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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 ELI SILVA, on behalf of himself and all) Case No.
17 others similarly situated,)
18 Plaintiff,) **CLASS ACTION COMPLAINT**
19 v.) **JURY TRIAL DEMANDED**
20 WHALECO, INC., d/b/a TEMU,)
21 Defendant.)
22 _____)

23 **INTRODUCTION**

24 1. Advertised “sale” prices are important to consumers. Consumers are more likely to
25 purchase an item if they know that they are getting a good deal. Further, if consumers think that a sale
26 will end soon, they are likely to buy now, rather than wait, comparison shop, and buy something else.

27 2. While there is nothing wrong with a legitimate sale, a fake one—that is, one with
28 made-up regular prices, made-up discounts, and made-up expirations—is deceptive and illegal.

1 3. California’s False Advertising Law prohibits businesses from making statements they
2 know or should know to be untrue or misleading. Cal. Bus. & Prof. Code § 17500. This includes
3 statements falsely suggesting that a product is on sale, when it actually is not. Moreover, California’s
4 False Advertising Law specifically provides that “[n]o price shall be advertised as a former price ...
5 unless the alleged former price was the prevailing market price ... within three months next
6 immediately preceding” the advertising. Cal. Bus. & Prof. Code § 17501.

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

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

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

20 7. Defendant WhaleCo, Inc., d/b/a Temu (“Temu” or “Defendant”) makes, sells and
21 markets a variety of everyday use products and household necessities (“Products”). Defendant
22 maintains a public website where it advertises the Products and their prices. Consumers who visit the
23 website can purchase the Products through an online store hosted on the website.

24 8. Plaintiff Eli Silva (“Plaintiff”) bought Products from Defendant online on temu.com. Like
25 Defendant’s other customers, when Plaintiff bought the Products, Defendant advertised that a
26 purported sale was going on and that it would end when a displayed countdown expired. Plaintiff
27 believed that the Temu Products that they purchased retailed for the displayed regular price. They
28 further believed that they were getting a substantial discount from the regular price, and that the sale

1 would end soon. These reasonable beliefs are what caused them to buy from Defendant. If they had
2 known that the Products they purchased were not on sale, they would not have bought them.

3 9. In truth, however, the representations Plaintiff relied on were not true. The purported
4 “regular” prices were not the true regular prices, the purported “discounts” were not the true discounts,
5 and the discounts were ongoing—not time limited. Had Defendant been truthful, Plaintiff and other
6 consumers like them would not have purchased the Products, or would have paid less for them.

7 10. Plaintiff bring this case for themselves and the other consumers who purchased Temu
8 Products.

9 11. By using misleading strikethrough prices to artificially increase the perceived value of
10 Temu products, Temu harms consumers by inducing them to pay more for its products and make
11 purchases they would not have otherwise made.

12 12. Temu’s strikethrough prices also harm competition by giving Temu an unfair
13 advantage over other Product manufacturers that do not engage in false reference pricing.

14 13. In addition to using misleading strikethrough prices, Temu also falsely advertises
15 limited-quantity and limited-time offers.

16 14. Temu advertises misleading strikethrough prices, fictitious savings, and fake-limited
17 time offers for hundreds of products on its website every day. The pervasive, ongoing nature of its
18 deceptive pricing scheme demonstrates that false reference pricing is central to its overall marketing
19 strategy. In bringing this lawsuit, Plaintiff intend to curb these and other unlawful and deceptive
20 advertising practices on Temu’s website. Plaintiff seek public injunctive relief in the form of a court
21 order prohibiting Temu from continuing to falsely advertise on its website, and seek compensation
22 for themselves and all others similarly situated who have been duped by Temu’s false advertising.

23 **PARTIES**

24 15. Plaintiff Eli Silva is a citizen and resident of Dublin, California.

25 16. Defendant WhaleCo, Inc. is a Delaware corporation with its principal place of business
26 and headquarters in Boston, Massachusetts. WhaleCo Inc., operates Temu, an online retailer offering
27 a wide range of products at heavily discounted prices.

28

JURISDICTION AND VENUE

1
2 17. This Court has original jurisdiction over this action because (1) the proposed classes
3 are comprised of at least This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2).
4 The amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and the matter is a
5 class action in which one or more members of the proposed class are citizens of a state different from
6 Defendant.

7 18. This Court has personal jurisdiction over Defendant. Defendant does business in
8 California. It advertises and sells its Products in California. Due to Defendant’s actions, its Products
9 have been marketed and sold to consumers in California, and harmed consumers in California.
10 Plaintiff’s claims arise out of Defendant’s contacts with this forum. Due to Defendant’s actions,
11 Plaintiff purchased Defendant’s Products in California and were harmed in California.

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

18 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

19 20. Temu is an online marketplace operated by the Chinese e-commerce company PDD
20 Holdings. It offers heavily discounted consumer goods which are mostly shipped to consumers
21 directly from China.

22 21. Temu's business model has allowed it to become popular among consumers but has
23 also drawn concerns over data privacy, forced labor, intellectual property, and the quality of its
24 marketplace products.

25 22. Temu’s online success has in significant part resulted from advertising misleading
26 strikethrough prices, fictitious savings, and fake limited-time offers.

27 23. In addition, consumers are more likely to buy the product if they believe that the
28 product is on sale and that they are getting a substantial discount. Consumers that are presented with

1 discounts are substantially more likely to make the purchase. “Nearly two-thirds of consumers
2 surveyed admitted that a promotion or a coupon often closes the deal, if they are wavering or are
3 undecided on making a purchase.”¹ And, “two-thirds of consumers have made a purchase they weren't
4 originally planning to make solely based on finding a coupon or discount,” and “80% [of consumers]
5 said they feel encouraged to make a first-time purchase with a brand that is new to them if they found
6 an offer or discount.”² Similarly, when consumers believe that an offer is expiring soon, the sense of
7 urgency makes them more likely to buy a product.³ Thus, Defendant’s advertisements harmed Plaintiff
8 and class members by inducing them to make purchases they would not have otherwise made based on
9 false information.

10 24. In addition, by the same mechanisms, Defendant’s advertisements artificially increase
11 consumer demand for Defendant’s Products. This puts upward pressure on the prices that Defendant can
12 charge for its Products. As a result, Defendant can charge a price premium for its Products, that it would
13 not be able to charge absent the misrepresentations described above. So, due to Defendant’s
14 misrepresentations, Plaintiff and the class paid more for the Products they bought than
15 they otherwise would have.

16 **I. Temu Employs Fake Regular Prices and Discounts to Mislead Consumers**

17 25. Temu creates an illusion of savings on its website by advertising misleading
18 strikethrough prices and fictitious savings based on those prices. Temu perpetrates this scheme by
19 advertising a strikethrough price—i.e., the product’s full, non-discounted price—which it typically
20 displays in strikethrough typeface (e.g., \$5.00).

21 26. Adjacent to the strikethrough price, Temu advertises a sale price, which is the price at
22

23
24 ¹ <https://www.invespcro.com/blog/how-discounts-affect-online-consumer-buying-behavior/>

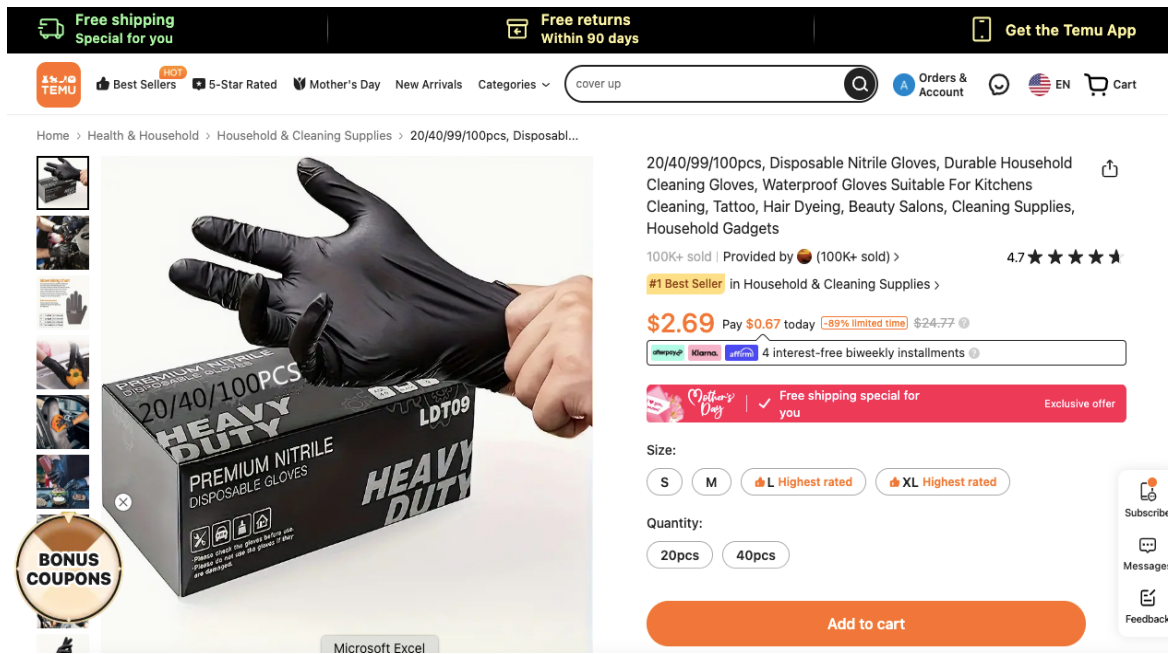
25 ² [https://www.prnewswire.com/news-releases/retailmenot-survey-deals-and-promotional-offers-
drive-incremental-purchases-online-especially-among-millennial-buyers-300635775.html](https://www.prnewswire.com/news-releases/retailmenot-survey-deals-and-promotional-offers-drive-incremental-purchases-online-especially-among-millennial-buyers-300635775.html)

26 ³ <https://cxl.com/blog/creating-urgency/> (addition of a countdown timer increased conversion rates
27 from 3.4%-10%); Dynamic email content leads to 400% increase in conversions for Black Friday
28 email | Adestra (uplandsoftware.com) (400% higher conversation rate for ad with countdown timer).

1 which the product is currently offered for sale. Temu typically displays the sale price in larger, bolder
2 font, often using a contrasting color.

3 27. Throughout its website, Temu also advertises discounts or savings, which are typically
4 displayed the percentage saved. Temu prominently displays the purported savings on its website
5 together with words or phrases such as “limited time” to create a sense of urgency.

6 28. Below is an example of how Temu advertises fictitious savings on its website:



19 After customers click the button to buy a product, Temu directs them to additional pages where they
20 can customize the size, color, and quantity of the order. In a further act of deceit, the price changes
21 based on these selections. For example, here, simply choosing a larger size results in a higher price.

22 ///

23 ///

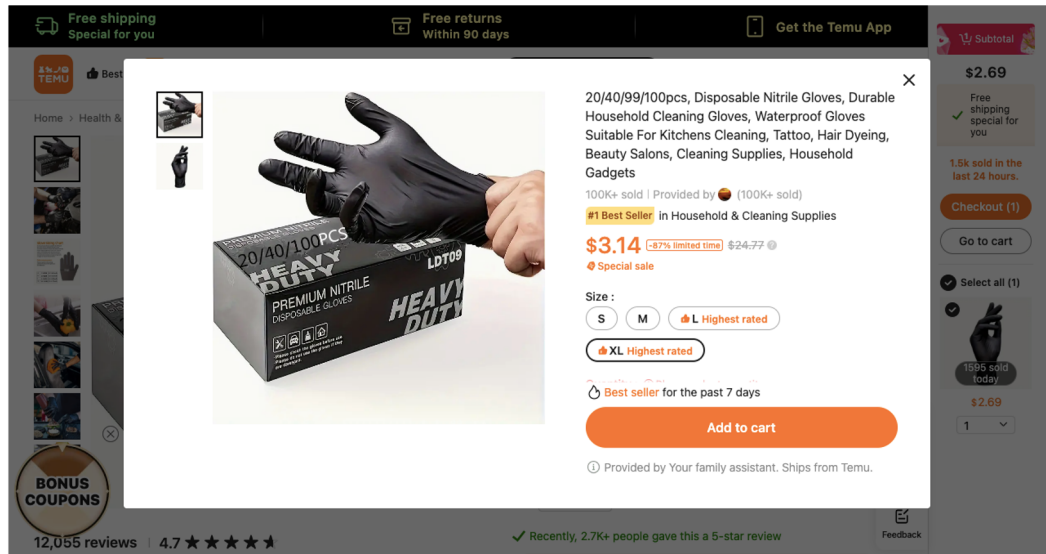
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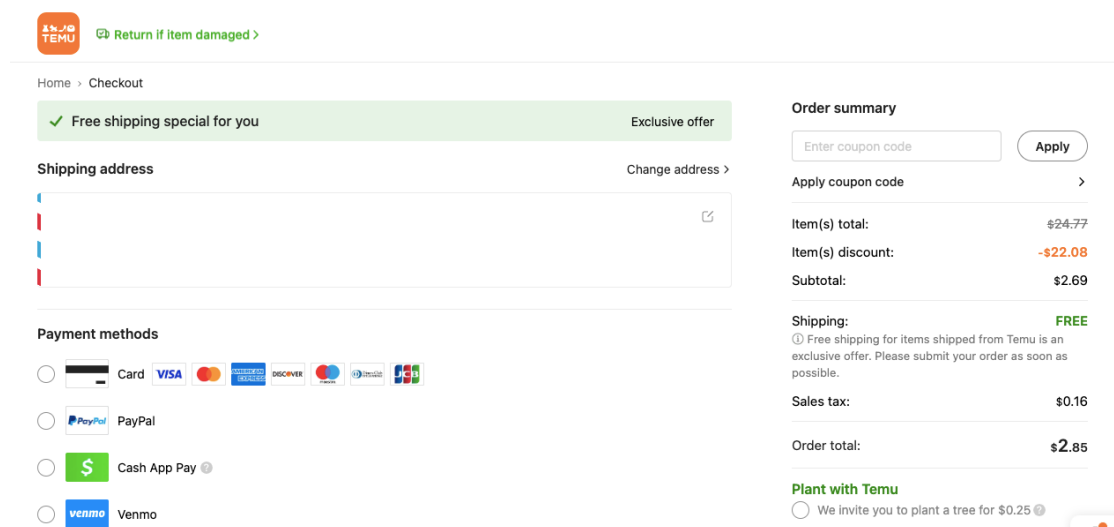
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28



29. Once the item is added to the cart, as shown below, Temu prominently displays the strikethrough price, the sale price, and the savings customers are purportedly receiving.

30. When customers proceed to check out, they are directed to pages where they can enter their information and review their order. On each of these pages, Temu again falsely promises customers savings equal to the difference between the strikethrough price and sale price. These “savings” are part of the contract that is entered into between Temu and its customers and part of the bargain that is struck between them. Below is an example of these representations that are made to customers at the time they place their order.



1 31. After customers place their order, the promised savings are confirmed again on a
2 webpage on Temu’s website and memorialized again in an email from Temu that it sends to customers
3 after receiving their order. \

4 32. Discovery will show that on any given day Temu’s offers hundreds of thousands of
5 Products for sale on its website, and advertises nearly all of those at a discount from a strikethrough
6 price. But discovery will show the strikethrough prices are misleading because they do not represent
7 the actual prices at which the Products were ever sold or offered for sale for a reasonable period of
8 time.

9 33. Temu’s pricing scheme is misleading because the savings advertised on its website
10 (which are based on the advertised strikethrough prices) do not represent the actual savings customers
11 receive, as Plaintiff and reasonable consumers understand that term. Moreover, Temu’s strikethrough
12 prices violate California law because they mislead consumers about the existence and amounts of
13 Temu’s price reductions.

14 34. In addition to advertising misleading strikethrough prices and fictitious savings, Temu
15 further misrepresents that the discounts are available only for a limited time and fails to disclose the
16 continuing nature of these discounts. By giving potential customers the false impression that they will
17 miss out on the advertised markdowns if they do not make a purchase soon, Temu induces customers
18 to make purchases they would not have otherwise made and pay more for Temu products than they
19 would have otherwise paid. Additionally, by imparting a false sense of urgency on prospective
20 customers, Temu deters them from shopping at competitor websites.

21 35. For that reason, the FTC’s Guide Against Deceptive Pricing provides:

22 [Retailers] should not offer an advance sale under circumstances where they do not in
23 good faith expect to increase the price at a later date, or make a “limited” offer which,
24 in fact, is not limited. In all of these situations, as well as in others too numerous to
mention, advertisers should make certain that the bargain offer is genuine and truthful.

25 16 C.F.R. § 233.5.

26 36. Temu’s pricing scheme is misleading because the savings advertised on its website
27 (which are based on the advertised strikethrough prices) do not represent the actual savings customers
28 receive, as Plaintiff and reasonable consumers understand that term. Moreover, Temu’s strikethrough

1 prices violate California law because they mislead consumers about the existence and amounts of
2 Temu's price reductions.

3 **II. Temu Utilizes Fake Sales To Mislead Consumers**

4 37. In addition to advertising misleading strikethrough prices and fictitious savings, Temu
5 further misrepresents that the discounts are available only for a limited time and fails to disclose the
6 continuing nature of these discounts. By giving potential customers the false impression that they will
7 miss out on the advertised markdowns if they do not make a purchase soon, Temu induces customers
8 to make purchases they would not have otherwise made and pay more for Temu products than they
9 would have otherwise paid. Additionally, by imparting a false sense of urgency on prospective
10 customers, Temu deters them from shopping at competitor websites.

11 38. Temu employs a variety of means to impart this false sense of urgency on potential
12 customers. One way is by featuring products in the "Lightening Deals" section of its website, which
13 suggests that the advertised markdowns will expire. Temu lures potential customers to its Lightening
14 Deals by displaying a red banner at the top of its website.



17 39. In reality, the lightening deals almost never change. Immediately after each
18 purportedly time-limited sale ends, Defendant generates another similar discount

19 40. In addition to advertising fake Lightning deals, Temu also uses fake "flash sales" or
20 holiday themed sales to deceive customers about the duration of its discounts. A reasonable consumer
21 is thus induced to complete the purchase immediately, lest the consumer miss out on the discounted
22 priced of the Product.

23 41. When shopping on Temu's website, Plaintiff do not have access to Temu's former
24 prices and cannot determine which strikethrough prices represent bona fide former prices or which
25 savings represent actual savings. Moreover, Plaintiff have no way of determining in the future whether
26 Temu has corrected its deceptive pricing practices.

27 42. Discovery will show that the vast majority of Products offered for sale on Temu's
28 website are sold exclusively on Temu's website and not available for purchase from traditional big

1 box retailers such as Walmart, Target, or Amazon (“Big Box Retailers”).

2 43. Discovery will show that because the majority of products offered at a discount on
3 Temu’s website are sold exclusively on Temu’s website (or by Temu through third-party websites),
4 the prevailing market price for those products are the prices at which Temu offers them for sale.

5 44. With respect to products that are sold exclusively on Temu’s website, the precise
6 number and identity of those products are peculiarly within Temu’s knowledge because Temu knows
7 which products it sells to other retailers for resale and which products it does not sell to other retailers
8 for resale.

9 45. With respect to products that are not sold exclusively by Temu, the precise number of
10 sales of those products by other retailers is peculiarly within Temu’s knowledge because Temu knows
11 how many non-exclusive products it sells to other retailers for resale. Thus, whether Temu sells more
12 non-exclusive products to consumers than it sells to other retailers is peculiarly within Temu’s
13 knowledge. Thus, for non-exclusive products that Temu sells more to consumers than to other
14 retailers, the prevailing market prices of those products are peculiarly within Temu’s knowledge.

15 **III. Plaintiff’s Experiences.**

16 46. On February 21, 2024, Plaintiff Silva purchased two electric massager guns

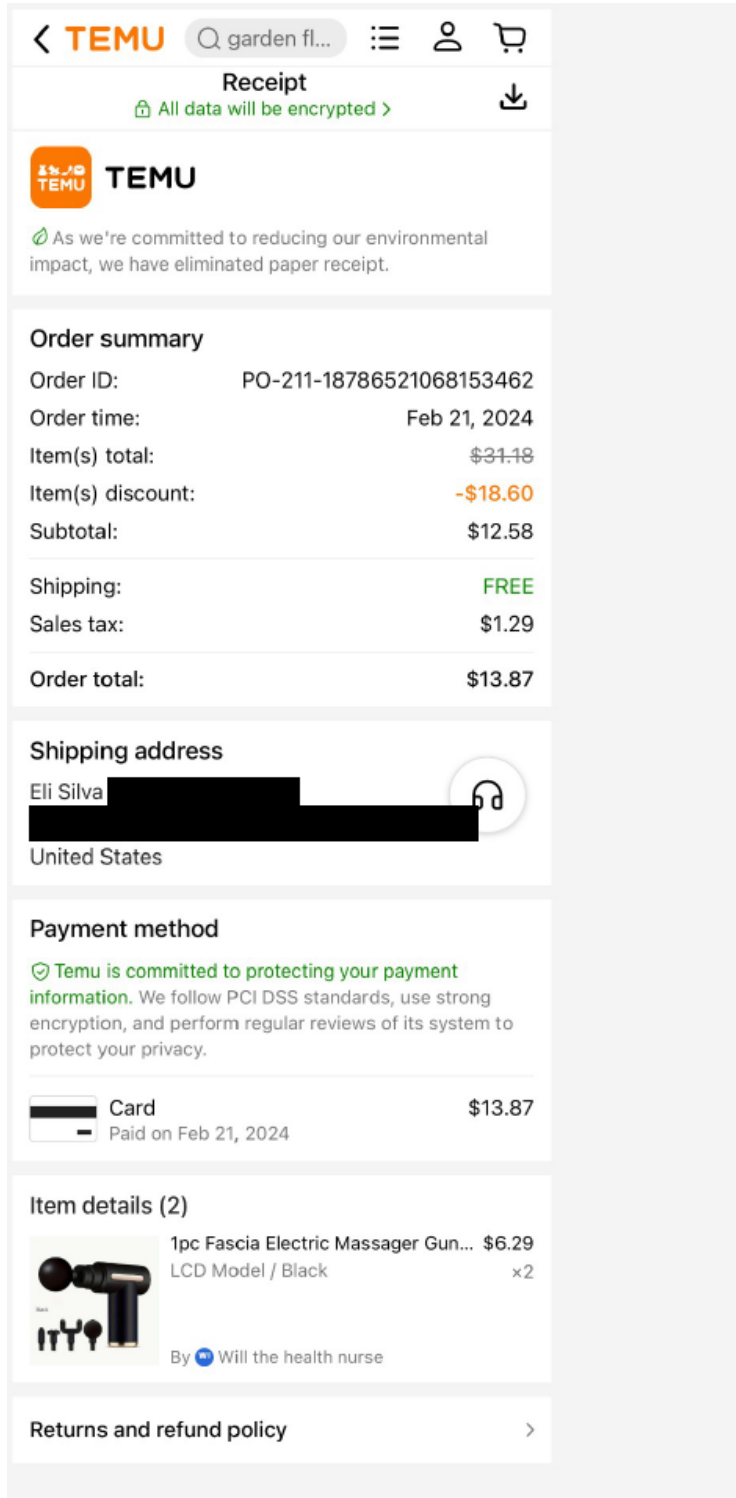
17 47. Temu advertised the electric massager guns as being on sale for \$6.29 each and
18 represented to Silva that he would save \$9.30 off the strikethrough price of \$15.59.

19 48. Enticed by the idea of paying less than the regular price and getting \$15.59 electric
20 massager guns for the price of \$6.29 each, Plaintiff Silva proceeded to add two electric massager guns
21 to his shopping cart.

22 49. After clicking the buttons to add the electric massager guns to his shopping cart,
23 Plaintiff Silva was directed to his shopping cart. In his shopping cart, Temu again displayed the
24 strikethrough pricing of the electric massager guns, and represented to Plaintiff Silva that he was
25 saving \$18.60 on the two electric massager guns.

26 50. In reliance on Temu’s representations and omissions with respect to the pricing of the
27 electric massager guns and the amount of savings he purportedly was receiving, Plaintiff Silva placed
28 his order.

1 51. Immediately after completing his purchase, Temu directed Plaintiff Silva to a webpage
 2 confirming the amount he purportedly saved on his order, and amount equal to the sum of the
 3 difference between the strikethrough prices for the two electric massager guns.



1 52. Temu also sent Plaintiff Silva an order confirmation email displaying the strikethrough
2 price total for the two electronic massager guns, and the “discount” Plaintiff purportedly received.

3 53. Plaintiff Silva purchased the electronic massager guns after Temu had advertised them
4 using misleading strikethrough prices. At the time, Plaintiff Silva believed he was purchasing the
5 electric massager guns at a value of nearly 60% off.

6 54. However, discovery will show that prior to Plaintiff Silva’s purchase, Temu did not
7 sell the electric massager guns for the full price of \$15.59 each for a reasonably substantial period of
8 time, if ever at all.

9 55. Plaintiff Silva’s understanding of the value of the electric massager guns was based on
10 his belief that Temu regularly sold them for \$15.59 each, and that \$15.59 represented their value.
11 Temu thereby induced Plaintiff Silva to purchase the electronic massager gun by "by falsely
12 representing to him that he was saving a significant amount of money off their strikethrough prices
13 and by failing to disclose that the strikethrough prices, which Plaintiff Silva reasonably believed to
14 be their regular prices, were not the actual prices at which Temu formerly offered the products for
15 sale for a reasonably substantial period of time. Plaintiff Silva would not have purchased the electronic
16 massager guns, or would have paid less for them, had he known that their true regular prices were
17 less than the advertised strikethrough prices.

18 56. Plaintiff’s counsel’s investigation indicates and discovery will show that the electric
19 massager was not available for purchase directly from a Big Box Retailer. Discovery will show that
20 the prevailing market price for the electric massage gun was the price at which Temu sold it on its
21 website.

22 **CLASS ALLEGATIONS**

23 57. Plaintiff brings this action on behalf of themselves and all others similarly situated
24 pursuant to Rule 23 of the Federal Rules of Civil Procedure.

25 58. The proposed classes (“Classes”) are defined as follows:

26 **Class:** All individuals and entities in the United States who, within the
27 applicable statute of limitations period, purchased one or more Temu products
28 on Temu’s website that were advertised as discounted from a strikethrough
price.

1 **Consumer Subclass:** All members of the Nationwide Class who are
2 “consumers” within the meaning of California Civil Code § 1761(d)

3 59. Excluded from the Classes are (i) Defendant and Defendant’s subsidiaries and
4 affiliates; (ii) Defendant’s officers, directors, and employees; (iii) entities in which Defendant has a
5 controlling interest; (iv) the judicial officer(s) to whom this action is assigned; and (v) the immediate
6 family members, legal representatives, heirs, successors, or assigns of any party excluded under (i)–
7 (iv).

8 60. Plaintiff reserve the right to modify or amend the definitions of the proposed Classes
9 and to add subclasses before this Court determines whether certification is appropriate.

10 61. This action satisfies the numerosity, commonality, typicality, adequacy, predominance,
11 and superiority requirements of Rule 23.

12 62. As to numerosity: The parties are numerous such that joinder is impracticable. Upon
13 information and belief, and subject to class discovery, the Class consists of thousands of members or
14 more, the identity of whom are within the exclusive knowledge of and can be ascertained only by
15 resort to Temu’s records. Temu has the administrative capability through its computer systems and
16 other records to identify all members of the Class, and such specific information is not otherwise
17 available to Plaintiff.

18 63. As to commonality: The questions here are ones of common or general interest such
19 that there is a well-defined community of interest among Class members. These questions
20 predominate over questions that may affect only individual class members because Temu has acted
21 on grounds generally applicable to the class. Such common legal or factual questions include, but are
22 not limited to:

- 23 a. whether Temu made false or misleading statements of fact in its
24 advertisements;
- 25 b. whether Temu’s advertisements had a tendency to mislead a reasonable
26 consumer;
- 27 c. whether Temu’s advertising and marketing practices, as alleged herein,
28 violated

1 established law;

2 d. whether a reasonable consumer would interpret the strikethrough prices on
3 Temu's website as the regular price or former price of the products offered for sale on Temu's
4 website;

5 e. whether Temu ever sold or offered for sale the products at the advertised
6 strikethrough prices;

7 f. whether the limited-time offers advertised on Temu's website were, in fact, so
8 limited in time;

9 g. whether Temu's statements concerning the strikethrough prices, savings, and
10 limited-time offers displayed on its website were material, such that a reasonable consumer
11 would attach importance to and be induced to act on the information in deciding whether to
12 make a purchase on Temu's website;

13 h. whether a reasonable consumer would interpret the strikethrough prices
14 on Temu's website as the regular or former prices of the products offered for sale on Temu's
15 website;

16 i. whether a reasonable consumer would believe the products offered for sale on
17 Temu's website have values equal to their strikethrough prices;

18 j. whether Temu misrepresented and/or failed to disclose material facts about the
19 strikethrough prices, discounts, and limited-time offers advertised on its website;

20 k. whether Temu knew, or by the exercise of reasonable care should have known,
21 that the strikethrough prices, discounts, and limited-time offers advertised on its website were
22 untrue and misleading;

23 l. whether Temu intended the strikethrough prices, discounts, and limited-time
24 offers advertised on its website to induce customers to purchase products;

25 m. whether Temu's pricing scheme alleged herein—consisting of misleading
26 strikethrough prices, fictitious savings, and fake limited-time offers—was false or misleading
27 within the meaning of California's False Advertising Law, Consumer Legal Remedies Act, or
28 Unfair Competition Law.

1 n. whether Temu has been unjustly enriched from products falsely advertised and
2 sold on its website;

3 o. whether Temu is likely to continue engaging in false advertising such that an
4 injunction is necessary; and

5 p. whether Plaintiff and members of the Classes are entitled to damages, and
6 restitution, and/or punitive damages as a result of Temu's conduct alleged herein.

7 64. As to typicality: Plaintiff's claims are typical of the claims of the other members of
8 the Class in that they arise out of the same wrongful business practices by Temu, as described herein.
9 The evidence and the legal theories regarding Defendant's alleged wrongful conduct committed
10 against Plaintiff and absent Class members are substantially the same because the challenged practices
11 are uniform for Plaintiff and Class members. Accordingly, in pursuing their own self-interest in
12 litigating the claims, Plaintiff will also serve the interests of the Class.

13 65. As to adequacy: Each Plaintiff is a more than adequate representative of the Class
14 pursuant to Rule 23 in that each Plaintiff made purchases on Temu and has suffered damages as a
15 result of Temu's deceptive practices. Additionally, (i) Plaintiff are committed to the vigorous
16 prosecution of this action on behalf of themselves and all others similarly situated; (ii) Plaintiff have
17 retained competent counsel experienced in the prosecution of class actions; (iii) there is no conflict
18 of interest between Plaintiff and the unnamed members of the Class; (iv) Plaintiff anticipate no
19 difficulty in the management of this litigation as a class action; and (v) Plaintiff's legal counsel has
20 the financial and legal resources to meet the substantial costs and address the legal issues associated
21 with this type of litigation.

22 66. As to predominance: The matter is properly maintained as a class action under Rule
23 23 because the common questions of law and fact identified herein and to be identified through
24 discovery predominate over questions that may affect only individual Class members.

25 67. As to superiority: A class action is superior to all other available methods for the fair
26 and efficient adjudication of this matter pursuant to Rule 23 because the injuries suffered by the
27 individual Class members are relatively small. As such, the expense and burden of individual
28 litigation would make it virtually impossible for Plaintiff and Class members to individually seek

1 redress for Defendant's wrongful conduct.

2 68. Additionally, the class is numerous enough to render joinder of all members or the
3 maintenance of separate suits impracticable. Even if any individual person or group of Class members
4 could afford individual litigation, it would be unduly burdensome to the courts in which the individual
5 litigation would proceed. The class action device is preferable to individual litigation because it
6 provides the benefits of unitary adjudication, economies of scale, and comprehensive resolution by a
7 single court. Further, the difficulties likely to be encountered in the management of this action as a
8 class action are minimal.

9 69. In contrast, the prosecution of separate actions by individual Class members would
10 create a risk of inconsistent or varying adjudications with respect to individual Class members that
11 would establish incompatible standards of conduct for the party or parties opposing the Class and
12 would lead to repetitious trials of many common questions of law and fact.

13 70. Plaintiff know of no difficulty to be encountered in the management or maintenance
14 of this action that would preclude its maintenance as a class action. But absent a class action, Plaintiff
15 and Class members will continue to suffer losses, thereby allowing Defendant's violations of law to
16 proceed without remedy and allowing Defendant to retain the proceeds of their ill-gotten gains.

17 71. For all these reasons, a class action is superior to other available methods for the fair
18 and efficient adjudication of this action.

19 72. As stated above, Temu has acted or refused to act on grounds generally applicable to
20 the class, thereby making appropriate corresponding declaratory relief with respect to the Class as a
21 whole.

22 73. All conditions precedent to bringing this action have been satisfied, waived, or both.

23 **CLAIMS FOR RELIEF**

24 **FIRST CLAIM FOR RELIEF**
25 **Violation of California's Unfair Competition Law**
26 **(Cal. Bus. & Prof. Code § 17200, et seq.)**
(On Behalf of Plaintiff and the Classes)

27 74. Plaintiff hereby incorporate by reference the preceding paragraphs as if fully restated
28 here.

1 75. Plaintiff bring this cause of action on behalf of themselves and the Class.

2 76. Plaintiff bring this cause of action for public injunctive relief pursuant to Section
3 17203 of the Business and Professions Code and seek an order enjoining Temu from continuing to
4 violate California's Unfair Competition Law. Plaintiff are entitled to this forward-looking relief
5 because there is no adequate remedy at law that would protect Plaintiff, Class members, and the public
6 at large from Temu's ongoing violations of California's Unfair Competition Law.

7 77. Plaintiff additionally bring this cause of action for restitution pursuant to Section
8 17203 of the Business and Professions Code. Pursuant to Rule 8(a)(3) of the Federal Rules of Civil
9 Procedure, Plaintiff seek restitution in the alternative to the damages they seek in their first through
10 fifth causes of action. Plaintiff are entitled to restitution because they lack an adequate remedy at law;
11 the legal remedies available to them are not as equally prompt and certain, and in other ways efficient.

12 a. Temu has violated, and continues to violate, the "unlawful" prong of
13 California's Unfair Competition Law, Bus. Prof. Code §§ 17200, *et seq.* ("UCL") by engaging
14 in the following unlawful business acts and practices:

15 b. disseminating untrue and misleading advertisements over the internet by
16 advertising misleading strikethrough prices, fictitious savings, and fake limited-time offers, in
17 violation of Bus. & Prof. Code § 17500;

18 c. by representing that products offered for sale on its website have characteristics
19 or benefits which they do not have in violation of Civ. Code § 1770(a)(5);

20 d. by advertising products on its website with intent not to sell them as advertised,
21 in violation of Civ. Code § 1770(a)(9);

22 e. making false or misleading statements of fact concerning the reasons for,
23 existence of, or amounts of price reductions as to products sold on its website, in violation of
24 Civ. Code § 1770(a)(13); and

25 f. representing that products sold on its website were supplied in accordance with
26 its previous representations when in fact they were not, in violation of Civ. Code §
27 1770(a)(16).

28 78. Temu has violated, and continues to violate, the "fraudulent prong" of the UCL by

1 engaging in the following fraudulent business acts and practices:

2 a. using misrepresentations, deception, and/or concealment of material
3 information in connection with the former price and value of products sold on Temu’s website,
4 such that Plaintiff and Class members were likely to be deceived;

5 b. advertising strikethrough prices, discounts, and limited-time offers that are
6 false, misleading, and/or have a capacity, likelihood, or tendency to deceive Plaintiff and Class
7 members; and

8 c. failing to provide Plaintiff and Class members with information as to when, if
9 ever, the strikethrough prices displayed on Temu’s website were bona fide offer prices.

10 79. Temu has violated, and continues to violate, the “unfair” prong of the UCL by
11 engaging in the following unfair business acts and practices:

12 a. engaging in false reference pricing in connection with the sale of products on
13 its website such that Plaintiff and Class members, who could not have reasonably avoided
14 such predatory schemes, have been injured—a practice that serves no benefit to consumers or
15 competition;

16 b. engaging in false reference pricing whereby the harm to consumers,
17 competition, and the public far outweighs any utility of the practice, which only serves to
18 deceive consumers and give Temu an unfair advantage over other Product manufacturers; and

19 c. engaging in false and misleading advertising in contravention of public policy,
20 including such public policy as reflected in Cal. Bus. & Prof. Code §§ 17200 and 17500, Cal.
21 Civ. Code § 1770(a)(13), and 16 C.F.R. §§ 233.1 and 233.5.

22
23 **SECOND CLAIM FOR RELIEF**
Violation of California’s Consumer Legal Remedies Act (“CLRA”)
(Cal. Civ. Code § 1750, et seq.)
24 **(On behalf of Plaintiff and the Classes)**

25 80. Plaintiff hereby incorporates by reference the preceding paragraphs as if fully restated
26 here.

27 81. Temu violated, and continues to violate, Section 1770(a)(5) of the California Civil
28 Code by representing that products offered for sale on its website have characteristics or benefits

1 which they do not have. Specifically, Temu represents that the value of its products is greater than it
2 actually is by advertising inflated strikethrough prices for products sold on its website.

3 82. Temu violated, and continues to violate, Section 1770(a)(9) of the California Civil
4 Code by advertising products as discounted when Temu intends to, and does in fact, sell them at their
5 regular prices.

6 83. Temu violated, and continues to violate, Section 1770(a)(13) of the California Civil
7 Code by making false or misleading statements of fact concerning reasons for, existence of, or
8 amounts of, price reductions on its website. Specifically, Temu has violated Section 1770(a)(13) by
9 engaging in the following unlawful acts and practices:

10 a. misrepresenting the regular prices of products on its website by advertising
11 misleading strikethrough prices;

12 b. advertising discounts and savings that are inflated or nonexistent because they
13 are based on misleading strikethrough prices; and

14 c. misrepresenting that the discounts and savings on its website are available only
15 for a limited time, when in fact the discounts and savings are not so limited in time.

16 84. Temu violated, and continues to violate, Section 1770(a)(16) of the California Civil
17 Code by representing that the subject of a transaction has been supplied in accordance with a previous
18 representation when it has not. Specifically, Temu represents on its website that it sells products at
19 specified discounts. After a customer places an order, Temu emails the customer an order confirmation
20 confirming that the products were sold at a discount. But in fact, Temu does not sell, nor does it intend
21 to sell, its products at the specified discounts.

22 85. Pursuant to California Civil Code section 1782(a), Plaintiff's counsel provided proper
23 notice to Temu of Plaintiff intent to pursue damages under the Consumers Legal Remedies Act on
24 behalf of themselves and all others similarly situated, and provided Temu a reasonable opportunity to
25 cure. The letter was sent via certified mail, return receipt requested, to Temu's principal office in
26 Boston, located at 31 St James Ave Suite 355, Boston, MA 02116, and to Temu's agent for service of
27 process, CT Corporation System, located at Corporate Service Company, 84 State Street, BOSTON,
28 MA 02109. As of the filing this Complaint, Temu has not taken any actions to correct the false

1 advertising on its website, nor has it addressed any of other issues raised in the letter, such as such as
2 notifying and providing monetary compensation to Class members.

3 86. Plaintiff seek actual damages pursuant to California Civil Code section 1780(a)(1),
4 public injunctive relief pursuant to section 1780(a)(2), punitive damages pursuant to section
5 1780(a)(4), and any other relief the court deems proper pursuant to section 1780(a)(5).

6
7 **THIRD CLAIM FOR RELIEF**
8 **False and Misleading Advertising**
9 **(Bus. & Prof. Code §§ 17500, et seq.)**
10 **(On Behalf of Plaintiff and the Classes)**

11 87. Plaintiff hereby incorporate by reference the preceding paragraphs if fully restated
12 here.

13 88. Plaintiff bring this cause of action on behalf of themselves and the Class.

14 89. Plaintiff bring this cause of action for public injunctive relief pursuant to Section
15 17535 of the Business and Professions Code and seek an order enjoining Temu from continuing to
16 violate Section 17500. Plaintiff are entitled to this forward-looking relief because there is no adequate
17 remedy at law that would protect Plaintiff, Class members, and the public at large from Temu's
18 ongoing violations of Section 17500.

19 90. Plaintiff additionally bring this cause of action for restitution pursuant to Section
20 17535 of the Business and Professions Code. Pursuant to Rule 8(a)(3) of the Federal Rules of Civil
21 Procedure, Plaintiff seek restitution in the alternative to the damages they seek in their first through
22 fifth causes of action. Plaintiff are entitled to restitution because they lack an adequate remedy at law;
23 the legal remedies available to them are not as equally prompt and certain, and in other ways efficient.

24 91. Temu has violated, and continues to violate, Section 17500 of the Business and
25 Professions Code by disseminating untrue and misleading advertisements over the internet to Plaintiff
26 and Class members.

27 92. Temu disseminated untrue and misleading advertisements by advertising misleading
28 strikethrough prices, fictitious savings, and fake limited-time offers with respect to Temu products
offered for sale on its website.

93. Temu disseminated such untrue and misleading advertisements with the intent to

1 induce Plaintiff and Class members to purchase products on its website.

2 94. Temu knew, or by the exercise of reasonable care should have known, that the
3 advertised strikethrough prices, discounts, and limited-time offers were untrue or misleading.

4 95. Temu fraudulently concealed from and intentionally failed to disclose to Plaintiff and

5 96. Class members the truth about its strikethrough prices, discounts, and limited-time
6 offers.

7 **FOURTH CLAIM FOR RELIEF**
8 **UNJUST ENRICHMENT**
9 **(On Behalf of Plaintiff and the Classes)**

10 97. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth
11 herein.

12 98. Plaintiff, individually and on behalf of the Classes, assert a common law claim for
13 unjust enrichment. This claim is brought solely in the alternative to Plaintiff's statutory claims. In
14 such circumstances, unjust enrichment will dictate that Defendant disgorge all improperly assessed
15 fees. Also, if claims are deemed not to be covered by the contract—for example, if Defendant has
16 violated state and federal law, but in such a way that it does not violate the contract, then unjust
17 enrichment will require disgorgement of all improperly assessed subscription fees.

18 99. By means of Defendant's wrongful conduct alleged herein, Defendant knowingly
19 assessed subscription fees upon Plaintiff and the members of the Classes that cancelled their
20 subscriptions and did not receive written notice of renewals of annual subscriptions that are unfair,
21 unconscionable, and oppressive.

22 100. Defendant has unjustly retained a benefit in the form of improper membership fees to
23 the detriment of Plaintiff and the members of the Classes.

24 101. Defendant has retained this benefit through its fee maximization scheme, and such
25 retention violates fundamental principles of justice, equity, and good conscience.

26 102. Defendant should not be allowed to profit or enrich itself inequitably and unjustly at
27 the expense of Plaintiff and the members of the Class and should be required to make restitution to
28 Plaintiff and the members of the Classes.

PRAYER FOR RELIEF

For the foregoing reasons, Plaintiff, individually and on behalf of the Classes, pray for the following relief:

1. Certification for this matter to proceed as a class action on behalf of the Classes pursuant to Rule 23;
2. Appointment of the Plaintiff as representatives of the Classes;
3. Appointment of counsel for Plaintiff as Lead Counsel for the Class;
4. A finding that Temu’s practices are in violation of state consumer protection statutes;
5. Restitution of all amounts improperly paid to Temu by Plaintiff and the members of the Classes as a result of the wrongs alleged herein in an amount to be determined at trial;
6. Actual damages in an amount according to proof;
7. Statutory damages as allowed by law;
8. An award of pre-judgment and post-judgment interest at the maximum rate permitted by applicable law;
9. An award of costs and attorneys’ fees under the common fund doctrine and all other applicable law; and
10. Declaratory and injunctive relief on behalf of the general public.
11. Plaintiff also request such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this Class Action Complaint that are so triable.

Dated: May 13, 2024

KALIELGOLD PLLC

By: */s/ Jeffrey D. Kalief* _____
Jeffrey D. Kalief
Sophia Goren Gold

Attorneys for Plaintiff and the Proposed Class

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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)

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

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

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

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

Large table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, 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, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE

SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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 Federal Rule of Civil Procedure 8(a), 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.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 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.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 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-CAND 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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no 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 Federal Rule of Civil Procedure 23. 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-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.