its deceptive pricing scheme. The Federal Trade Commission’s Act  
25 (“FTCA”) prohibits “unfair or deceptive acts or practices in or affecting commerce”  
26 (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false advertisements.  
27 15 U.S.C. § 52(a). Under the Federal Trade Commission, false former pricing  
28 schemes, are described as deceptive practices that would violate the FTCA:

1 (a) One of the most commonly used forms of bargain advertising is to  
2 offer a reduction from the advertiser’s own former price for an article. If the  
3 former price is the actual, bona fide price at which the article was offered to the  
4 public on a regular basis for a reasonably substantial period of time, it provides  
5 a legitimate basis for the advertising of a price comparison. Where the former  
6 price is genuine, the bargain being advertised is a true one. If, on the other  
7 hand, the former price being advertised is not bona fide but fictitious – **for**  
8 **example, where an artificial, inflated price was established for the purpose**  
9 **of enabling the subsequent offer of a large reduction – the “bargain” being**  
10 **advertised is a false one**; the purchaser is not receiving the unusual value  
11 he expects. In such a case, the “reduced” price is, in reality, probably just the  
12 seller’s regular price.

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

20 16 C.F.R. § 233.1(a) and (b) (emphasis added).

21 138. In addition to federal law, California law also expressly prohibits false  
22 former pricing schemes. California’s FAL, Bus. & Prof. Code §17501, entitled  
23 “Worth or value; statements as to former price,” states:

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

28 **No price shall be advertised as a former price of any advertised thing, unless**  
**the alleged former price was the prevailing market price as above defined**  
**within three months next immediately preceding the publication of the**  
**advertisement** or unless the date when the alleged former price did prevail is  
clearly, exactly and conspicuously stated in the advertisement.

Cal. Bus. & Prof. Code § 17501 (emphasis added).

1           139. Similar to false former pricing schemes, the FTC prohibits improperly  
2 advertising retail prices that have been established or suggested by manufacturers or  
3 other nonretail distributors:

4           (a) Many members of the purchasing public believe that a manufacturer’s list  
5 price, or suggested retail price, is the price at which an article is generally  
6 sold. Therefore, if a reduction from this price is advertised, many people will  
7 believe that they are being offered a genuine bargain. To the extent that list or  
8 suggested retail prices do not in fact correspond to prices at which a  
substantial number of sales of the article in question are made, the  
advertisement of a reduction may mislead the consumer.

9           ...

10           (d) [A list price] will not be deemed fictitious if it is the price at which  
11 substantial (that is, not isolated or insignificant) sales are made in the  
12 advertiser’s trade area (the area in which he does business). Conversely, **if the  
list price is significantly in excess of the highest price at which substantial  
sales in the trade area are made, there is a clear and serious danger of the  
consumer being misled by an advertised reduction from this price.**

13           (e) This general principle applies whether the advertiser is a national or  
14 regional manufacturer (or other non-retail distributor), a mail-order or catalog  
15 distributor who deals directly with the consuming public, or a local retailer.  
16 But certain differences in the responsibility of these various types of  
businessmen should be noted. ...

17           (g) [A] manufacturer or other distributor who does business on a large  
18 regional or national scale cannot be required to police or investigate in detail  
19 the prevailing prices of his articles throughout so large a trade area. **If he  
advertises or disseminates a list or preticketed price in good faith (i.e., as an  
honest estimate of the actual retail price) which does not appreciably exceed  
the highest price at which substantial sales are made in his trade area, he  
will not be chargeable with having engaged in a deceptive practice.**

20           16 C.F.R. § 233.3(a), (d), (e), and (g) (emphasis added).

21  
22  
23           140. As detailed in Plaintiff’s Third Cause of Action below, the CLRA, Cal.  
24 Civ. Code § 1770(a)(9), prohibits a business from “[a]dvertising goods or services  
25 with intent not to sell them as advertised,” and subsection (a)(13) prohibits a business  
26 from “[m]aking false or misleading statements of fact concerning reasons for,  
27 existence of, or amounts of price reductions.”  
28

1 141. The violation of any law constitutes an “unlawful” business practice  
2 under the UCL.

3 142. As detailed herein, the acts and practices alleged were intended to or did  
4 result in violations of the FTCA, the FAL, and the CLRA.

5 143. Defendant’s practices, as set forth above, have misled Plaintiff, the  
6 proposed Class, and the public in the past and will continue to mislead in the future.  
7 Consequently, Defendant’s practices constitute an unlawful, fraudulent, and unfair  
8 business practice within the meaning of the UCL.

9 144. Pursuant to the UCL, Plaintiff and the Class are entitled to disgorgement  
10 and restitution of all of Defendant’s revenues associated with its unfair competition,  
11 or such portion of those revenues as the Court may find equitable.

12 **SECOND CAUSE OF ACTION**

13 **Violation of California’s False Advertising Law (“FAL”)**

14 **California Business & Professions Code § 17500, *et seq.***

15 145. Plaintiff repeats and re-alleges the allegations contained in every  
16 preceding paragraph as if fully set forth herein.

17 146. Cal. Bus. & Prof. Code § 17500 provides:

18 It is unlawful for any...corporation...with intent...to dispose of...personal  
19 property...to induce the public to enter into any obligation relating thereto, to  
20 make or disseminate or cause to be made or disseminated...from this state  
21 before the public in any state, in any newspaper or other publication, or any  
22 advertising device, or by public outcry or proclamation, or in any other manner  
23 or means whatever, including over the Internet, any statement...which is  
untrue or misleading, and which is known, or which by the exercise of  
reasonable care should be known, to be untrue or misleading...”

24 147. The “intent” required by Section 17500 is the intent to dispose of  
25 property, and not the intent to mislead the public in the disposition of such property.

26 148. Similarly, Cal Bus. & Prof. Code § 17501 provides, “no price shall be  
27 advertised as a former price of any advertised thing, unless the alleged former price  
28 was the prevailing market price...within three months next immediately preceding the

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

3 149. Defendant’s routine of advertising discounted prices from false  
4 advertised Reference Prices, which were never the prevailing market prices of those  
5 products and were materially greater than the true prevailing prices, is an unfair,  
6 untrue, and misleading practice. This deceptive marketing practice gives consumers  
7 the false impression that the products are regularly sold on the market for a  
8 substantially higher price than they actually were, therefore, leading to the false  
9 impression that the products sold on Defendant’s website are worth more than  
10 they actually are.

11 150. Defendant misled consumers by making untrue and misleading  
12 statements and failing to disclose what is required as stated in the Code alleged above.

13 151. As a direct and proximate result of Defendant’s misleading and false  
14 advertisements, Plaintiff and Class members have suffered injury in fact and have  
15 lost money. As such, Plaintiff requests that this Court order Temu to restore this  
16 money to Plaintiff and all Class members.

17 **THIRD CAUSE OF ACTION**

18 **Violation of California’s Consumers Legal Remedies Act (“CLRA”),**  
19 **California Civil Code § 1750, *et seq.***

20 152. Plaintiff repeats and re-alleges the allegations contained in every  
21 preceding paragraph as if fully set forth herein.

22 153. This cause of action is brought pursuant to the CLRA, Cal. Civ. Code §  
23 1750, *et seq.* Plaintiff and each member of the proposed Class are “consumers” as  
24 defined by Cal. Civ. Code § 1761(d). Defendant’s sale of merchandise website to  
25 Plaintiff and the Class are “transactions” within the meaning of Cal. Civ. Code §  
26 1761(e). The products purchased by Plaintiff and the Class are “goods” within the  
27 meaning of Cal. Civ. Code § 1761(a).  
28

1 154. Defendant violated and continues to violate the CLRA by engaging  
2 in the following practices proscribed by Cal. Civ. Code § 1770(a) in transactions  
3 with Plaintiff and the Class which were intended to result in, and did result in, the  
4 sale of merchandise sold on its e-commerce retail store and App:

5 a. Advertising goods or services with intent not to sell them as  
6 advertised; (a)(9);

7 b. Making false or misleading statements of fact concerning reasons  
8 for, existence of, or amounts of price reductions; (a)(13).

9 155. Pursuant to § 1782(a) of the CLRA, on May 3, 2024, Plaintiff's  
10 counsel notified Defendant in writing by certified mail of the particular violations  
11 of § 1770 of the CLRA and demanded that it rectify the problems associated with the  
12 actions detailed above and give notice to all affected consumers of Defendant's intent  
13 to act.

14 156. If the 30-day notice period passes without Temu remedying its  
15 misconduct, Plaintiff will amend this Complaint to include claims for actual,  
16 punitive, and statutory damages as appropriate under Cal. Civ. Code § 1770, *et seq.*

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for  
19 judgment against Defendant as follows:

- 20 (a) Certifying this action as a class action, appointing Plaintiff as the Class  
21 representative, and designating the undersigned as Class counsel;
- 22 (b) A declaration that Defendant is financially responsible for notifying  
23 Class members of the pendency of this suit;
- 24 (c) A judgment awarding Plaintiff and all Class members restitution and/or  
25 other equitable relief, including, without limitation, restitutionary  
26 disgorgement of all profits and unjust enrichment that Defendant  
27 obtained from Plaintiff and the Class as a result of the unlawful, unfair  
28 and/or fraudulent business practices described herein;

- 1 (d) A judgment awarding Plaintiff and the Class damages under common  
2 law and/or by statute, and punitive damages;
- 3 (e) An order enjoining Defendant from continuing to violate the UCL  
4 and/or FAL and/or CLRA as described herein, and/or an order enjoining  
5 Defendant from violating the UCL and/or FAL and/or CLRA in the  
6 future;
- 7 (f) Additional awards of up to \$5,000 for physical, emotional, or economic  
8 damage for all senior citizen and disabled Class Members, pursuant to  
9 California Civil Code § 1780(b)(1);
- 10 (g) A judgment awarding Plaintiff and Class members their costs of suit,  
11 including reasonable attorneys’ fees pursuant to Code of Civil  
12 Procedure § 1021.5 and as otherwise permitted by statute or law, and  
13 pre- and post-judgment interest; and
- 14 (h) Granting such other and further relief as this Court may deem just and  
15 proper.

16 Respectfully submitted,

17 Date: May 28, 2024

**SCHONBRUN SEPLOW HARRIS  
HOFFMAN & ZELDES, LLP**

19 By: /s/ Helen I. Zeldes

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Tel: (619) 400-4990

28 *Counsel for Plaintiff Kristen Kohler.  
and the Proposed Class.*

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demand a trial by jury for all claims so triable.

Date: May 28, 2024

Respectfully submitted,

**SCHONBRUN SEFLOW HARRIS  
HOFFMAN & ZELDES, LLP**

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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

KRISTEN KOHLER, individually and on behalf of all others similarly situated.

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Helen I. Zeldes; Amy Johnsgard; Aya Dardari; Schonbrun Seplow Harris Hoffman & Zeldes, LLP; 501 W. Broadway, Suite 800 San Diego, Ca 92101

DEFENDANTS

WHALECO, INC., a Delaware Corporation, d/b/a Temu; and DOES 1-10.

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)

'24CV0935 BEN DEB

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, 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, 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): Fed. R. Civ. P. 23(a), (b)(2), and (b)(3); Cal Bus & Prof Code § 17200; Cal Bus & Prof Code § 17500; Cal Civil Code § 1750.

Brief description of cause: Violation of California's Unfair Competition Law ("UCL"); False Advertising Law ("FAL"); and Consumers Legal Remedies Act ("CLRA").

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: [X] Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE May 28, 2024 SIGNATURE OF ATTORNEY OF RECORD /s/ Helen I. Zeldes

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**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.