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

16 EMILY CHEBUL, individually
17 and on behalf of all others similarly
18 situated,

19 *Plaintiff,*

20 v.

21 TUFT & NEEDLE, LLC,

22 *Defendant.*

Case No. 2:24-cv-02707

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 **I. Introduction.**

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

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

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

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

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

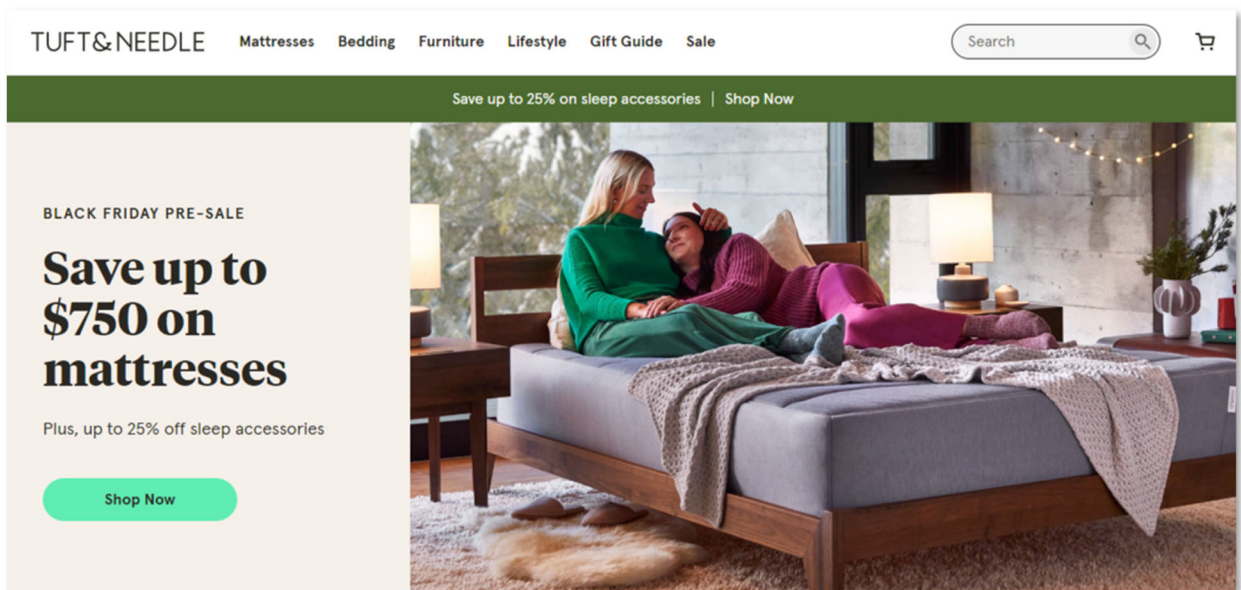
24 6. Moreover, the Federal Trade Commission’s regulations prohibit false or
25 misleading “former price comparisons,” for example, making up “an artificial, inflated
26 price ... for the purpose of enabling the subsequent offer of a large reduction” off that
27 price. 16 C.F.R. § 233.1. They also prohibit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

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

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

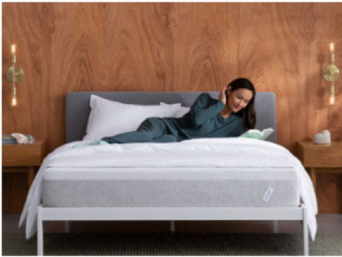


6 8. Defendant Tuft & Needle, LLC (“Defendant” or “Tuft & Needle”) sells
7 and markets mattresses and bedding products online through the Tuft & Needle brand
8 and website, www.tuftandneedle.com (“Tuft & Needle Products” or “Products”).

9 9. On its website, Defendant lists purported regular prices and advertises
10 purported discounts from those listed regular prices. These include “LIMITED TIME”
11 discounts offering “up to \$X off” and “X% off.” Defendant also advertises that its
12 Products have a lower discount price as compared to a higher, regular price shown in
13 grey and/or strikethrough font. Examples are shown below:



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The screenshot displays the Tuft & Needle website's promotional banner and product grid. The banner features the text "Up to 20% off our bestselling mattresses" and "LIMITED TIME ONLY" in a large font. A secondary line of text states "Save now through 1/18". A "Shop Sale" button is visible. Below the banner, three product cards are shown, each with a "Shop Now" button. The cards are for the T&N Original Mattress, Mint Mattress, and Mint Hybrid Mattress. Each card includes a price range with a red strikethrough on the original price and a description of the mattress's features.

T&N; Original Mattress	Mint Mattress	Mint Hybrid Mattress
		
\$596 - \$1,116 \$745 - \$1,395 Bounce-back support and breathability from our T&N; Adaptive® foam technology.	\$876 - \$1,676 \$1,095 - \$2,095 Cool comfort and pressure relief thanks to our T&N; Adaptive® foam, plus edge support designed for two sleepers—now with a washable top cover.	\$1,018.35 - \$1,894.35 \$1,395 - \$2,595 Our T&N; Adaptive® foam meets Micro Diamond memory foam and bouncy springs for the ultimate motion control and pressure relief—all wrapped in an ultra-soft washable top cover.
Shop Now	Shop Now	Shop Now

10. But in fact, Defendant's discounts are routinely 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 routinely available for less than that. The purported discounts Defendant advertises are not the true discount the customer is receiving, and are often

1 not a discount at all. Nor are the purported discounts “LIMITED TIME ONLY,” or
2 limited to specific time periods like President’s Day or Black Friday.

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

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

19 13. Plaintiff brings this case for herself and the other customers who purchased
20 Tuft & Needle Products.

21 **II. Parties**

22 14. Plaintiff Emily Chebul is domiciled in Castaic, California.

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

24 16. Defendant Tuft & Needle, LLC is an Delaware limited liability company
25 with its principal place of business at 735 Grand Avenue, Phoenix, Arizona 85007.

26 **III. Jurisdiction and Venue.**

27 17. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2).
28 The amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and the

1 matter is a class action in which one or more members of the proposed class are citizens
2 of a state different from Defendant.

3 18. The Court has personal jurisdiction over Defendant because Defendant
4 sold Tuft & Needle Products to consumers in California, including to Plaintiff.

5 19. Venue is proper under 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1391(d)
6 because Defendant would be subject to personal jurisdiction in this District if this
7 District were a separate state, given that Defendant sold Tuft & Needle Products to
8 consumers in this District, including Plaintiff. Venue is also proper under 28 U.S.C. §
9 1391(b)(2) because a substantial part of Defendant’s conduct giving rise to the claims
10 occurred in this District, including Defendant’s sale to Plaintiff.

11 **IV. Facts.**

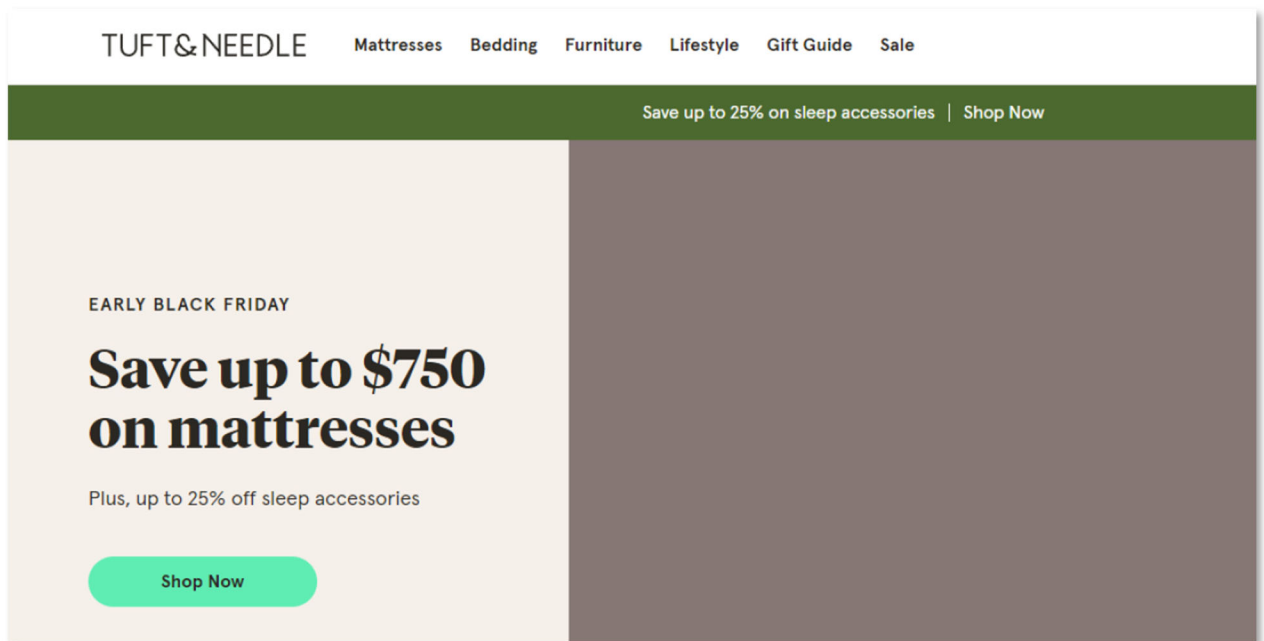
12 **A. Defendant’s fake prices and fake discounts.**

13 20. Defendant Tuft & Needle manufactures, distributes, markets, and sells
14 mattresses. Defendant sells its Products directly to consumers through its website, www
15 www.tuftandneedle.com.

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

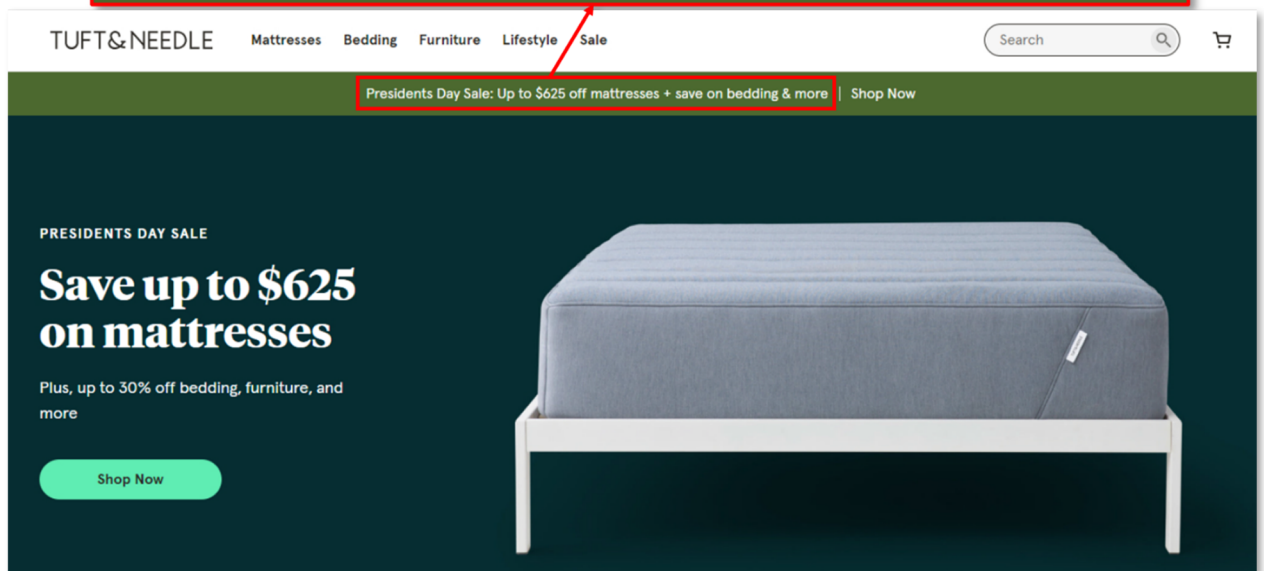
18 22. On its website, Defendant advertises steep discounts on its Products. These
19 discounts consistently offer “X%” or “\$X” off the listed regular prices Defendant
20 advertises. Defendant also states that they are “LIMITED TIME ONLY” or limited to
21 specific time periods (such as Black Friday or President’s Day). And it advertises these
22 discounts extensively: on an attention-grabbing banner at the top of its website; in a large
23 banner image on its homepage; on the products listing pages, next to images of each
24 Product; on the individual product pages for each Product; and during checkout.
25 Example screenshots are provided on the following pages:

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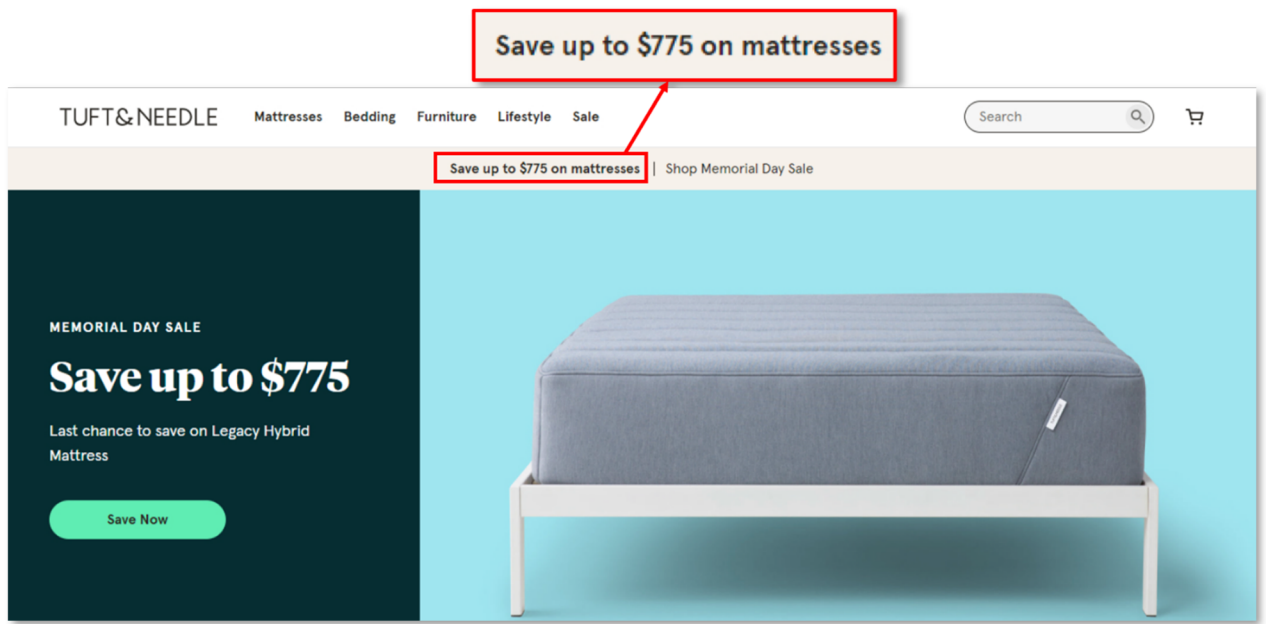
Captured on November 18, 2022

Presidents Day Sale: Up to \$625 off mattresses + save on bedding & more

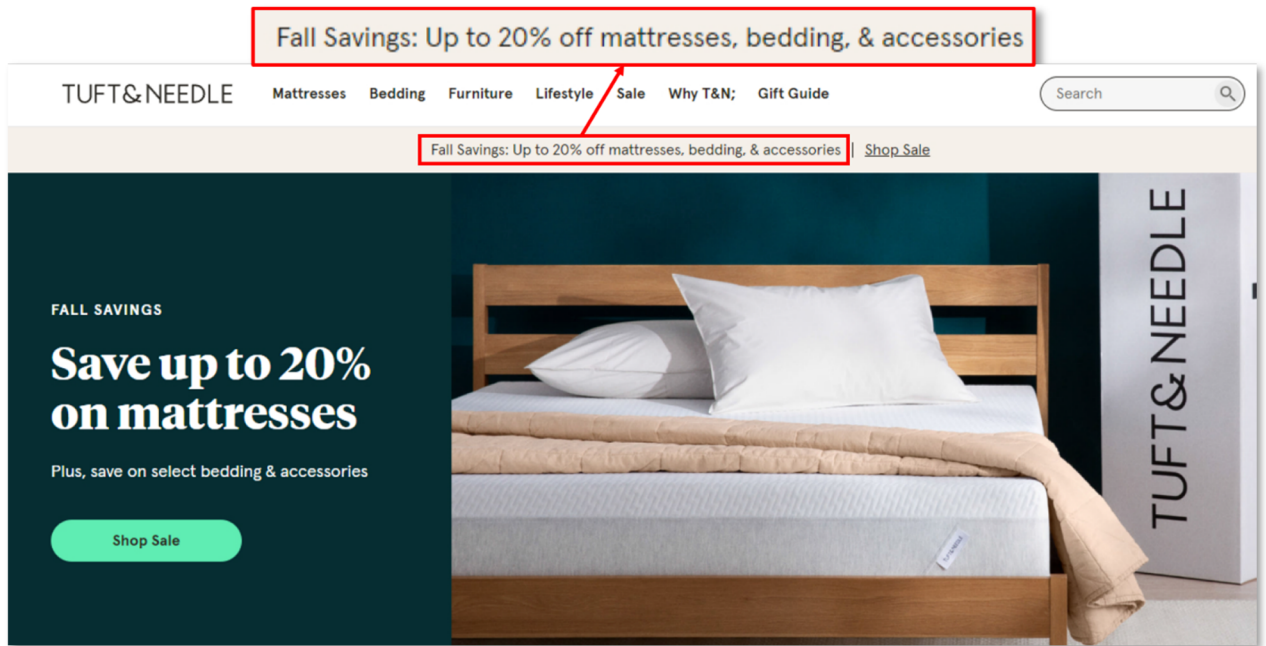


Captured on February 8, 2023

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Captured on May 11, 2023



Captured on October 20, 2023

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Up to 20% off our bestselling mattresses

Up to 20% off our bestselling mattresses | [Shop Sale](#)

LIMITED TIME ONLY

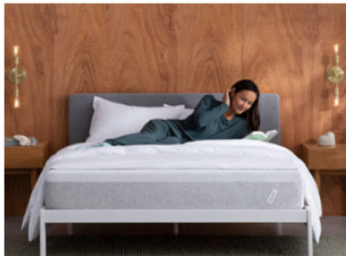
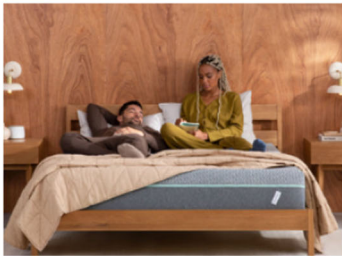

Up to 20% off our bestselling mattresses

Save now through 1/18

[Shop Sale](#)

Save now through 1/18

Captured on January 10, 2024

T&N; Original Mattress	Mint Mattress	Mint Hybrid Mattress
 <p>\$596 - \$1,116 \$745 - \$1,395</p> <p>Bounce-back support and breathability from our T&N; Adaptive® foam technology.</p> <p>Shop Now</p>	 <p>\$876 - \$1,676 \$1,095 - \$2,095</p> <p>Cool comfort and pressure relief thanks to our T&N; Adaptive® foam, plus edge support designed for two sleepers—now with a washable top cover.</p> <p>Shop Now</p>	 <p>\$1,018.35 - \$1,894.35 \$1,395 - \$2,595</p> <p>Our T&N; Adaptive® foam meets Micro Diamond memory foam and bouncy springs for the ultimate motion control and pressure relief—all wrapped in an ultra-soft washable top cover.</p> <p>Shop Now</p>

Captured on May 20, 2023

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Save up to \$700 on select mattresses + frames

The screenshot shows the Tuft & Needle website header with navigation links: TUFT&NEEDLE, Mattresses, Bedding, Furniture, Lifestyle, Sale, Why T&N;. A search bar and a shopping cart icon are on the right. A green banner below the header repeats the offer: 'Save up to \$700 on select mattresses + frames' and 'Shop Sale'. The main content area features a large image of a couple on a bed. A red box highlights the text 'JULY 4TH SUPER SALE - SAVE 15%'. Another red box highlights the price '\$930.75 \$1,095.00'. To the right, the product title is 'Bestselling T&N; Mint Mattress'. Below the title, there is a description: 'Cool comfort and pressure relief thanks to our T&N; Adaptive® foam, plus edge support designed for two sleepers—now with a washable top cover.' Another red box highlights 'JULY 4TH SUPER SALE - SAVE 15%' and a third highlights 'Plus, save an additional 15% when you bundle with our Mattress Protector, Down Alternative Pillow Set, and any sheet set. Use code MATTRESS15 at checkout.' A fourth red box highlights the price '\$930.75 \$1,095.00'. At the bottom, it says 'Starting at \$85/mo with **affirm** Prequalify now'.

Captured on June 29, 2023

Spring forward with up to 20% off mattresses & bedding

The screenshot shows the Tuft & Needle website header with navigation links: TUFT&NEEDLE, Mattresses, Bedding, Furniture, Lifestyle, Sale, Why T&N;. A search bar and a shopping cart icon are on the right. A green banner below the header repeats the offer: 'Spring forward with up to 20% off mattresses & bedding' and 'Shop now'. The main content area features a large image of a couple on a bed. A red box highlights the text 'DAYLIGHTS SAVINGS SALE - SAVE 20%'. Another red box highlights the price '\$1,596.00 \$1,995.00'. To the right, the product title is 'Bestselling T&N Mint'. Below the title, there is a star rating: '★★★★★ 4.6 (14299)'. Below the rating, there is a description: 'Cool comfort and pressure relief, designed for two sleepers—now with a washable cover.' Another red box highlights 'DAYLIGHTS SAVINGS SALE - SAVE 20%' and a third highlights 'Plus, save an additional 15% when you bundle with our Mattress Protector, Down Alternative Pillow Set, and any sheet set. Add eligible items to your cart and use code MATTRESS15 at checkout.' A fourth red box highlights the price '\$1,596.00 \$1,995.00'. At the bottom, it says 'Starting at \$145/mo with **affirm** Prequalify now'. Below this, there is a 'Select Size' section with a 'Size & dimensions' link. The size options are: Twin, Twin XL, Full, Queen, King, and Cal King.

Captured on March 11, 2024

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Black Friday Sale | Save up to \$800 on mattresses & up to 25% on bedding and accessories | [Shop Now](#)

My Cart (2)

Essential T&N Original Mattress
Size: Queen
\$746.25 ~~\$995~~

Recycling Fee CA Fee for: Essential T&N Original Mattress - Queen
\$10.50

Order Summary

Subtotal \$1,005.50
Discounts - \$248.75
 Shipping, Taxes, Recycling Fees \$--.--
 Calculated in checkout

Subtotal \$756.75

[Secure Checkout](#)

Gift cards and promo codes are applied in at checkout.

100-night sleep trial | Free shipping & returns | Hassle-free warranty

Captured on November 9, 2023

1 Recycling Fee CA \$10.50
Recycling Fee CA
Fee for: Essential T&N Original Mattress - Queen

1 Essential T&N Original Mattress Queen
~~\$995.00~~
\$746.25

You may also like

Mattress Protector \$68.00 ~~\$80.00~~ [Size](#)

Hemp Sheet Set \$200.00 ~~\$250.00~~ [Options](#)

Discount code [Apply](#)

Subtotal \$756.75
 Shipping Free
 Estimated taxes \$76.49

Total USD \$833.24

Captured on November 9, 2023

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

7 24. Based on Defendant's advertisements, reasonable consumers reasonably
8 believe that the prices displayed in "strikethrough font" (e.g., "\$995.00") are Defendant's
9 regular prices and former prices (that is, the price at which the goods were actually
10 offered for sale on Defendant's website before the limited-time offer went into effect).
11 In other words, reasonable consumers reasonably believe that the listed strikethrough
12 regular prices Defendant advertises represent the amount that consumers formerly had to
13 pay on Defendant's website for Defendant's goods, before the limited-time sale began.
14 Said differently, reasonable consumers reasonably believe that, prior to the supposedly
15 time-limited sale, consumers buying from Defendant on its website had to pay the regular
16 price to get the item and did not have the opportunity to get a discount from that regular
17 price.

18 25. Reasonable consumers also reasonably believe that the listed regular prices
19 Defendant advertises represent the true market value of the Products, and are the
20 prevailing prices for those Products; and that they are receiving reductions from those
21 listed regular prices in the amounts advertised. In truth, however, Defendant consistently
22 offers discounts off the purported regular prices it advertises. As a result, everything
23 about Defendant's price and purported discount advertising is false. The regular prices
24 Defendant advertises are not actually Defendant's regular or former prices, or, as
25 discussed below, the prevailing prices for the Products Defendant sells. And, the listed
26 regular prices do not represent the true market value for the Products, because
27 Defendant's Products are consistently available for less than that on Defendant's website,
28 and customers did not have to formerly pay that amount to get those items. The

1 purported discounts Defendant advertises are not the true discount the customer is
2 receiving, and are often not a discount at all. Nor are the purported discounts limited in
3 time—quite the opposite, they are regularly available.

4 **B. Defendant’s advertisements are unfair, deceptive, and unlawful.**

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

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

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

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

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

26 31. Here, as described in detail above, Defendant makes untrue and misleading
27 statements about its prices. Defendant advertises regular prices that are not its true
28 regular prices, or its former prices, and were not the prevailing market price in the three

1 months immediately preceding the advertisement. In addition, Defendant advertised
2 goods or services with the intent not to sell them as advertised, for example, by
3 advertising goods having certain former prices and/or market values without the intent
4 to sell goods having those former prices and/or market values. Defendant made false or
5 misleading statements of fact concerning the reasons for, existence of, and amounts of
6 price reductions, including the existence of steep discounts, and the amounts of price
7 reductions resulting from those discounts. And Defendant engaged in unlawful, unfair,
8 and deceptive business practices.

9 **C. Defendant's advertisements harm consumers.**

10 32. Based on Defendant's advertisements, reasonable consumers would expect
11 that the listed regular prices are the regular prices at which Defendant usually sells its
12 Products and that these are former prices that Defendant sold its Products at before the
13 time-limited discount was introduced.

14 33. Reasonable consumers would also expect that, if they purchase during the
15 sale, they will receive an item whose regular price and/or market value is the advertised
16 regular price and that they will receive the advertised discount from the regular purchase
17 price.

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

21 35. Consumers that are presented with discounts are substantially more likely to
22 make the purchase. "Nearly two-thirds of consumers surveyed admitted that a
23 promotion or a coupon often closes the deal, if they are wavering or are undecided on
24 making a purchase."¹ And, "two-thirds of consumers have made a purchase they weren't
25 originally planning to make solely based on finding a coupon or discount," while "80%
26

27 _____
28 ¹ <https://www.invespcro.com/blog/how-discounts-affect-online-consumer-buying-behavior/>.

1 [of consumers] said they feel encouraged to make a first-time purchase with a brand that
2 is new to them if they found an offer or discount.”²

3 36. Similarly, when consumers believe that an offer is expiring soon, the sense
4 of urgency makes them more likely to buy a product.³

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

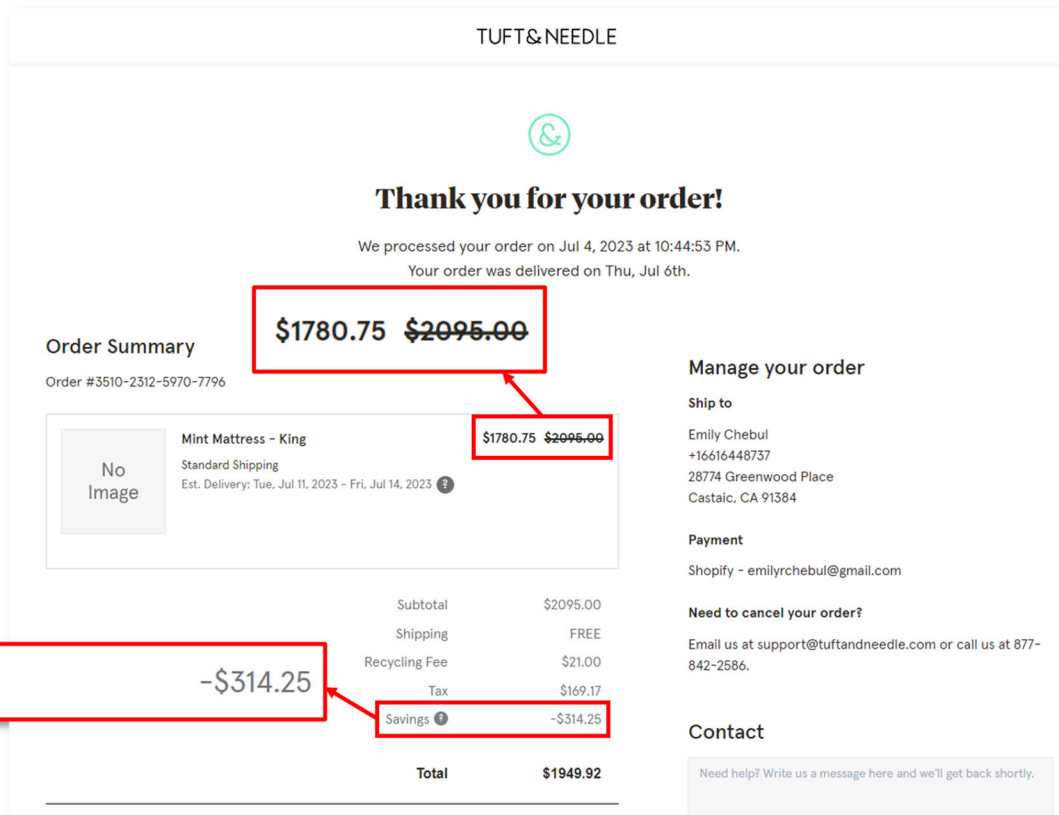
13 **D. Plaintiff was misled by Defendant’s misrepresentations.**

14 38. On July 4, 2023, Ms. Chebul purchased a king-sized Tuft & Needle Mint
15 Mattress from Defendant’s website. She made this purchase while living in Castaic,
16 California. In the email order confirmation and online order summary that Defendant
17 sent to Ms. Chebul after she made her purchase, Defendant represented that the Tuft &
18 Needle Mint Mattress had a regular price of \$2095.00 (in strikethrough font). And,
19 Defendant represented that Ms. Chebul received a “Savings” of \$314.25 for a discounted
20 price of \$1780.75.

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25 ² RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases
26 Online, Especially Among Millennial Buyers (prnewswire.com).

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

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39. In short, Defendant represented that the Product had a certain regular price and that Ms. Chebul was receiving a substantial discount for the item that she purchased.

40. Ms. Chebul read and relied on Defendant’s representations on the website, specifically that the Product was being offered at a discount and had the regular price listed above. She relied on the strikethrough regular price of “\$2095.00,” the discounted price of “\$1780.75,” and the “Savings” of “-\$314.25.” Based on Defendant’s representations described and shown above, Ms. Chebul reasonably understood that Defendant regularly (and before the promotion Defendant was advertising) sold the Products she was purchasing at the published regular price, that this regular price was the market value of the Products that she was buying, that she was receiving the advertised discount as compared to the regular price. She would not have made the purchase if she had known that the Product was not discounted as advertised, and that she was not receiving the advertised discount.

1 41. In reality, as explained above, Defendant's products, including the Products
2 that Ms. Chebul purchased, are regularly available at a discounted price of off the
3 purported regular prices. In other words, Defendant did not regularly sell the Products
4 Ms. Chebul purchased at the purported regular prices, and the Products were not
5 discounted as advertised. Plus, the sale was not limited time—Defendant's products are
6 routinely on sale.

7 42. Plaintiff faces an imminent threat of future harm. Plaintiff would purchase
8 Products from Defendant again in the future if she could feel sure that Defendant's
9 regular prices accurately reflected Defendant's former prices and the market value of the
10 Products, and that its discounts were truthful. But without an injunction, Plaintiff has no
11 realistic way to know which—if any—of Defendant's regular prices, discounts, and sales
12 are not false or deceptive. For example, while she could watch Defendant's website for a
13 sale on the day that it is supposed to end to see if the sale is permanent, doing so could
14 result in her missing out on the sale (*e.g.*, if the sale is actually limited in time, and not
15 permanent). Accordingly, Plaintiff is unable to rely on Defendant's advertising in the
16 future, and so cannot purchase Products she would like to purchase.

17 **E. Defendant breached its contract with and warranties to Ms. Chebul**
18 **and the putative class.**

19 43. When Ms. Chebul, and other members of the putative class, purchased and
20 paid for the Tuft & Needle Products that they bought as described above, they accepted
21 offers that Defendant made, and thus, a contract was formed each time that they made
22 purchases. Each offer was to provide Products having a particular listed regular price
23 and market value, and to provide those Products at the discounted price advertised on
24 the website.

25 44. Defendant's website and email confirmations list the market value of the
26 items that Defendant promised to provide (which, for Ms. Chebul, are shown above).
27 Defendant agreed to provide a discount equal to the difference between the regular
28 prices, and the prices paid by Ms. Chebul and putative class members (also shown above

1 for Ms. Chebul). For example, Defendant offered to provide Ms. Chebul (among other
2 things) the Tuft & Needle Mint Mattress with a market value of \$2095, and to provide a
3 discount of \$314.25. Defendant also warranted that the regular price and market value of
4 the Products Ms. Chebul purchased was the advertised list price and warranted that Ms.
5 Chebul was receiving a specific discount on those Products.

6 45. The regular price and market value of the items Ms. Chebul and putative
7 class members would receive, and the amount of the discount they would be provided
8 off the regular price of those items, were specific and material terms of the contract.
9 They were also affirmations of fact about the Products and a promise relating to the
10 goods.

11 46. Ms. Chebul and other members of the putative class performed their
12 obligations under the contract by paying for the items they purchased.

13 47. Defendant breached its contract by failing to provide Ms. Chebul and other
14 members of the putative class with Products that have a regular price and market value
15 equal to the regular price displayed, and by failing to provide the discount it promised.
16 Defendant also breached warranties for the same reasons.

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

18 48. Plaintiff seeks damages and, in the alternative, restitution. Plaintiff is
19 permitted to seek equitable remedies in the alternative because she has no adequate
20 remedy at law.

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

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

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

9 **V. Class action allegations.**

10 52. Plaintiff brings the asserted claims on behalf of the proposed class of:

- 11 • Nationwide Class: all persons who, within the applicable statute of
12 limitations period, purchased one or more Tuft & Needle Products
13 advertised at a discount on Defendant's website.
- 14 • California Subclass: all persons who, while in the state of California and
15 within the applicable statute of limitations period, purchased one or more
16 Tuft & Needle Products advertised at a discount on Defendant's website.

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

1 ***Numerosity & Ascertainability***

2 54. The proposed class contains members so numerous that separate joinder of
3 each member of the class is impractical. There are tens or hundreds of thousands of
4 class members.

5 55. Class members can be identified through Defendant's sales records and
6 public notice.

7 ***Predominance of Common Questions***

8 56. There are questions of law and fact common to the proposed class.
9 Common questions of law and fact include, without limitation:

10 (1) whether Defendant made false or misleading statements of fact in its
11 advertisements;

12 (2) whether Defendant violated California's consumer protection statutes;

13 (3) whether Defendant committed a breach of contract;

14 (4) whether Defendant committed a breach of an express warranty;

15 (5) damages needed to reasonably compensate Plaintiff and the proposed class.

16 ***Typicality & Adequacy***

17 57. Plaintiff's claims are typical of the proposed class. Like the proposed class,
18 Plaintiff purchased the Tuft & Needle Products advertised at a discount from Defendant.
19 There are no conflicts of interest between Plaintiff and the class.

20 ***Superiority***

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

1 **VI. Claims.**

2 **First Cause of Action:**

3 **Violation of California’s False Advertising Law, Bus. & Prof. Code §§ 17500 &**
4 **17501 et. seq.**

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

6 59. Plaintiff incorporates each and every factual allegation set forth above.

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

9 61. Defendant has violated sections 17500 and 17501 of the Business and
10 Professions Code.

11 62. Defendant has violated, and continues to violate, section 17500 of the
12 Business and Professions Code by disseminating untrue and misleading advertisements to
13 Plaintiff and subclass members.

14 63. As alleged more fully above, Defendant advertises former prices along with
15 discounts. Defendant does this, for example, by crossing out a higher price (*e.g.*, \$2095)
16 and displaying it next to a lower, discounted price. Reasonable consumers would
17 understand prices advertised in strikethrough font from which time-limited discounts are
18 calculated to denote “former” prices, i.e., the prices that Defendant charged before the
19 time-limited discount went into effect.

20 64. The prices advertised by Defendant are not Defendant’s regular prices. In
21 fact, those prices are not Defendant’s regular prices (i.e., the price you usually have to pay
22 to get the Product in question), because there is routinely a heavily-advertised promotion
23 ongoing entitling consumers to a discount. Moreover, for the same reasons, those prices
24 were not the former prices of the Products. Accordingly, Defendant’s statements about
25 the former prices of its Products, and its statements about its discounts from those
26 former prices, were untrue and misleading. In addition, Defendant’s statements that its
27 discounts are “LIMITED TIME ONLY,” or specific to certain time periods (such as
28 President’s Day or Fourth of July) are false and misleading too.

1 65. In addition, Defendant has violated, and continues to violate, section 17501
2 of the Business and Professions Code by advertising former prices that were not the
3 prevailing market price within three months next immediately preceding the advertising.
4 As explained above, Defendant's advertised regular prices, which reasonable consumers
5 would understand to denote former prices, were not the prevailing market prices for the
6 Products within three months preceding publication of the advertisement. And
7 Defendant's former price advertisements do not state clearly, exactly, and conspicuously
8 when, if ever, the former prices prevailed. Defendant's advertisements do not indicate
9 whether or when the purported former prices were offered at all.

10 66. Defendant's misrepresentations were intended to induce reliance, and
11 Plaintiff saw, read, and reasonably relied on the statements when purchasing Tuft &
12 Needle Products. Defendant's misrepresentations were a substantial factor in Plaintiff's
13 purchase decision.

14 67. In addition, subclass-wide reliance can be inferred because Defendant's
15 misrepresentations were material, i.e., a reasonable consumer would consider them
16 important in deciding whether to buy the Tuft & Needle Products.

17 68. Defendant's misrepresentations were a substantial factor and proximate
18 cause in causing damages and losses to Plaintiff and the subclass.

19 69. Plaintiff and the subclass were injured as a direct and proximate result of
20 Defendant's conduct because (a) they would not have purchased Tuft & Needle Products
21 if they had known the truth, and/or (b) they overpaid for the Products because the Tuft
22 & Needle Products were sold at a price premium due to the misrepresentation.

23 **Second Cause of Action:**

24 **Violation of California's Consumer Legal Remedies Act**

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

26 70. Plaintiff incorporates each and every factual allegation set forth above.

27 71. Plaintiff brings this cause of action on behalf of herself and members of the
28 California Subclass.

1 72. Plaintiff and the subclass are “consumers,” as the term is defined by
2 California Civil Code § 1761(d).

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

5 74. The conduct alleged in this Complaint constitutes unfair methods of
6 competition and unfair and deceptive acts and practices for the purpose of the CLRA,
7 and the conduct was undertaken by Defendant in transactions intended to result in, and
8 which did result in, the sale of goods to consumers.

9 75. As alleged more fully above, Defendant made and disseminated untrue and
10 misleading statements of facts in its advertisements to subclass members. Defendant did
11 this by using fake regular prices, i.e., regular prices that are not the prevailing prices, and
12 by advertising fake discounts.

13 76. Defendant violated, and continues to violate, section 1770 of the California
14 Civil Code.

15 77. Defendant violated, and continues to violate, section 1770(a)(5) of the
16 California Civil Code by representing that Products offered for sale have characteristics
17 or benefits that they do not have. Defendant represents that the value of its Products is
18 greater than it actually is by advertising inflated regular prices and fake discounts for
19 Products.

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

24 79. And Defendant violated, and continues to violate section 1770(a)(13) by
25 making false or misleading statements of fact concerning reasons for, existence of, or
26 amounts of, price reductions on its website, including by (1) misrepresenting the regular
27 price of Products on its website, (2) advertising discounts and savings that are
28 exaggerated or nonexistent, (3) misrepresenting that the discounts and savings are

1 unusually large, when in fact they are regularly available (4) misrepresenting the reason
2 for the sale (*e.g.*, “Presidents Day Sale,” when in fact the sale is ongoing and not limited to
3 Presidents Day).

4 80. Defendant’s representations were likely to deceive, and did deceive, Plaintiff
5 and reasonable consumers. Defendant knew, or should have known through the exercise
6 of reasonable care, that these statements were inaccurate and misleading.

7 81. Defendant’s misrepresentations were intended to induce reliance, and
8 Plaintiff saw, read, and reasonably relied on them when purchasing Tuft & Needle
9 Products. Defendant’s misrepresentations were a substantial factor in Plaintiff’s purchase
10 decision.

11 82. In addition, subclass-wide reliance can be inferred because Defendant’s
12 misrepresentations were material, *i.e.*, a reasonable consumer would consider them
13 important in deciding whether to buy the Tuft & Needle Products.

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

16 84. Plaintiff and the subclass were injured as a direct and proximate result of
17 Defendant’s conduct because (a) they would not have purchased Tuft & Needle Products
18 if they had known the discounts and/or regular prices were not real, (b) they overpaid for
19 the Products because the Products were sold at a price premium due to the
20 misrepresentation, and/or (c) they received products with market values lower than the
21 promised market values.

22 85. Accordingly, pursuant to California Civil Code § 1780(a)(2), Ms. Chebul, on
23 behalf of herself and all other members of the subclass, seeks injunctive relief.

24 86. CLRA § 1782 NOTICE. On February 29, 2024, a CLRA demand letter was
25 sent to Defendant’s headquarters and registered agent via certified mail (return receipt
26 requested), that provided notice of Defendant’s violations of the CLRA and demanded
27 that Defendant correct the unlawful, unfair, false and/or deceptive practices alleged here.
28 Defendant does not have a California headquarters. Defendant has not fully corrected

1 the problem for Plaintiff and for each member of the California Subclass within 30 days
2 of receipt. Accordingly, Plaintiff and the California Subclass seek all monetary relief and
3 equitable relief allowed under the CLRA, including reasonable attorneys' fees and
4 punitive damages.

5 87. A CLRA venue declaration is attached.

6 **Third Cause of Action:**

7 **Violation of California's Unfair Competition Law**

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

9 88. Plaintiff incorporates each and every factual allegation set forth above.

10 89. Plaintiff brings this cause of action on behalf of herself and members of the
11 California Subclass.

12 90. Defendant has violated California's Unfair Competition Law (UCL) by
13 engaging in unlawful, fraudulent, and unfair conduct (i.e., violating each of the three
14 prongs of the UCL).

15 ***The Unlawful Prong***

16 91. Defendant engaged in unlawful conduct by violating the CLRA and FAL, as
17 alleged above and incorporated here. In addition, Defendant engaged in unlawful
18 conduct by violating the FTCA. The FTCA prohibits "unfair or deceptive acts or
19 practices in or affecting commerce" and prohibits the dissemination of false
20 advertisements. 15 U.S.C. § 45(a)(1). As the FTC's regulations make clear, Defendant's
21 false pricing schemes violate the FTCA. 16 C.F.R. § 233.1, § 233.2.

22 ***The Deceptive Prong***

23 92. As alleged in detail above, Defendant's representations that its Products
24 were on sale, that the sale was limited in time, that the Products had a specific regular
25 price, and that the customers were receiving discounts were false and misleading.

26 93. Defendant's representations were misleading to Plaintiff and other
27 reasonable consumers.

28

1 94. Plaintiff relied upon Defendant’s misleading representations and omissions,
2 as detailed above.

3 ***The Unfair Prong***

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

7 96. Defendant violated established public policy by violating the CLRA, the
8 FAL, and the FTCA, as alleged above and incorporated here. The unfairness of this
9 practice is tethered to a legislatively declared policy (that of the CLRA, the FAL, and the
10 FTCA).

11 97. The harm to Plaintiff and the subclass greatly outweighs the public utility of
12 Defendant’s conduct. There is no public utility to misrepresenting the price of a
13 consumer product. This injury was not outweighed by any countervailing benefits to
14 consumers or competition. Misleading consumer products only injure healthy
15 competition and harm consumers.

16 98. Plaintiff and the subclass could not have reasonably avoided this injury. As
17 alleged above, Defendant’s representations were deceptive to reasonable consumers like
18 Plaintiff.

19 99. Defendant’s conduct, as alleged above, was immoral, unethical, oppressive,
20 unscrupulous, and substantially injurious to consumers.

21 * * *

22 100. For all prongs, Defendant’s representations were intended to induce
23 reliance, and Plaintiff saw, read, and reasonably relied on them when purchasing Tuft &
24 Needle Products. Defendant’s representations were a substantial factor in Plaintiff’s
25 purchase decision.

26 101. In addition, subclass-wide reliance can be inferred because Defendant’s
27 representations were material, i.e., a reasonable consumer would consider them important
28 in deciding whether to buy Tuft & Needle Products.

1 102. Defendant's representations were a substantial factor and proximate cause
2 in causing damages and losses to Plaintiff and the subclass members.

3 103. Plaintiff and the subclass were injured as a direct and proximate result of
4 Defendant's conduct because (a) they would not have purchased the Tuft & Needle
5 Products if they had known that they were not discounted, and/or (b) they overpaid for
6 the Products because the Products were sold at the regular price and not at a discount.

7 **Fourth Cause of Action:**

8 **Breach of Contract**

9 **(by Plaintiff and the Nationwide Class)**

10 104. Plaintiff incorporates each and every factual allegation set forth above.

11 105. Plaintiff brings this cause of action on behalf of herself and the Nationwide
12 Class. In the alternative, Plaintiff brings this cause of action on behalf of herself and the
13 California Subclass.

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

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

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

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

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

26 111. Defendant breached its contracts with Plaintiff and class members by failing
27 to provide Products that had a regular price, former price, and/or prevailing market value
28

1 equal to the regular price displayed on its website, and by failing to provide the promised
2 discount. Defendant did not provide the discount that it had promised.

3 112. Plaintiff provided Defendant with notice of this breach of contract, by
4 mailing a notice letter to Defendant's headquarters and registered agent on February 29,
5 2024.

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

9 **Fifth Cause of Action:**

10 **Breach of Express Warranty**

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

12 114. Plaintiff incorporates each and every factual allegation set forth above.

13 115. Plaintiff brings this cause of action on behalf of herself and members of the
14 California Subclass.

15 116. Defendant, as the manufacturer, marketer, distributor, supplier, and/or
16 seller of the Tuft & Needle Products, issued material, written warranties by advertising
17 that the Products had a prevailing market value equal to the regular price displayed on
18 Defendant's website. This was an affirmation of fact about the Products (i.e., a
19 representation about the market value) and a promise relating to the goods.

20 117. This warranty was part of the basis of the bargain and Plaintiff and
21 members of the subclass relied on this warranty.

22 118. In fact, the Tuft & Needle Products' stated market value was not the
23 prevailing market value. Thus, the warranty was breached.

24 119. Plaintiff provided Defendant with notice of this breach of warranty, by
25 mailing a notice letter to Defendant's headquarters and registered agent on February 29,
26 2024.

27 120. Plaintiff and the subclass were injured as a direct and proximate result of
28 Defendant's breach, and this breach was a substantial factor in causing harm, because (a)

1 they would not have purchased Tuft & Needle Products if they had known that the
2 warranty was false, or (b) they overpaid for the Products because the Products were sold
3 at a price premium due to the warranty.

4 **Sixth Cause of Action:**

5 **Quasi-Contract/Unjust Enrichment**

6 **(by Plaintiff and the Nationwide Class)**

7 121. Plaintiff incorporates each and every factual allegation in paragraphs 1-42,
8 48-58 above.

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

12 123. As alleged in detail above, Defendant's false and misleading advertising
13 caused Plaintiff and the class to purchase Tuft & Needle Products and to pay a price
14 premium for these Products.

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

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

19 126. Plaintiff and the class seek restitution, and in the alternative, rescission.

20 **Seventh Cause of Action:**

21 **Negligent Misrepresentation**

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

23 127. Plaintiff incorporates each and every factual allegation set forth above.

24 128. Plaintiff brings this cause of action on behalf of herself and members of the
25 California Subclass.

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

1 130. These representations were false.

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

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

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

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

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

17 **Eighth Cause of Action:**

18 **Intentional Misrepresentation**

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

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

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

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

26 139. These representations were false.
27
28

1 140. When Defendant made these misrepresentations, it knew that they were
2 false at the time that it made them and/or acted recklessly in making the
3 misrepresentations.

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

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

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

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

16 **VII. Relief.**

17 145. Plaintiff seeks the following relief for herself and the proposed class:

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

1 **VIII. Demand for Jury Trial.**

2 146. Plaintiff demands the right to a jury trial on all claims so triable.

3
4 Dated: April 3, 2024

Respectfully submitted,

5 By: /s/ Christin Cho

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