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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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By: Deborah Nugent, DEPUTY

7 *Attorneys for Plaintiff*

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN BERNARDINO**

11 BRYNN GROSSMAN, individually and
12 on behalf of all others similarly situated,

13 *Plaintiff,*

14 vs.

15 BROOKLYN BEDDING LLC,

16 *Defendant.*
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Case No. CIVSB2422475

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1. False Advertising Law
2. Unfair Competition Law
3. Consumer Legal Remedies Act
4. Quasi-Contract/Unjust Enrichment

UNLIMITED CIVIL CASE

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1 **I. Introduction.**

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

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

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

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

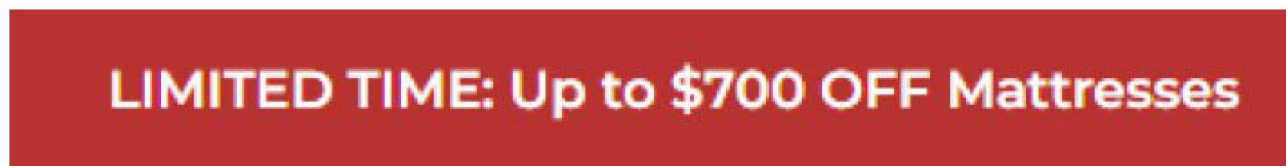
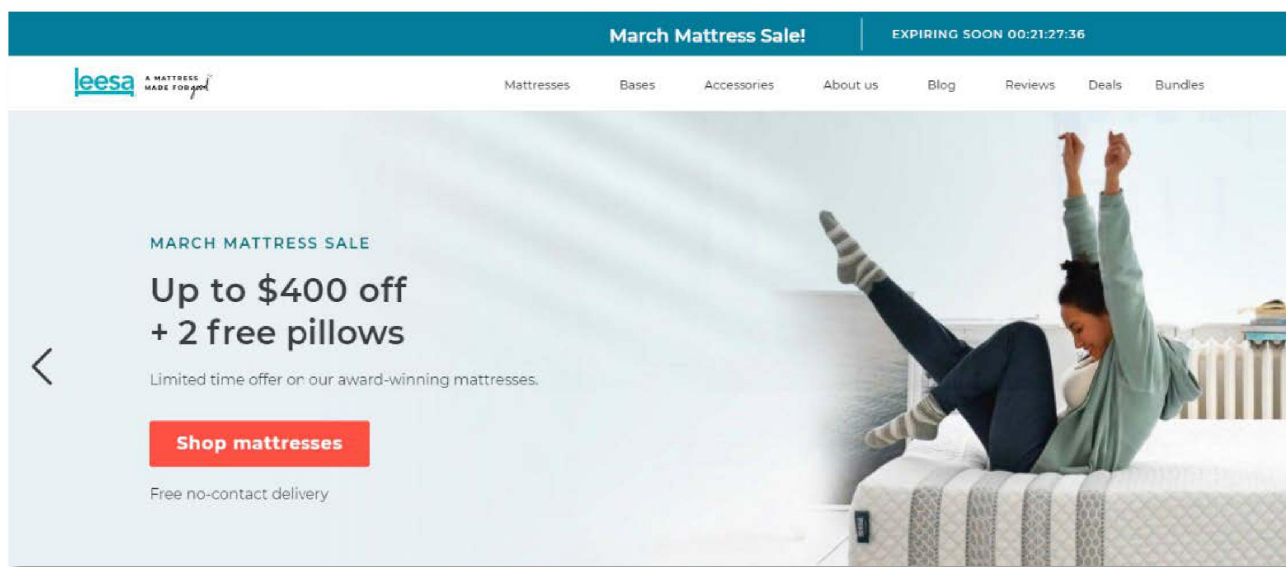
16 5. In addition, California’s Consumer Legal Remedies Act prohibits “advertising goods or
17 services with the intent not to sell them as advertised” and specifically prohibits “false or misleading
18 statements of fact concerning reasons for, existence of, or amounts of price reductions.” Cal. Civ.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

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


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

1 8. Defendant Brooklyn Bedding LLC (“Defendant” or “Leesa”) sells and markets
2 mattresses and bedding products online through the Leesa brand and website, www.leesa.com (“Leesa
3 Products” or “Products”).

4 9. On its website, Defendant lists purported regular prices and advertises purported
5 “Limited Time” discounts from those listed regular prices. These include “LIMITED TIME”
6 discounts offering “up to \$X off” and “X% off.” Defendant uses countdown clocks to represent that its
7 sales are on the verge of ending. Defendant also advertises that its Products have a lower discount
8 price as compared to a higher, regular price shown in grey and/or strikethrough font. Examples are
9 shown below:



LIMITED TIME: Up to \$700 OFF Mattresses




[Mattresses](#) ▾ [Bases](#) ▾ [Bedding & Cushions](#) ▾ [Bundles](#) [Blog](#) [Memorial Day Sale](#)

MEMORIAL DAY SALE

Up to \$700 off mattresses
+ 2 free pillows

Our lowest price of the year. While supplies last.
[Offer Terms](#)


Shop sale



UP TO \$200 OFF + 2 FREE PILLOWS

LEESA ORIGINAL MATTRESS

Multilayer foam



BUDGET FRIENDLY

- 3 layers of premium foam
- Cooling top layer foam that contours your body for comfort all night
- Pressure-relieving support for all sleepers and body types

Starting at
~~\$799~~ **\$699**


As low as
\$39/mo

Shop

UP TO \$300 OFF + 2 FREE PILLOWS

LEESA HYBRID MATTRESS

Foam + spring hybrid



BEST VALUE

- Premium foam meets springs for advanced comfort and support
- Pocket springs provide edge-to-edge support, durability and stability
- Wirecutter's #1 Hybrid Mattress

Starting at
~~\$1099~~ **\$949**

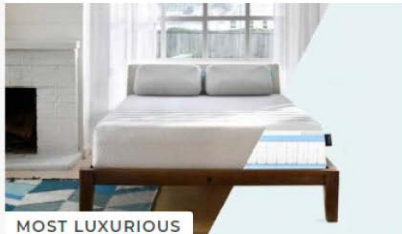
As low as
\$53/mo

Shop

UP TO \$400 OFF + 2 FREE PILLOWS

LEESA LEGEND MATTRESS

Foam + dual spring hybrid



MOST LUXURIOUS

- Premium foam + dual spring system
- Support of pocket springs and targeted pressure-relief of micro-coils
- A sustainable cover: organic cotton, Merino wool & recycled fiber

Starting at
~~\$1799~~ **\$1549**

As low as
\$54/mo

Shop

10. Far from being time-limited, however, Defendant’s discounts are *always* available. As a result, everything about Defendant’s price and purported discount advertising is false. The regular prices Defendant advertises are not actually Defendant’s regular prices, because Defendant’s Products are *always* available for less than that. The purported discounts Defendant advertises are not the true discount the customer is receiving, and are often not a discount at all. Nor are the purported discounts “LIMITED TIME” or “EXPIRING SOON”—quite the opposite, they are always available.

1 11. As described in greater detail below, Ms. Grossman bought items from Defendant from
2 its website, www.leesa.com. When Ms. Grossman made her purchase, Defendant advertised that a sale
3 was going on, and so Defendant represented that the Products Ms. Grossman purchased were being
4 offered at a steep discount from their purported regular prices that Defendant advertised. And based
5 on Defendant's representations, Ms. Grossman believed that she was purchasing Products whose
6 regular price and market value were the purported regular prices that Defendant advertised, that she
7 was receiving a substantial discount, and that the opportunity to get that discount was time-limited.
8 These reasonable beliefs are what caused Ms. Grossman to buy from Defendant when she did.

9 12. In truth, however, the representations Ms. Grossman relied on were not true. The
10 purported regular prices were not the true regular prices that Defendant sells the products for, the
11 purported discounts were not the true discounts, and the discounts were ongoing—not time-limited.
12 Had Defendant been truthful, Ms. Grossman and other consumers like her would not have purchased
13 the Products, or would have paid less for them.

14 13. Plaintiff brings this case for herself and the other customers who purchased Leesa
15 Products.

16 **II. Parties**

17 14. Plaintiff Brynn Grossman is domiciled in Joshua Tree, California.

18 15. The proposed class includes citizens of California.

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

21 **III. Jurisdiction and Venue.**

22 17. The Court has personal jurisdiction over Defendant because Defendant sold Leesa
23 Products to consumers in California, including to Plaintiff.

24 18. Venue is proper because Defendant does business in this county, Plaintiff resides in San
25 Bernardino County, and a substantial portion of the transaction occurred in this county.

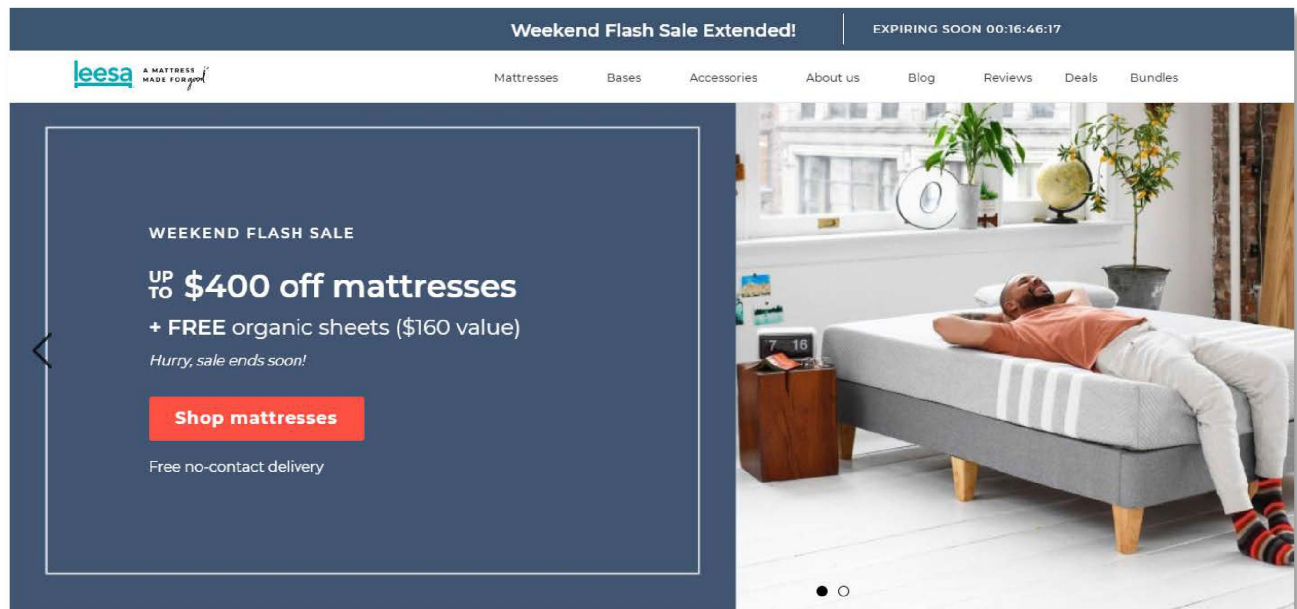
1 **IV. Facts.**

2 **A. Defendant’s fake prices and fake discounts.**

3 19. Defendant Brooklyn Bedding manufactures, distributes, markets, and sells mattresses
4 and bedding products. Defendant sells its Products directly to consumers through its website,
5 www.leesa.com.

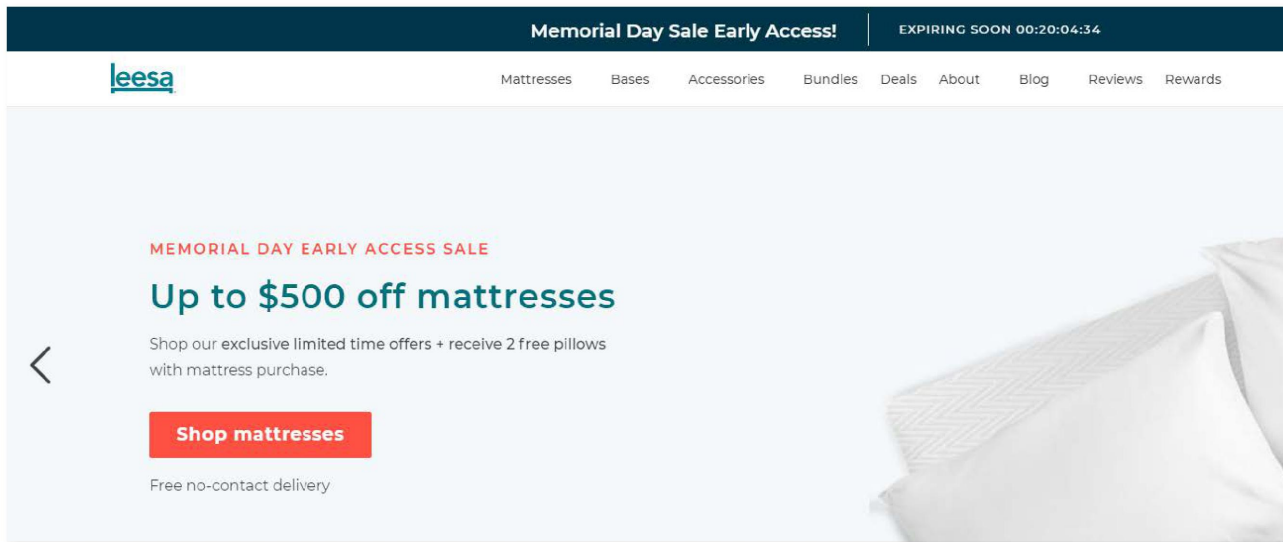
6 20. On its website, Defendant creates the false impression that its Products’ regular prices
7 are higher than they truly are.

8 21. At any given time, on its website, Defendant advertises steep discounts on its Products.
9 These discounts always offer “X%” or “\$X” off the listed regular prices Defendant advertises. Even
10 though in truth these discounts run in perpetuity, Defendant prominently claims they are “LIMITED
11 TIME” or “EXPIRING SOON.” And it advertises these discounts extensively: on an attention-
12 grabbing banner on every webpage of its website; in a large banner image on its homepage; on the
13 products listing pages, next to images of each Product; on the individual product pages for each
14 Product; and during checkout. Example screenshots are provided on the following pages:

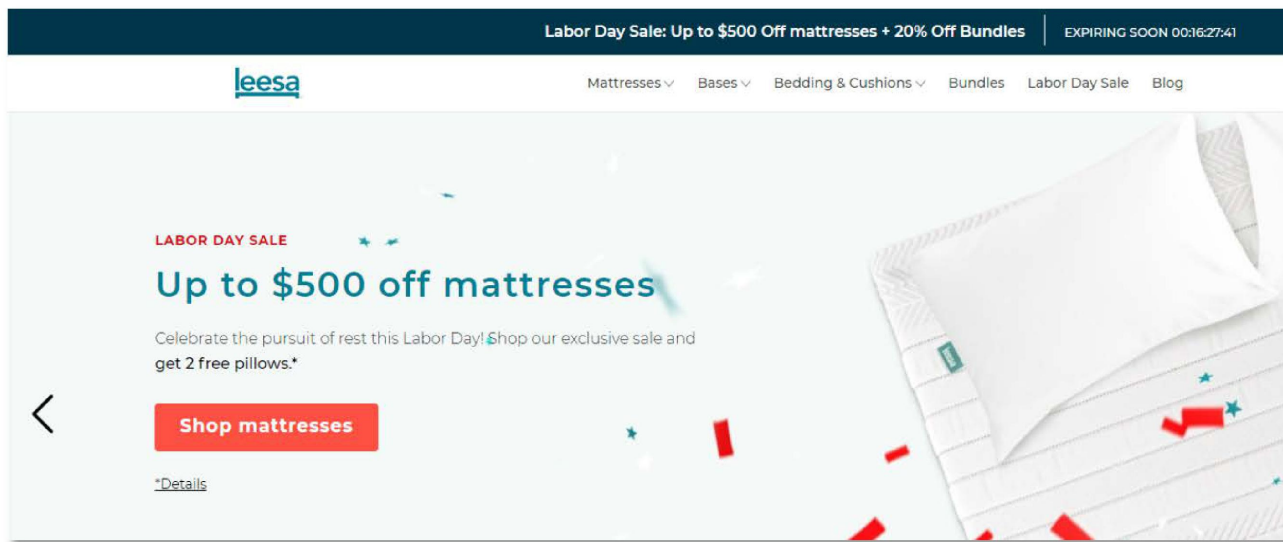


25 *Captured on January 19, 2021*

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Captured on May 15, 2021

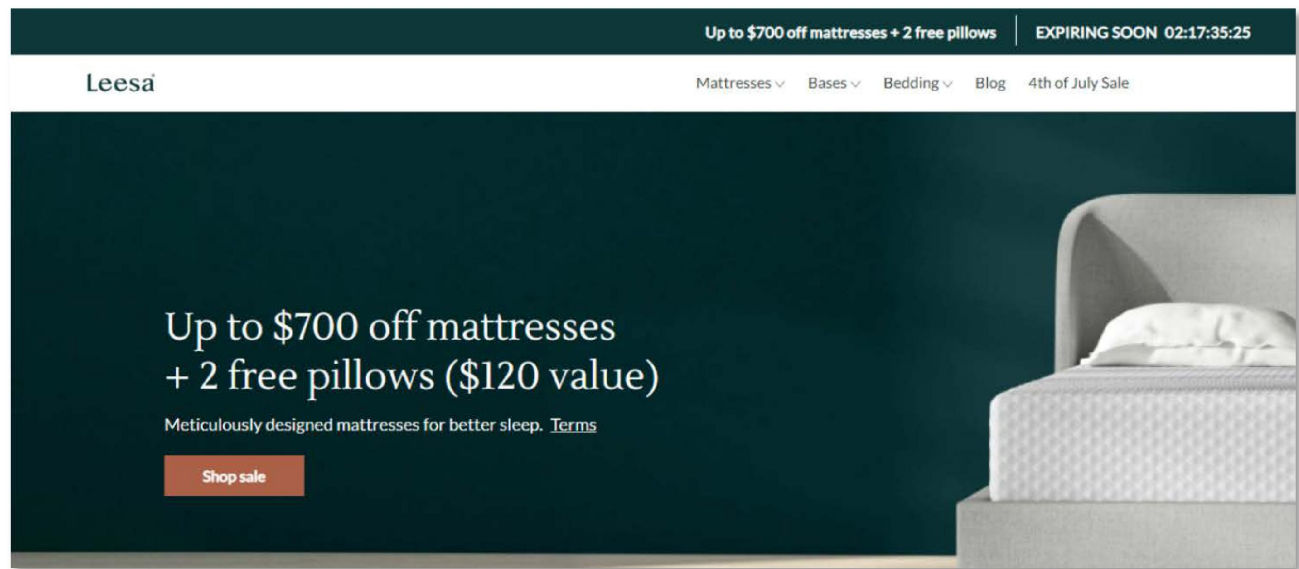


Captured on September 4, 2021

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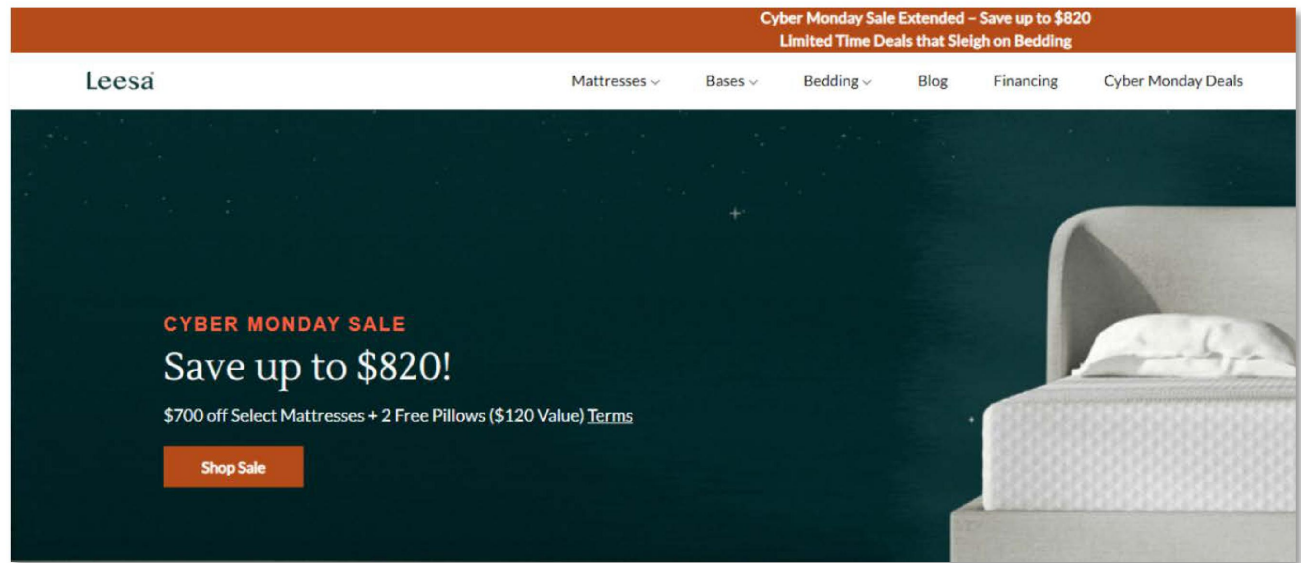


Captured on February 25, 2022

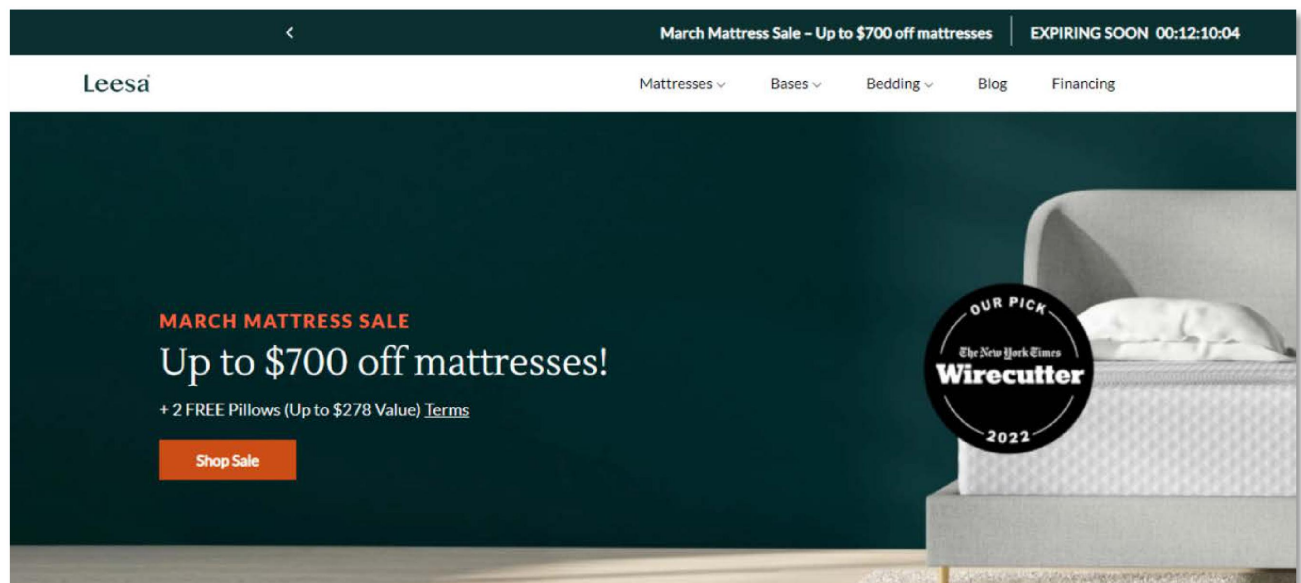


Captured on June 17, 2022

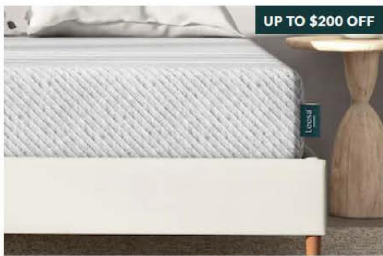
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Captured on December 1, 2022



Captured on March 27, 2023



UP TO \$200 OFF

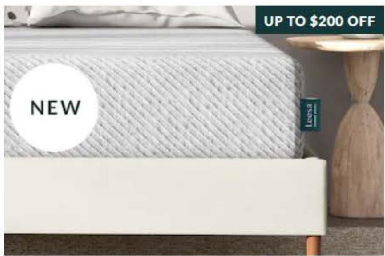
Original

FAN-FAVORITE

Exclusive stay-cool foam meets memory foam that hugs all the right spots. A customer favorite that's described as a "miracle" when it comes to comfort.

From: **\$749** ~~\$849~~
As low as \$24/mo

Shop Sale



UP TO \$200 OFF

NEW


Original Hybrid

VALUE HYBRID

Get that just-right Goldilocks feel with premium foams and 789+ pocket springs. Soft but firm, a little hug while staying cool and free to move.

From: **\$949** ~~\$1049~~
As low as \$30/mo

Shop Sale



UP TO \$400 OFF

OUR PICK
The New York Times
Wirecutter
2023

Sapira Hybrid

BEST-SELLER


A winning combination of extra special foam layers and 1,000+ pocket springs for supremely un-disturbing support and cool comfort.

From: **\$1199** ~~\$1349~~
As low as \$38/mo

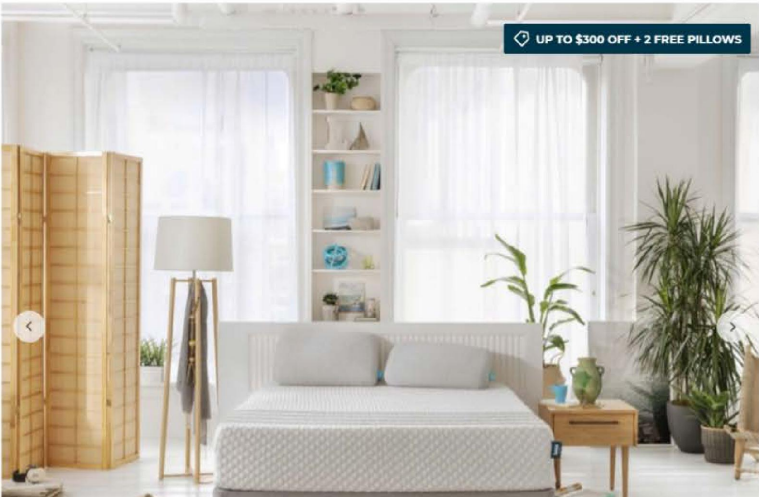
Shop Sale

Captured on July 25, 2023

Memorial Day Sale Early Access! EXPIRING SOON 00:13:33:49



Mattresses Bases Accessories Bundles Deals About Blog Reviews Rewards



UP TO \$300 OFF + 2 FREE PILLOWS

Leesa hybrid Mattress

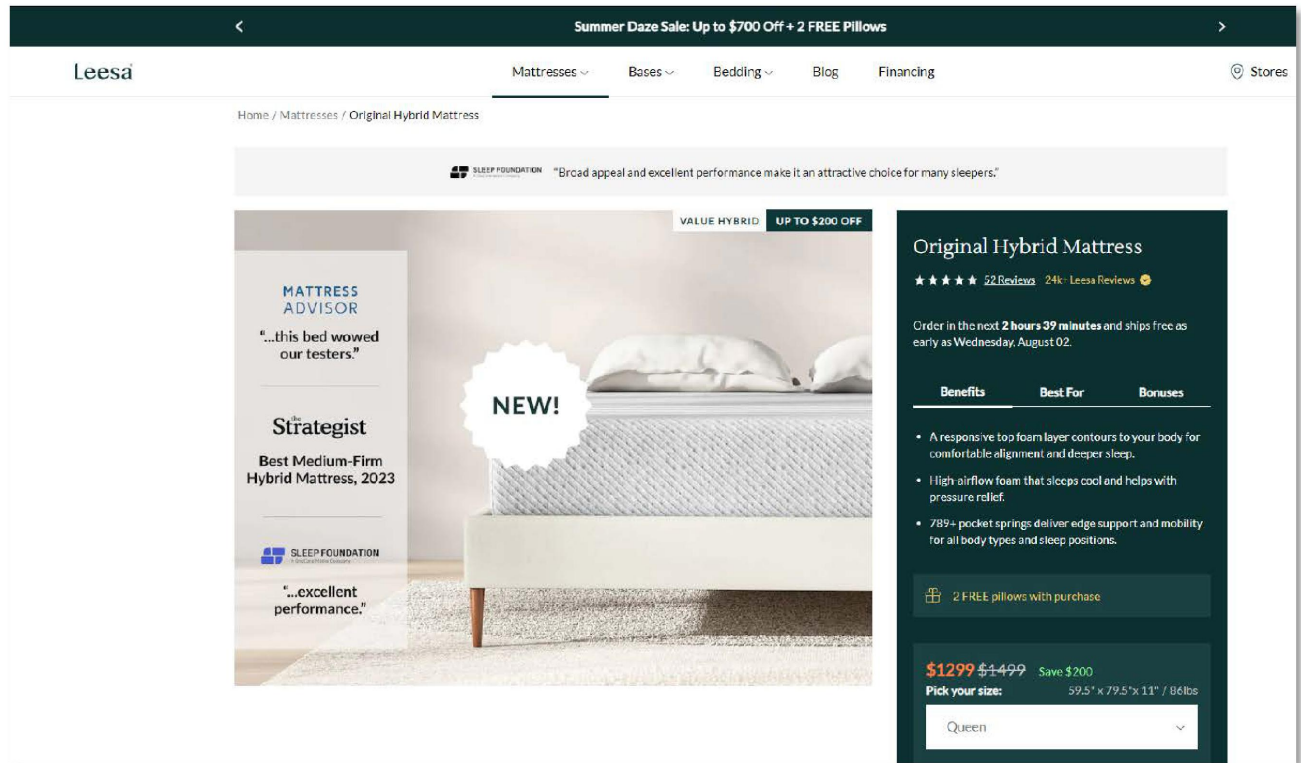
Features
Perks

- Our award-winning, advanced hybrid mattress combines the benefits of premium foam with pocket springs for comfort and advanced support.
- A hole-punched top layer of foam sleeps cool, providing the hug and bounce you want in a mattress.
- 1,000+ active response pocket springs provide durability and stability for enhanced support for all types of sleepers.
- 2 FREE Down Alternative Pillows with mattress purchase while supplies last**

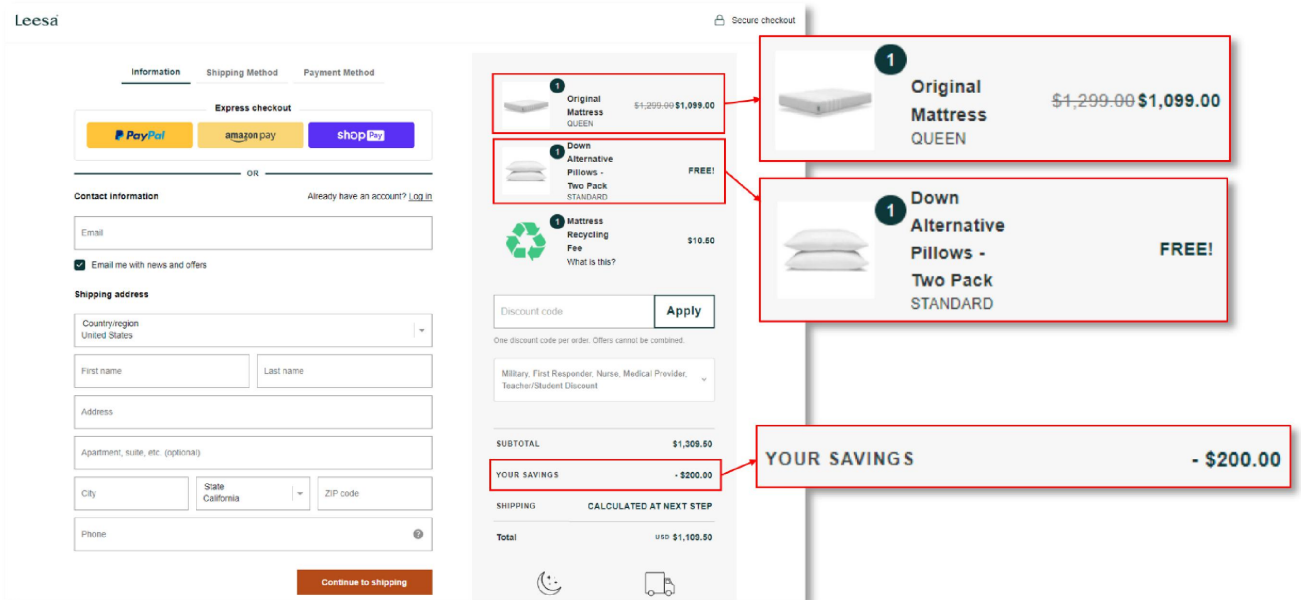
Pick your size:

Twin \$1099 \$949	Twin XL \$1199 \$1049	Full \$1499 \$1299
Queen \$1799 \$1549	King \$1999 \$1699	Cal King \$1999 \$1699

Captured on May 21, 2021



Captured on July 26, 2023



Captured on January 10, 2023

22. Defendant’s sales often offer “up to” \$X off, but they advertise *some* purported discount to items sitewide. For example, while the king-size of a certain mattress may be advertised with a

1 higher purported discount (“Save \$400”) than the twin-size (“Save \$150”), all sizes of the same
2 mattress (and other Products) are always advertised as on sale for a discounted price.¹

3 23. Defendant represents that these discounts will only be available for a limited time, but
4 in reality, they continue indefinitely. For example, as depicted below, Defendant represents that its
5 sales expire on a particular date or when the countdown clock expires, for example: “Offer valid 4/4/23
6 at 8:00 AM ET – 5/2/23 8:00 AM ET.” To reasonable consumers, this means that after the specified
7 date, Defendant’s Products will no longer be on sale and will retail at their purported regular price.
8 But immediately after each purportedly time-limited sale ends, Defendant generates another similar
9 discount, with a new expiration date.

10 24. For example, on April 19, 2023, Defendant advertised a purportedly time-limited sale
11 that was “valid 4/4/23 at 8:00 AM ET – 5/2/23 8:00 AM ET.”

12 **Spring Refresh Sale Offer Terms**

13 Offer valid 4/4/23 at 8:00 AM ET – 5/2/23 8:00 AM ET

14 **Up to \$700 Off Select Mattresses + 2 Free Pillows (Up to \$120 Value)**

15 Discount automatically applied to the Studio, Original, Original Hybrid, Sapira
16 Hybrid, and Legend Hybrid mattresses. Two free Down Alternative Pillows will be
17 added to your cart; however, these items are not eligible for free returns or
warranty claims. Excludes Bundles, Youth, Kids, and Trundle mattresses.

18 **Up to 20% Off Select Bedding**

19 Discount automatically applied to bedding.

20 *Captured on April 19, 2023*

21 25. However, on May 3, 2023, the day that the time-limited sale was supposed to have
22 ended, Defendant advertised the same sale with a new expiration date, 6/6/23.

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26 _____
27 ¹ A limited set of Products are sometimes excluded from Defendant’s sales and discounts (for
28 example, Defendant’s “trundle mattresses”). Other than these exclusions, Defendant’s advertised sales
are sitewide and always available. And, as explained below, the proposed class only includes
consumers who purchased Products advertised at a discount.

Memorial Day Sale Offer Terms

Offer valid 5/2/23 at 8:00 AM ET - 6/6/23 8:00 AM ET

Save up to \$820: Up to \$700 Off Mattresses + 2 Free Pillows (Up to \$120 Value)

Discount automatically applied to the Studio, Original, Original Hybrid, Sapira Hybrid, and Legend Hybrid mattresses. Two free Down Alternative Pillows will be added to your cart; however, these items are not eligible for free returns or warranty claims. Excludes Bundles, Youth, Kids, and Trundle mattresses.

Up to 20% Off Select Bedding

Discount automatically applied to bedding.

Captured on May 3, 2023

26. To confirm that Defendant always offers discounts off of purported regular prices, Plaintiff's counsel performed an investigation of Defendant's advertising practices using the Internet Archive's Wayback Machine (available at www.archive.org).² Defendant's sales have persisted continuously since at least January 1, 2020. For example, 54 randomly selected screenshots of Defendant's website, www.leesa.com, were collected from the Internet Archive's Wayback Machine, from the 2020-2022 period. In addition, 46 additional screenshots from the www.leesa.com website were captured in 2023 by visiting the website and recording screenshots. One hundred percent of the 100 randomly selected screenshots of Defendant's website, captured on the Wayback Machine and directly on the website, displayed a purportedly time-limited discount.

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

28. Based on Defendant's advertisements, reasonable consumers reasonably believe that the prices displayed in "strikethrough font" (e.g., "\$1400") are Defendant's regular prices and former prices (that is, the price at which the goods were actually offered for sale on Defendant's website

² The Internet Archive, available at archive.org, is a library that archives web pages. <https://archive.org/about/>

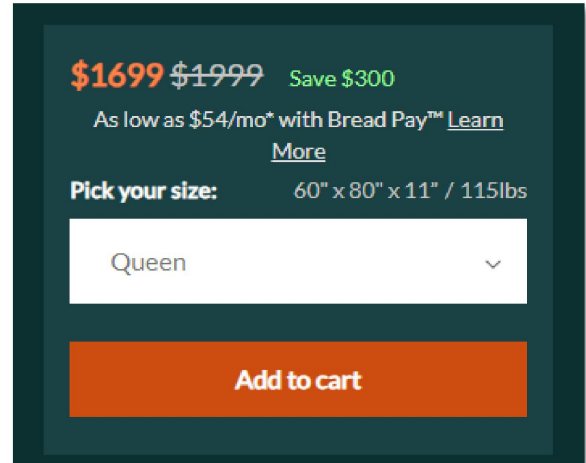
1 before the limited-time offer went into effect). In other words, reasonable consumers reasonably
2 believe that the listed strikethrough regular prices Defendant advertises represent the amount that
3 consumers formerly had to pay on Defendant’s website for Defendant’s goods, before the limited-time
4 sale began. Said differently, reasonable consumers reasonably believe that, prior to the supposedly
5 time-limited sale, consumers buying from Defendant on its website had to pay the regular price to get
6 the item and did not have the opportunity to get a discount from that regular price.

7 29. Reasonable consumers also reasonably believe that the listed regular prices Defendant
8 advertises represent the true market value of the Products, and are the prevailing prices for those
9 Products; and that they are receiving reductions from those listed regular prices in the amounts
10 advertised. In truth, however, Defendant *always* offers discounts off the purported regular prices it
11 advertises. As a result, everything about Defendant’s price and purported discount advertising is false.
12 The regular prices Defendant advertises are not actually Defendant’s regular or former prices, or, as
13 discussed below, the prevailing prices for the Products Defendant sells. And, the listed regular prices
14 do not represent the true market value for the Products, because Defendant’s Products are *always*
15 available for less than that on Defendant’s website, and customers did not have to formerly pay that
16 amount to get those items. The purported discounts Defendant advertises are not the true discount the
17 customer is receiving, and are often not a discount at all. Nor are the purported discounts “LIMITED
18 TIME” or “EXPIRING SOON”—quite the opposite, they are always available.

19 **B. Defendant’s purported regular prices were not the prevailing prices during the 90**
20 **days immediately preceding Defendant’s advertisement of the purported discount.**

21 30. As explained above, Defendant sells its Leesa Products through its website,
22 www.leesa.com. Some Leesa Products are also available through a small number of third-party
23 retailers, including Amazon, Potterybarn, and West Elm.

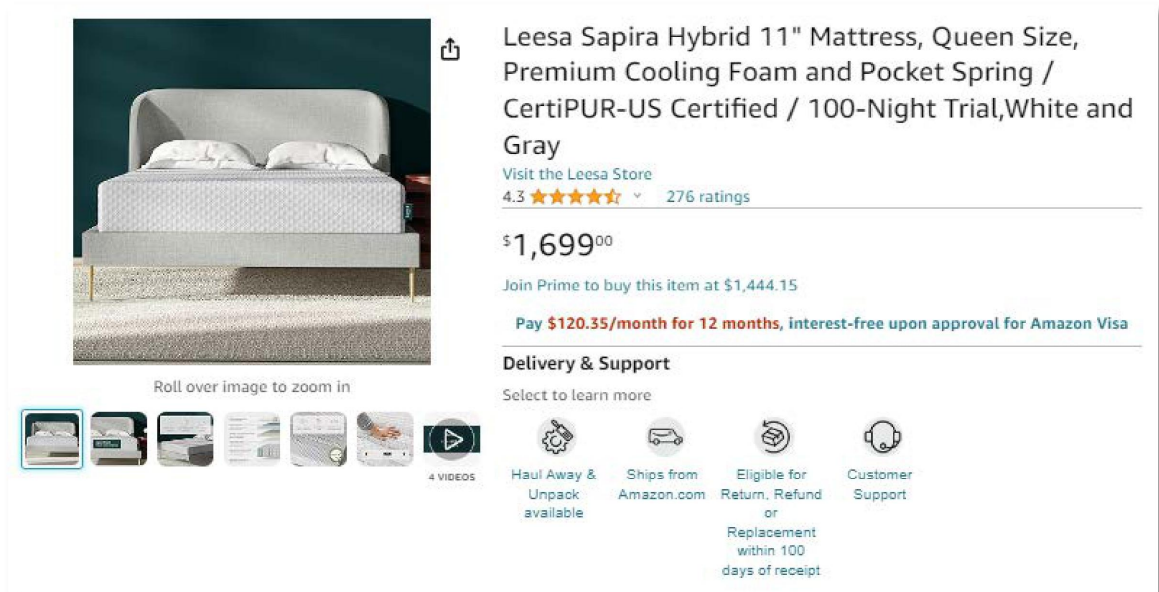
24 31. Often, third-party retailers sell the Leesa Products for prices below Defendant’s listed
25 regular prices. For example, on October 22, 2023, Defendant advertised the queen-sized Sapira Hybrid
26 Mattress with a listed regular price of \$1,999, for a supposedly discounted price of \$1,699:



32. On the same day, Amazon was selling the Product for \$1,699—the supposedly “discounted” price Defendant was advertising. But on Amazon, that supposedly discounted price was listed as the regular price. And, on the listing, Amazon represented to consumers that the “List Price” is “the suggested retail price ... as provided by a manufacturer, supplier, or seller.” Defendant is the manufacturer and supplier of these Products. So, for this Product, Defendant provided Amazon with a suggested retail price equal to its own supposedly “discounted” price and below its own advertised “regular” prices.

33. Plus, for consumers who are Amazon “Prime” members, Amazon sold the mattress for an even lower price (\$1,444.15).

Non-Prime member:



1 Prime member:

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Leesa Sapira Hybrid 11" Mattress, Queen Size, Premium Cooling Foam and Pocket Spring / CertiPUR-US Certified / 100-Night Trial, White and Gray

Visit the Leesa Store
4.3 ★★★★★ 276 ratings

With Prime
-15% \$1,444¹⁵
List Price: ~~\$1,699.00~~ ⓘ

Exclusive Prime price
Pay \$120.35/month for 12 months, interest-free upon approval for Amazon Visa

Delivery & Support
Select to learn more

- Ships from Amazon.com
- Eligible for Return, Refund or Replacement within 100 days of receipt

The List Price is the suggested retail price of a new product as provided by a manufacturer, supplier, or seller. Except for books, Amazon will display a List Price if the product was purchased by customers on Amazon or offered by other retailers at or above the List Price in at least the past 90 days. List prices may not necessarily reflect the product's prevailing market price. [Learn more](#)

15 34. And, a third-party Amazon price tracker reveals that in the three-months preceding the
16 day of the screenshots above (October 22, 2023), the queen-sized Leesa Sapira Hybrid mattress was
17 never sold at the purported regular price of \$1,999 on Amazon, and was always sold, even to non-
18 Prime subscribers, for at least \$100 less than that price.

19 35. Amazon regularly sells Leesa Products to “Prime” subscribers for lower prices than
20 even Leesa’s purported “discount” prices. For example, on October 22, 2023, the following prices
21 were advertised on Leesa.com and Amazon.com for Leesa Products:
22
23
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Product	Leesa.com Listed Regular Price	Leesa.com “Discounted” Price	Amazon.com Price
Original Mattress (Queen)	\$1299	\$1099	\$808.14
Original Hybrid Mattress (Queen)	\$1499	\$1299	\$1199.25
Sapira Hybrid Mattress (Queen)	\$1999	\$1699	\$1444.15
Studio Mattress (Queen)	\$799	\$749	\$636.65
Legend Hybrid Mattress (Queen)	\$2599	\$2099	\$1574.25

36. In short, as information from Amazon shows, third-party sellers regularly sell Defendant’s Products for less than the purported regular prices that Defendant advertises. This is not surprising, as prices charged by third-party retailers converge on Defendant’s price, especially since this Product is sold in an e-commerce market and Defendant, the manufacturer, sells the Products directly to consumers through its publicly available website.

37. Moreover, regardless of third-party retailers’ prices, Leesa Products are primarily sold through Defendant’s branded website, www.leesa.com. If consumers are searching for a Leesa Product, they will go to Defendant’s website. For example, if a consumer Googles “Leesa Mattress,” the first result will be Leesa.com (followed by a New York Times review that repeatedly cites to Leesa.com³).

38. The difference in the number of product reviews on Defendant’s website versus Amazon.com, one of the world’s largest retailers of consumer goods, also shows that the Leesa Products are most commonly sold on Defendant’s website (for Defendant’s prices). For example, as of

³ <https://www.nytimes.com/wirecutter/reviews/leesa-mattress/>

1 the filing of this Complaint, the Leesa “Original Mattress” has 19,989 reviews on Leesa’s website, but
2 only 1,100 on Amazon.com:

3 Leesa.com:



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9 Amazon.com:



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15 39. So, because the Leesa Products are most commonly sold on Defendant’s website, they
16 are most commonly sold for the discounted prices always available on Defendant’s website.

17 40. Moreover, as discussed above, Amazon regularly sells Leesa Products to its “Prime”
18 subscribers for far lower prices than Leesa’s listed regular prices. And, because the vast majority of
19 Amazon shoppers have a “Prime” membership, the vast majority of Amazon’s sales of Leesa Products
20 are at these lower prices.⁴ Thus, between sales on Defendant’s website and Amazon, the Products
21 routinely and predominantly sell for prices below Defendant’s purported regular prices, and the listed
22 regular prices are not the prevailing market rates.

23 **C. Defendant’s advertisements are unfair, deceptive, and unlawful.**

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

27
28 ⁴ <https://www.statista.com/statistics/234253/share-of-amazon-prime-subscribers-in-the-united-states/>

1 42. Moreover, section 17501 of California’s False Advertising Law specifically provides
2 that “[n]o price shall be advertised as a former price ... unless the alleged former price was the
3 prevailing market price ... within three months next immediately preceding” the advertising. Cal. Bus.
4 & Prof. Code § 17501.

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

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

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

17 46. Here, as described in detail above, Defendant makes untrue and misleading statements
18 about its prices. Defendant advertises regular prices that are not its true regular prices, or its former
19 prices, and were not the prevailing market price in the three months immediately preceding the
20 advertisement. In addition, Defendant advertised goods or services with the intent not to sell them as
21 advertised, for example, by advertising goods having certain former prices and/or market values
22 without the intent to sell goods having those former prices and/or market values. Defendant made
23 false or misleading statements of fact concerning the reasons for, existence of, and amounts of price
24 reductions, including the existence of steep discounts, and the amounts of price reductions resulting
25 from those discounts. And Defendant engaged in unlawful, unfair, and deceptive business practices.
26
27
28

1 **D. Defendant’s advertisements harm consumers.**

2 47. Based on Defendant’s advertisements, reasonable consumers would expect that the
3 listed regular prices are the regular prices at which Defendant usually sells its Products and that these
4 are former prices that Defendant sold its Products at before the time-limited discount was introduced.

5 48. Reasonable consumers would also expect that, if they purchase during the sale, they
6 will receive an item whose regular price and/or market value is the advertised regular price and that
7 they will receive the advertised discount from the regular purchase price.

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

11 50. Consumers that are presented with discounts are substantially more likely to make the
12 purchase. “Nearly two-thirds of consumers surveyed admitted that a promotion or a coupon often
13 closes the deal, if they are wavering or are undecided on making a purchase.”⁵ And, “two-thirds of
14 consumers have made a purchase they weren’t originally planning to make solely based on finding a
15 coupon or discount,” while “80% [of consumers] said they feel encouraged to make a first-time
16 purchase with a brand that is new to them if they found an offer or discount.”⁶

17 51. Similarly, when consumers believe that an offer is expiring soon, the sense of urgency
18 makes them more likely to buy a product.⁷

19 52. Thus, Defendant’s advertisements harm consumers by inducing them to make purchases
20 based on false information. In addition, by this same mechanism, Defendant’s advertisements
21 artificially increase consumer demand for Defendant’s Products. This puts upward pressure on the
22 prices that Defendant can charge for its Products. As a result, Defendant can charge a price premium
23 for its Products, that it would not be able to charge absent the misrepresentations described above. So,
24

25 ⁵ <https://www.invespro.com/blog/how-discounts-affect-online-consumer-buying-behavior/>.

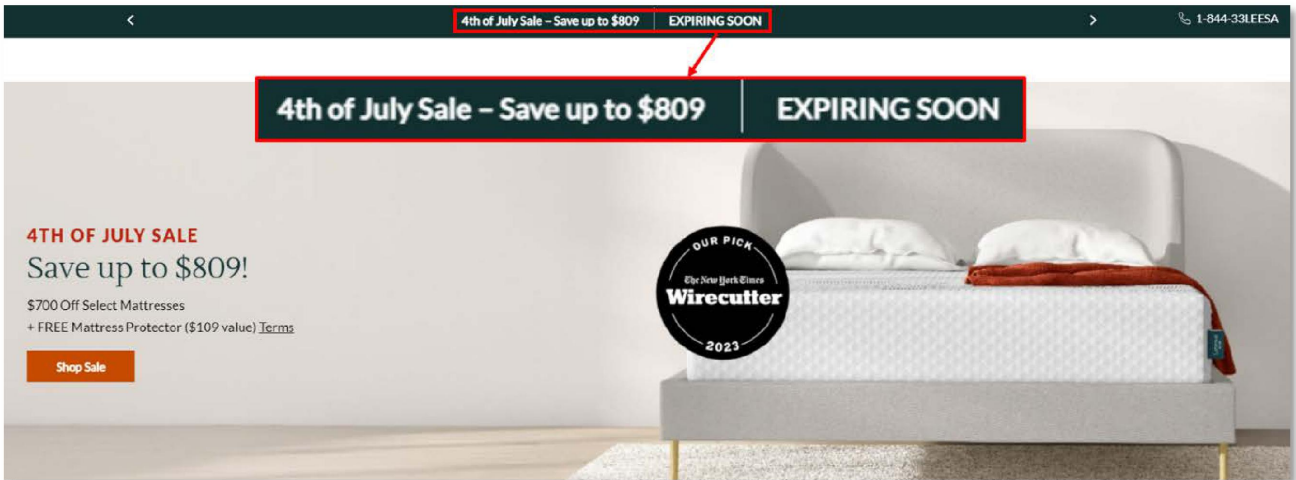
26 ⁶ RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases Online, Especially Among Millennial Buyers (prnewswire.com).

27 ⁷ <https://cxl.com/blog/creating-urgency/> (addition of a countdown timer increased conversion
28 rates from 3.4%-10%); Dynamic email content leads to 400% increase in conversions for Black Friday email | Adestra (uplandsoftware.com) (400% higher conversation rate for ad with countdown timer).

1 due to Defendant’s misrepresentations, Plaintiff and the class paid more for the Products they bought
2 than they otherwise would have.

3 **E. Plaintiff was misled by Defendant’s misrepresentations.**

4 53. On June 27, 2023, Defendant’s website advertised a “4th of July Sale” that promised
5 “EXPIRING SOON” offers including a “FREE Mattress Protector” and up to “\$700 Off” on its
6 mattress Products:



15 *Captured on June 27, 2023*

16 54. On this day, Ms. Grossman purchased a queen-sized Sapira Hybrid Mattress and
17 mattress protector from Defendant’s website while the same sale was on-going. She made this
18 purchase while living in Twentynine Palms, California. The website represented that the Sapira Hybrid
19 Mattress had a regular price, but was on sale for a discounted price of \$1,699.00 plus tax. Defendant
20 represented that Ms. Grossman was receiving a discount for the items that she ordered. In the email
21 order confirmation that Defendant sent to Ms. Grossman after she made her purchase, Defendant
22 represented that Ms. Grossman was paying the \$1,699.00 plus tax discounted price for the Sapira
23 Hybrid Mattress, and that the mattress protector was free. In short, Defendant represented that the
24 Products had a certain regular price and that Ms. Grossman was receiving a substantial discount for the
25 items that she purchased.

26 55. Ms. Grossman read and relied on Defendant’s representations on the website,
27 specifically that the Products were being offered at a discount for a limited time and had a regular
28 price. Based on Defendant’s representations described and shown above, Ms. Grossman reasonably

1 understood that Defendant regularly (and before the promotion Defendant was advertising) sold the
2 Products she was purchasing at the published regular price, that this regular price was the market value
3 of the Products that she was buying, and that she was receiving the advertised discount as compared to
4 the regular price. She would not have made the purchase if she had known that the Products were not
5 discounted as advertised, and that she was not receiving the advertised discount.

6 56. In reality, as explained above, Defendant's products, including the Products that Ms.
7 Grossman purchased, are *always* available at a discounted price of off the purported regular prices.⁸ In
8 other words, Defendant did not regularly sell the Products Ms. Grossman purchased at the purported
9 regular prices, and the Products were not discounted as advertised. Plus, the sale was not time-
10 limited—Defendant's products are always on sale.

11 **V. Class action allegations.**

12 57. Plaintiff brings the asserted claims on behalf of the proposed Class of: All persons who,
13 while in the state of California and within the applicable statute of limitations period, purchased one or
14 more Leesa Products advertised at a discount on Defendant's website.

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

23 ***Numerosity & Ascertainability***

24 59. The proposed class contains members so numerous that separate joinder of each
25 member of the class is impractical. There are tens or hundreds of thousands of class members.

26 60. Class members can be identified through Defendant's sales records and public notice.

27 _____
28 ⁸ As explained above, a limited set of Defendant's Products are sometimes excluded from
Defendant's sales. The Products purchased by Ms. Grossman, however, are continuously on sale.

1 ***Predominance of Common Questions***

2 61. There are questions of law and fact common to the proposed class. Common questions
3 of law and fact include, without limitation:

- 4 (1) whether Defendant made false or misleading statements of fact in its advertisements;
5 (2) whether Defendant violated California’s consumer protection statutes;
6 (3) damages needed to reasonably compensate Plaintiff and the proposed class.

7 ***Typicality & Adequacy***

8 62. Plaintiff’s claims are typical of the proposed class. Like the proposed class, Plaintiff
9 purchased the Leesa Products advertised at a discount from Defendant. There are no conflicts of
10 interest between Plaintiff and the class.

11 ***Superiority***

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

16 **VI. Claims.**

17 **First Cause of Action:**

18 **Violation of California’s False Advertising Law Bus. & Prof. Code §§ 17500 & 17501 et. seq.**
19 **(By Plaintiff and the Class)**

20 64. Plaintiff incorporates each and every factual allegation set forth above.

21 65. Plaintiff brings this cause of action on behalf of herself and members of the Class.

22 66. Defendant has violated sections 17500 and 17501 of the Business and Professions
23 Code.

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

27 68. As alleged more fully above, Defendant advertises former prices along with discounts.
28 Defendant does this, for example, by crossing out a higher price (*e.g.*, \$1049) and displaying it next to

1 a lower, discounted price. Reasonable consumers would understand prices advertised in strikethrough
2 font from which time-limited discounts are calculated to denote “former” prices, i.e., the prices that
3 Defendant charged before the time-limited discount went into effect.

4 69. The prices advertised by Defendant are not Defendant’s regular prices. In fact, those
5 prices are never Defendant’s regular prices (i.e., the price you usually have to pay to get the Product in
6 question), because there is always a heavily-advertised promotion ongoing entitling consumers to a
7 discount. Moreover, for the same reasons, those prices were not the former prices of the Products.
8 Accordingly, Defendant’s statements about the former prices of its Products, and its statements about
9 its discounts from those former prices, were untrue and misleading. In addition, Defendant’s
10 statements that its discounts are “limited time” and only “valid” for a certain time period are false and
11 misleading too.

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

20 71. Defendant’s misrepresentations were intended to induce reliance, and Plaintiff saw,
21 read, and reasonably relied on the statements when purchasing Leesa Products. Defendant’s
22 misrepresentations were a substantial factor in Plaintiff’s purchase decision.

23 72. In addition, class-wide reliance can be inferred because Defendant’s misrepresentations
24 were material, i.e., a reasonable consumer would consider them important in deciding whether to buy
25 the Leesa Products.

26 73. Defendant’s misrepresentations were a substantial factor and proximate cause in
27 causing damages and losses to Plaintiff and the Class.

28

1 have. Defendant represents that the value of its Products is greater than it actually is by advertising
2 inflated regular prices and fake discounts for Products.

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

6 85. And Defendant violated, and continues to violate section 1770(a)(13) by making false or
7 misleading statements of fact concerning reasons for, existence of, or amounts of, price reductions on
8 its website, including by (1) misrepresenting the regular price of Products on its website, (2) advertising
9 discounts and savings that are exaggerated or nonexistent, (3) misrepresenting that the discounts and
10 savings are unusually large, when in fact they are regularly available (4) misrepresenting the reason for
11 the sale (e.g., “Presidents’ Day Sale,” when in fact the sale is ongoing and not limited to Presidents’
12 Day).

13 86. Defendant’s representations were likely to deceive, and did deceive, Plaintiff and
14 reasonable consumers. Defendant knew, or should have known through the exercise of reasonable care,
15 that these statements were inaccurate and misleading.

16 87. Defendant’s misrepresentations were intended to induce reliance, and Plaintiff saw,
17 read, and reasonably relied on them when purchasing Leesa Products. Defendant’s misrepresentations
18 were a substantial factor in Plaintiff’s purchase decision.

19 88. In addition, class-wide reliance can be inferred because Defendant’s misrepresentations
20 were material, i.e., a reasonable consumer would consider them important in deciding whether to buy
21 the Leesa Products.

22 89. Defendant’s misrepresentations were a substantial factor and proximate cause in causing
23 damages and losses to Plaintiff and the Class.

24 90. Plaintiff and the Class were injured as a direct and proximate result of Defendant’s
25 conduct because (a) they would not have purchased Leesa Products if they had known the discounts
26 and/or regular prices were not real, (b) they overpaid for the Products because the Products were sold at
27 a price premium due to the misrepresentation, and/or (c) they received products with market values
28 lower than the promised market values.

1 91. Accordingly, pursuant to California Civil Code § 1780(a)(2), Ms. Grossman, on behalf
2 of herself and all other members of the Class, seeks injunctive relief.

3 92. CLRA § 1782 NOTICE. On June 20, 2024, a CLRA demand letter was sent to
4 Defendant’s headquarters and registered agent via certified mail (return receipt requested), that
5 provided notice of Defendant’s violations of the CLRA and demanded that Defendant correct the
6 unlawful, unfair, false and/or deceptive practices alleged here. Defendant does not have a California
7 headquarters. If Defendant does not fully correct the problem for Plaintiff and for each member of the
8 Class within 30 days of receipt, Plaintiff and the Class will seek monetary relief under the CLRA,
9 including full restitution, restitutionary disgorgement, and restitution of the difference between what
10 she and the Class paid and what she and the Class would have been willing to pay had Defendant’s
11 advertisements been truthful, punitive damages, and reasonable attorneys’ fees.

12 93. A CLRA venue declaration is attached.

13 **Third Cause of Action:**

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

15 **(by Plaintiff and the Class)**

16 94. Plaintiff incorporates each and every factual allegation set forth above.

17 95. Plaintiff brings this cause of action on behalf of herself and members of the Class.

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

20 ***The Unlawful Prong***

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

1 ***The Deceptive Prong***

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

5 99. Defendant’s representations were misleading to Plaintiff and other reasonable
6 consumers.

7 100. Plaintiff relied upon Defendant’s misleading representations and omissions, as detailed
8 above.

9 ***The Unfair Prong***

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

13 102. Defendant violated established public policy by violating the FAL, the CLRA, and the
14 FTCA, as alleged above and incorporated here. The unfairness of this practice is tethered to a
15 legislatively declared policy (that of the FAL, the CLRA, and the FTCA).

16 103. The harm to Plaintiff and the Class greatly outweighs the public utility of Defendant’s
17 conduct. There is no public utility to misrepresenting the price of a consumer product. This injury was
18 not outweighed by any countervailing benefits to consumers or competition. Misleading consumer
19 products only injure healthy competition and harm consumers.

20 104. Plaintiff and the Class could not have reasonably avoided this injury. As alleged above,
21 Defendant’s representations were deceptive to reasonable consumers like Plaintiff.

22 105. Defendant’s conduct, as alleged above, was immoral, unethical, oppressive,
23 unscrupulous, and substantially injurious to consumers.

24 * * *

25 106. For all prongs, Defendant’s representations were intended to induce reliance, and
26 Plaintiff saw, read, and reasonably relied on them when purchasing Leesa Products. Defendant’s
27 representations were a substantial factor in Plaintiff’s purchase decision.
28

1 107. In addition, class-wide reliance can be inferred because Defendant’s representations
2 were material, i.e., a reasonable consumer would consider them important in deciding whether to buy
3 Leesa Products.

4 108. Defendant’s representations were a substantial factor and proximate cause in causing
5 damages and losses to Plaintiff and the Class members.

6 109. Plaintiff and the Class were injured as a direct and proximate result of Defendant’s
7 conduct because (a) they would not have purchased the Leesa Products if they had known that they
8 were not discounted, and/or (b) they overpaid for the Products because the Products were sold at the
9 regular price and not at a discount.

10 110. As a result of Defendant’s misconduct, Plaintiff and the Class are entitled to restitution
11 including full restitution, restitutionary disgorgement, and restitution of the difference between what
12 she and the Class paid and what she and the Class would have been willing to pay had Defendant’s
13 advertisements been truthful.

14 **Fourth Cause of Action:**

15 **Quasi-Contract/Unjust Enrichment**

16 **(by Plaintiff and the Class)**

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

18 112. Plaintiff brings this claim on behalf of herself and the Class.

19 113. As alleged in detail above, Defendant’s false and misleading advertising caused
20 Plaintiff and the Class to purchase Leesa Products and to pay a price premium for these Products.

21 114. In this way, Defendant received a direct and unjust benefit, at Plaintiff’s expense.

22 115. As a result of Defendant’s misconduct, Plaintiff and the Class are entitled to restitution
23 including full restitution, restitutionary disgorgement, and restitution of the difference between what
24 she and the Class paid and what she and the Class would have been willing to pay had Defendant’s
25 advertisements been truthful.

26 **VII. Relief.**

27 116. Plaintiff seeks the following relief for herself and the proposed class:

- 28
 - An order certifying the asserted claims, or issues raised, as a class action;

- 1 • A judgment in favor of Plaintiff and the proposed class;
- 2 • Restitution, disgorgement, and other just equitable relief;
- 3 • Pre- and post-judgment interest;
- 4 • An injunction prohibiting Defendant's deceptive conduct, as allowed by law;
- 5 • Reasonable attorneys' fees and costs, as allowed by law;
- 6 • Any additional relief that the Court deems reasonable and just.

7 **VIII. Demand for Jury Trial.**

8 117. Plaintiff demands the right to a jury trial on all claims so triable.

9
10 Dated: July 11, 2024

Respectfully submitted,

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