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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 ERICA HAMPTON, individually and on
12 behalf of all similarly situated persons,

13 Plaintiff,

14 v.

15 MATTRESS FIRM INC., a Delaware
16 corporation,

17 Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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

7 **I. NATURE OF THE ACTION**

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

11 2. This is a class action lawsuit brought to address Defendant’s misleading and
12 unlawful pricing, sales, and discounting practices on its website www.mattressfirm.com.
13 The products at issue are comprised of all mattresses that have been offered on the website
14 at a sale or discounted price from a higher reference price. Defendant advertises false,
15 misleading, and inflated comparison reference prices to deceive customers into a belief
16 that the sale price is a discounted bargain price.

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

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

1 5. Beyond that, on information and belief, Defendant’s products sold on the
2 website not only have a market value lower than the promised former price, but the market
3 value of the products is also lower than the discounted “sale” price. By using false
4 reference pricing and false limited time sales, Defendant artificially drives up demand for
5 the products, and by extension drives up the price of the products. As a result, consumers
6 received a product worth less than the price paid. To illustrate, assume a company knows
7 a product will sell in the marketplace at \$30. But to increase revenue and capture market
8 share, the company advertises the product as having a “regular” price of \$100 and being
9 on “sale” at 60% off (i.e., \$60 off). Because consumers value products based on the
10 regular price, and a purported limited-time sale conveys additional savings, the company
11 can sell that \$30 product for \$40.

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

15 **II. PARTIES**

16 7. Plaintiff Erica Hampton is a resident of the State of California and County of
17 Ventura. She was present in Ventura County at the time she made her purchase from the
18 website.

19 8. Defendant Mattress Firm is a Delaware corporation. Defendant is an online
20 and brick-and-mortar retailer of home and bedding products, including without limitation:
21 mattresses, mattress toppers, box springs, bed bases, pillows and bedding among other
22 items. Through the website, Defendant sells the products to consumers in California and
23 nationwide. Defendant is headquartered in Texas.

24 **III. JURISDICTION AND VENUE**

25 9. This Court has jurisdiction over this lawsuit under the Class Action Fairness
26 Act, 28 U.S.C. § 1332(d)(2), because this is a proposed class action in which: (i) there are
27 at least 100 class members; (ii) the aggregate amount in controversy exceeds \$5,000,000,
28

1 exclusive of interest and costs; and (iii) at least one putative class member and one
2 Defendant are citizens of different states.

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

8 11. Further, as set forth herein, Defendant has contacts in this district sufficient
9 to subject it to the personal jurisdiction of this district as if this district were a separate
10 state. Defendant continuously and systematically places goods into the stream of
11 commerce for distribution in California, maintains an interactive commercial website,
12 offers to ship products to California, and allows customers in California to order products.
13 Exercising jurisdiction over Defendant is fair, just, and reasonable considering the quality
14 and nature of Defendant's acts that occur in California and which affect interests located
15 in California. Defendant has purposefully availed itself of the privilege of conducting
16 activities in California, and should reasonably anticipate being haled into court in
17 California.

18 **IV. GENERAL ALLEGATIONS**

19 **A. Company Background**

20 12. On the website's About Us page, Defendant describes itself as "Sleep
21 Experts."¹

22 13. Mattress Firm prides itself on "delivering better sleep by matching you with
23 your perfect mattress at the perfect price."² Defendant further describes itself as "What
24
25
26

27 ¹ <https://www.mattressfirm.com/about.html>

28 ² *Id.*

1 started as a few stores has grown into America’s largest specialty mattress store, with more
 2 than 2,400 neighborhood stores in 49 states.”³

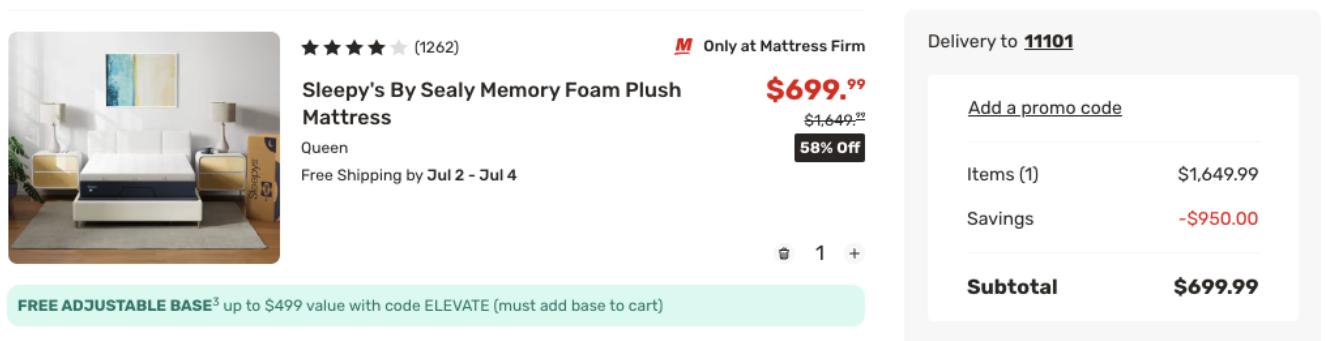
3 14. Defendant, through the website, has sold millions of units of merchandise to
 4 consumers in California and nationwide.

5 **B. Defendant’s False and Deceptive Pricing Scheme**

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

8 15. Defendant’s business model relies on deceiving consumers with false or
 9 misleading sales.

10 16. On any given date, many products on the website are represented as being
 11 discounted from a substantially higher reference price. On individual listing pages, the
 12 supposed markdowns are represented to the consumer by prominently displaying a
 13 “crossed-out” reference price next to the sale price, and “__% Off.” A representative
 14 example is shown below.



17 17. Defendant employs these deceptive tactics to convey to customers that the
 18 product was listed or sold on the website at the reference price, in the recent past and for
 19 a substantial period of time, but is now being listed and sold to the customer at a substantial
 20 discount. In other words, reasonable consumers would understand that the strikethrough
 21 reference price, or the adjacent “__% Off,” each independently convey that the product
 22 was listed or sold *on the website* at the reference price, in the recent past and for a
 23
 24
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28 ³ *Id.*

1 substantial period of time, but is now being listed and sold to the customer at a substantial
2 discount.

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

10 a. Serta Perfect Sleeper Sleep Excellence Medium PillowTop Mattress

11 **Special Deal**



12 **Serta Perfect Sleeper®**
13 **Sleep Excellence™**
14 **Medium PillowTop**
15 **Mattress**

16 143946P

17 **\$799.99** ~~\$1,999.99~~ **60% Off**

Suggested equal payments of \$67 with 12 months special financing. [Learn How](#)

- 18 i. 07/29/2024: \$799.99 (sale price); \$1,999.99 (reference price)
19 ii. 06/22/2024: \$799.99 (sale price); \$1,999.99 (reference price)
20 iii. 05/24/2024: \$799.99 (sale price); \$1,999.99 (reference price)
21 iv. 04/29/2024: \$799.99 (sale price); \$1,999.99 (reference price)
22 v. 03/13/2024: \$799.99 (sale price); \$1,999.99 (reference price)
23 vi. 02/22/2024: \$799.99 (sale price); \$1,999.99 (reference price)

24 b. Sealy Posturepedic Spring Bloom 12” Medium Mattress

25
26
27
28



😊 96% of customers were happy with their purchase.

Sealy Posturepedic® Spring Bloom 12" Medium Mattress

138721P

\$313.99 ~~\$499.99~~

37% off

Suggested equal payments of \$53 with 6 months special financing. [Learn How](#)

- i. 07/29/2024: \$313.99 (sale price); \$499.99 (reference price)
- ii. 06/22/2024: \$349.99 (sale price); \$499.99 (reference price)
- iii. 05/24/2024: \$299.99 (sale price); \$499.99 (reference price)
- iv. 04/29/2024: \$349.99 (sale price); \$499.99 (reference price)
- v. 03/13/2024: \$349.99 (sale price); \$499.99 (reference price)
- vi. 02/22/2024: \$349.99 (sale price); \$499.99 (reference price)

c. Serta Perfect Sleeper Charlotte 2.0 Medium Euro Top Mattress

- i. 06/22/2024: \$499.99 (sale price); \$999.99 (reference price)
- ii. 05/24/2024: \$499.99 (sale price); \$999.99 (reference price)
- iii. 04/29/2024: \$499.99 (sale price); \$999.99 (reference price)
- iv. 03/13/2024: \$699.99 (sale price); \$999.99 (reference price)
- v. 02/22/2024: \$499.99 (sale price); \$999.99 (reference price)

d. Sleepy's Basic Hybrid Mattress



Sleepy's Basic Hybrid Mattress

143803P

\$399.⁹⁹ ~~\$799.⁹⁹~~

50% Off



Delivery

To Check Availability [Enter Your Zip Code](#)

Twin

~~\$799.⁹⁹~~
\$399.⁹⁹

Twin XL

~~\$839.⁹⁹~~
\$419.⁹⁹

Full

~~\$899.⁹⁹~~
\$449.⁹⁹

Queen

~~\$999.⁹⁹~~
\$499.⁹⁹

King

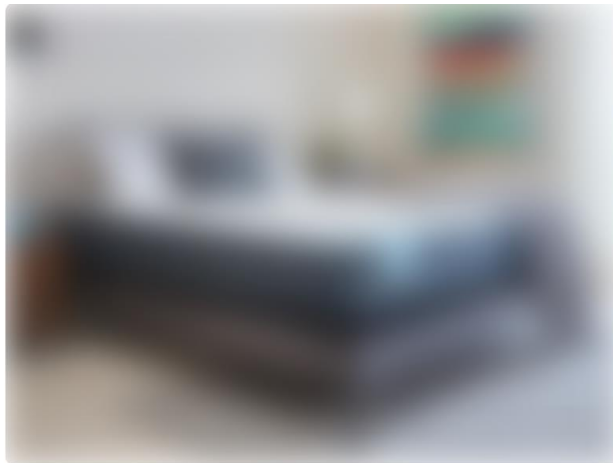
~~\$1,199.⁹⁹~~
\$599.⁹⁹

Cal King

~~\$1,199.⁹⁹~~
\$599.⁹⁹

- i. 06/22/2024: \$399.99 (sale price); \$799.99 (reference price)
- ii. 05/24/2024: \$399.99 (sale price); \$799.99 (reference price)
- iii. 04/29/2024: \$399.99 (sale price); \$799.99 (reference price)
- iv. 03/13/2024: \$599.99 (sale price); \$799.99 (reference price)
- v. 02/22/2024: \$499.99 (sale price); \$799.99 (reference price)
- vi. 01/17/2024: \$399.99 (sale price); \$799.99 (reference price)

e. Sleepy's Basic Innerspring Firm Mattress



Sleepy's Basic Innerspring Firm Mattress

126879P

\$159.⁹⁹ ~~\$249.⁹⁹~~

27% Off



Delivery

To Check Availability [Enter Your Zip Code](#)

Twin

~~\$249.⁹⁹~~
\$159.⁹⁹

Full

~~\$249.⁹⁹~~
\$179.⁹⁹

Full XL

~~\$269.⁹⁹~~
\$209.⁹⁹

Queen

~~\$269.⁹⁹~~
\$209.⁹⁹

King

~~\$259.⁹⁹~~
\$259.⁹⁹

- i. 06/22/2024: \$159.99 (sale price); \$219.99 (reference price)
- ii. 05/24/2024: \$149.99 (sale price); \$219.99 (reference price)
- iii. 04/29/2024: \$159.99 (sale price); \$219.99 (reference price)
- iv. 03/13/2024: \$159.99 (sale price); \$219.99 (reference price)
- v. 03/03/2024: \$159.99 (sale price); \$219.99 (reference price)
- vi. 02/22/2024: \$159.99 (sale price); \$219.99 (reference price)
- vii. 02/01/2024: \$159.99 (sale price); \$219.99 (reference price)

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

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

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

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

22. On information and belief, the reference prices are unsubstantiated and based on an undisclosed formula, or are outdated, or are cherrypicked and thus not representative of the prevailing market prices. On information and belief, Defendant does not independently verify that the reference prices are the prevailing market prices at which the products are listed for sale by other retailers for a substantial period of time and in substantial quantities. And on information and belief, Defendant does not update the references prices on a daily basis.

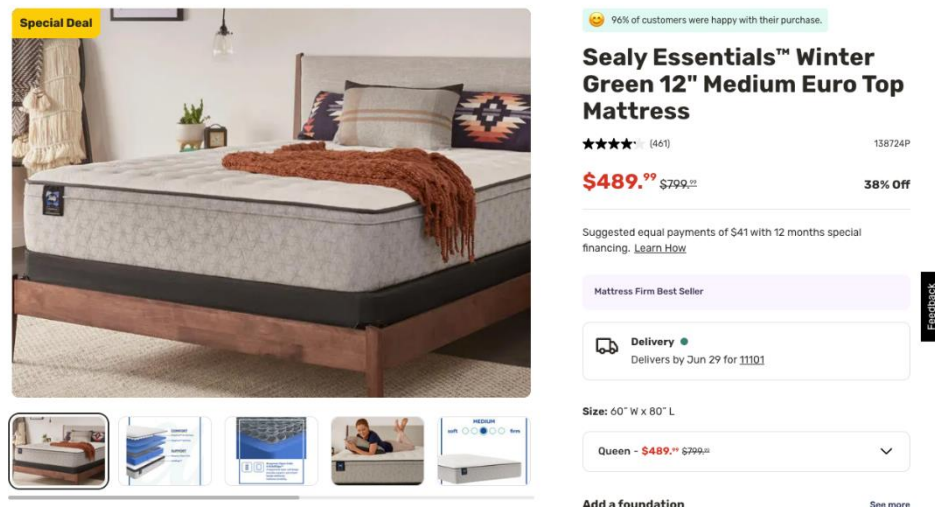
23. On information and belief, Defendant’s advertised reference prices are higher than the prevailing market prices for the identical products. Because Defendant consistently sells the products at issue at prices significantly (i.e., 25% or more) lower than its advertised former prices, there is no reasonable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

24. Further, many of the products are sold exclusively at Mattress Firm.

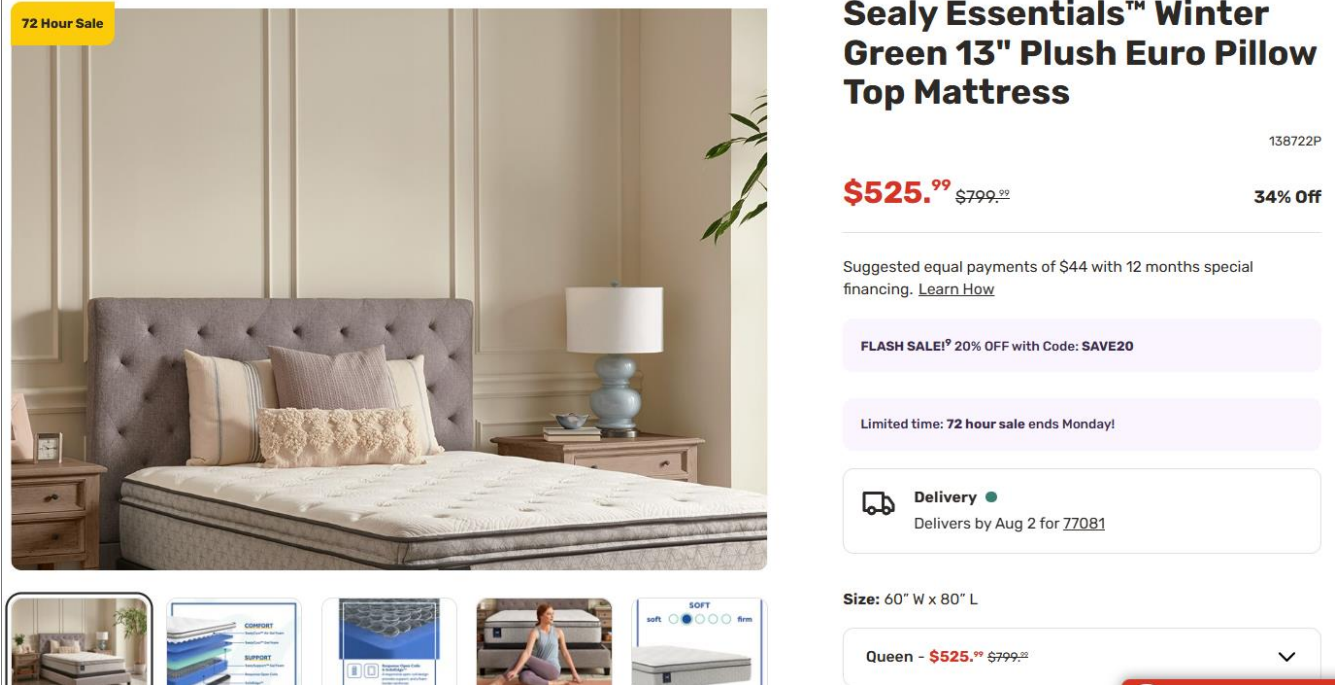
C. Plaintiff’s Purchase from the Website

25. On June 17, 2024, Plaintiff visited the website and purchased a Sealy Essentials Winter Green 13” Plush Euro Pillow Top Mattress (Queen) from Defendant. Based on and consistent with archived copies of the website, Plaintiff saw on the listing page a strikethrough regular price of \$799.99, a sale price of \$545.99, and “30% off” or similar statement. She then proceeded to purchase the product for \$545.99 with the understanding that she was receiving all advertised discounts off the former and regular price charged by Mattress Firm. The product was shipped to her address in Ventura County, California.

26. A screenshot of the product listing dated June 27, 2024, is below. As of that date, the product is still on sale, now for \$489.99 with a strikethrough reference price of \$799.99 for “38% Off.”



1 27. A screenshot of the product listing dated July 29, 2024, is below. As of that
 2 date, the product is still on sale, now for \$525.99 with a strikethrough reference price of
 3 \$799.99 for “34% Off.”

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16 28. Based on archived copies of the website, the product was regularly offered
 17 on the website at a discounted price.

- 18 a. 06/22/2024 - \$545.99 (sale price) / \$799.99 (regular price)
- 19 b. 04/16/2024 - \$545.99 (sale price) / \$799.99 (regular price)
- 20 c. 02/24/2024 - \$545.99 (sale price) / \$799.99 (regular price)

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

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

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

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

7 33. Plaintiff continues to be interested in purchasing home products and
8 furnishing that are offered by Defendant at discounted prices, but she will be unable to
9 trust and rely on Defendant’s advertising, and so will not purchase the products from
10 MattressFirm.com. Absent injunctive relief, Plaintiff cannot know whether Defendant’s
11 former and regular prices represent honest prices at which the products were listed for sale
12 on the website, on a regular basis for a reasonably substantial period of time, or if
13 Defendant’s sales are perpetual and discounts are fictitious.

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

16 34. Academic studies support the effectiveness of Defendant’s deceptive pricing
17 scheme.

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

25
26
27 ⁴ Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative*
or Deceptive?, 11 J. Pub. Pol’y & Mktg. 52, 55 (Spring 1992).

28 ⁵ *Id.* at 56 (emphasis added).

1 36. “[D]ecades of research support the conclusion that advertised reference
2 prices do indeed enhance consumers’ perceptions of the value of the deal.”⁶ According to
3 academic studies, “[c]onsumers are influenced by comparison prices even when the stated
4 reference prices are implausibly high.”⁷

5 37. Another academic journal explains that “[r]eference price ads strongly
6 influence consumer perceptions of value Consumers often make purchases not based
7 on price but because a retailer assures them that a deal is a good bargain. This occurs when
8 . . . the retailer highlights the relative savings compared with the prices of competitors . .
9 . [T]hese bargain assurances (BAs) change consumers’ purchasing behavior and may
10 deceive consumers.”⁸

11 38. “[R]esearch has shown that retailer-supplied reference prices clearly enhance
12 buyers’ perceptions of value” and “have a significant impact on consumer purchasing
13 decisions.”⁹

14 39. “[R]eference prices are important cues consumers use when making the
15 decision concerning how much they are willing to pay for the product.”¹⁰ This study also
16 concluded that “consumers are likely to be misled into a willingness to pay a higher price
17 for a product simply because the product has a higher reference price.”¹¹

18 40. Accordingly, research confirms that deceptive advertising through false
19 reference pricing is intended to, and does, influence consumer behavior by artificially
20

21 ⁶ Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Believe It*
22 *Or Not*, J. of Consumer Affairs, Vol. 36, No. 2, at 287 (Winter 2002).

23 ⁷ *Id.*

24 ⁸ Joan Lindsey-Mullikin & Ross D. Petty, *Marketing Tactics Discouraging Price*
Search: Deception and Competition, 64 J. of Bus. Research 67 (January 2011).

25 ⁹ Praveen K. Kopalle & Joan Lindsey-Mullikin, *The Impact of External Reference*
Price On Consumer Price Expectations, 79 J. of Retailing 225 (2003).

26 ¹⁰ Jerry B. Gotlieb & Cyndy Thomas Fitzgerald, *An Investigation Into the Effects*
27 *of Advertised Reference Prices On the Price Consumers Are Willing To Pay For the*
Product, 6 J. of App’d Bus. Res. 1 (1990).

28 ¹¹ *Id.*

1 inflating consumer perceptions of an item’s value and causing consumers to spend money
2 they otherwise would not have, purchase items they otherwise would not have, and/or
3 purchase products from a specific retailer.

4 **E. Consumers Suffered Economic Harm**

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

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

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

20 44. Again, an example illustrates the point. Assume a company knows a product
21 will sell in the marketplace at \$30. But to increase revenue, the company advertises the
22 product as having a “regular” price of \$100 and being on “sale” at 60% off (i.e., \$60 off).
23 Because consumers value products based on the regular price, and a sale conveys
24 additional savings, the company can sell that \$30 product for \$40. Defendant has done so.

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

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

6 46. Pursuant to 16 C.F.R. § 233.1, entitled Former Price Comparisons:

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

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

20 (c) The following is an example of a price comparison based on a fictitious former
21 price. John Doe is a retailer of Brand X fountain pens, which cost him \$5 each. His
22 usual markup is 50 percent over cost; that is, his regular retail price is \$7.50. In
23 order subsequently to offer an unusual “bargain,” Doe begins offering Brand X at
24 \$10 per pen. He realizes that he will be able to sell no, or very few, pens at this
25 inflated price. But he doesn’t care, for he maintains that price for only a few days.
26 Then he “cuts” the price to its usual level—\$7.50—and advertises: “Terrific
Bargain: X Pens, Were \$10, Now Only \$7.50!” *This is obviously a false claim.* The
advertised “bargain” is not genuine.

27 (d) Other illustrations of fictitious price comparisons could be given. An advertiser
28 might use a price at which he *never offered the article at all*; he might feature a

1 price which was *not used in the regular course of business*, or which was *not used*
2 *in the recent past* but at some *remote period in the past*, without making disclosure
3 of that fact; he might use a price that was not openly offered to the public, or that
4 was *not maintained for a reasonable length of time*, but was immediately reduced.

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

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

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

18
19 [Retailers] should not represent that they are selling at “factory” prices when they
20 are not selling at the prices paid by those purchasing directly from the manufacturer.

21 ...

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

1 **G. Class Action Allegations**

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

5 **California Class:**

6 All persons in California who purchased one or more mattresses from
7 www.MattressFirm.com, during the Class Period, at a discount from a higher
8 reference price.

9 50. The California Class is collectively referred to as the “Class.” Excluded from
10 the Class are the Defendant, the officers and directors of the Defendant at all relevant
11 times, members of their immediate families and their legal representatives, heirs,
12 successors or assigns and any entity in which either Defendant has or had a controlling
13 interest. Also excluded from the Class are persons or entities that purchased products from
14 Defendant for purposes of resale.

15 51. The “Class Period” is the time period beginning on the date established by
16 the Court’s determination of any applicable statute of limitations, after consideration of
17 any tolling, discovery, concealment, and accrual issues, and ending on the date of entry of
18 judgment.¹²

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

23 53. **Numerosity.** The Class is so numerous that joinder of all members in one
24 action is impracticable. The exact number and identities of the members of the Class is
25 unknown to Plaintiff at this time and can only be ascertained through appropriate
26

27 ¹² The Class Period begins at minimum 4 years from the date of filing of this action,
28 but based on tolling, may extend beyond that date.

1 discovery, but on information and belief, Plaintiff alleges that there are in excess of 1,000
2 members of the Class.

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

6 55. **Adequacy of Representation.** Plaintiff is an adequate representative of the
7 Class and will fairly and adequately protect the interests of the Class. Plaintiff has retained
8 attorneys who are experienced in the handling of complex litigation and class actions, and
9 Plaintiff and her counsel intend to diligently prosecute this action.

10 56. **Existence and Predominance of Common Questions of Law or Fact.**
11 Common questions of law and fact exist as to all members of the Class that predominate
12 over any questions affecting only individual members of the Class. These common legal
13 and factual questions, which do not vary among members of the Class, and which may be
14 determined without reference to the individual circumstances of any member of the Class,
15 include, but are not limited to, the following:

- 16 a. Whether, during the Class Period, Defendant advertised false reference prices
17 on products offered on the website.
- 18 b. Whether, during the Class Period, Defendant advertised price discounts from
19 false reference prices on products offered on the website.
- 20 c. Whether the products listed on Defendant’s website during the Class Period
21 were offered at their reference prices for any reasonably substantial period of
22 time prior to being offered at prices that were discounted from their reference
23 prices.
- 24 d. Whether Defendant’s deceptive pricing scheme using false reference prices
25 constitute an “unlawful,” “unfair,” or “fraudulent” business practice in
26 violation of the California Unfair Competition Law, Cal. Bus & Prof. Code §
27 17200, et seq.

- e. Whether Defendant's deceptive pricing scheme using false reference prices constitutes false advertising in violation of the California False Advertising Law under Business & Professions Code § 17500, et seq.
- f. Whether Defendant's use of false reference prices on products offered on their website during the Class Period was material.
- g. Whether Defendant had a duty to conspicuously disclose to customers that the reference prices were false former/regular prices.
- h. Whether the members of the Class are entitled to damages and/or restitution.
- i. Whether injunctive relief is appropriate and necessary to enjoin Defendant from continuing to engage in false or misleading advertising.
- j. Whether Defendant's conduct was undertaken with conscious disregard of the rights of the members of the Class and was done with fraud, oppression, and/or malice.

57. **Superiority.** A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all members of the Class is impracticable. Requiring each individual class member to file an individual lawsuit would unreasonably consume the amounts that may be recovered. Even if every member of the Class could afford individual litigation, the adjudication of at least tens of thousands of identical claims would be unduly burdensome to the courts. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented herein, presents no management difficulties, conserves the resources of the parties and of the court system, and protects the rights of the members of the Class. Plaintiff anticipates no difficulty in the management of this action as a class action. The prosecution of separate actions by individual members of the Class may create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other

1 members of the Class who are not parties to such adjudications, or that would substantially
2 impair or impede the ability of such non-party Class members to protect their interests.

3 58. **Substantial Similarity.** The products at issue in the action are substantially
4 similar in all material respects. Namely, the products were all advertised with a false
5 reference price, advertised with a strikethrough reference price, and advertised with a false
6 sale price. The products are also all sold by Defendant on the website and fall under the
7 umbrella of home goods.

8 **V. TOLLING OF THE STATUTE OF LIMITATIONS AND DELAYED**
9 **DISCOVERY**

10 59. All applicable statutes of limitations have been tolled by the delayed
11 discovery doctrine. Plaintiff and Class members could not have reasonably discovered
12 Defendant's practice of running perpetual and/or extended sales, based on deceptive
13 reference prices and deceptive sale prices, at any time prior to commencing this class
14 action litigation.

15 60. A reasonable consumer viewing the website on multiple occasions would
16 simply believe that a product is on sale for the time period represented on the website.
17 Short of visiting and checking the website for months continuously, a reasonable consumer
18 would not suspect that Defendant's sales and pricing practices were false and misleading.
19 Nor would a reasonable consumer be able to ascertain the market value of the products
20 being sold absent extensive investigation.

21 61. Plaintiff did not learn of Defendant's deceptive practices alleged herein until
22 commencing this action.

23 62. As a result, any and all applicable statutes of limitations otherwise applicable
24 to the allegations herein have been tolled.

25 **FIRST CAUSE OF ACTION**

26 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW (CAL. BUS. &**

27 **PROF. CODE § 17200, et seq.)**

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

1 63. Plaintiff restates the preceding allegations as if set forth herein.

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

6 ***Fraudulent***

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

9 66. Reasonable consumers are likely to be deceived by Defendant’s conduct as
10 alleged above. Defendant affirmatively misrepresented the reference prices of products
11 which, in turn, misled and deceived consumers into believing that they were buying
12 products at substantially discounted prices. Defendant’s deceptive marketing gave
13 consumers the false impression that its products were regularly listed or sold on the
14 website for a substantially higher price.

15 67. Defendant’s representations that its products were on sale, that the sale was
16 limited in time, that the products had a specific former and regular price, and that
17 consumers were receiving discounts, were false and misleading.

18 68. Defendant had a duty to disclose the truth about its pricing deception,
19 including that the reference prices advertised on its website were not, in fact, prices at
20 which Defendant’s items were listed or sold on the website in the recent past for a
21 reasonably substantial period of time, but in truth, the products never (or rarely) were
22 offered or sold at the reference prices. Reasonable consumers were likely to be deceived
23 by this material omission.

24 69. Defendant’s conduct was and continues to be fraudulent because it has the
25 effect of deceiving consumers into believing they are receiving a product that is worth
26 more than it actually is, by presenting a fake sale price.

27 70. Defendant’s representations were materially misleading to Plaintiff and other
28 reasonable consumers. Consumers are heavily influenced by price, including significant

1 price reductions of purported limited duration, as employed by Defendant’s high-pressure
2 sales tactics.

3 71. Plaintiff relied on Defendant’s misleading representations and omissions, as
4 detailed above, believing that she was receiving a genuine discount of limited duration
5 from a prevailing and genuine regular and former price.

6 72. Absent Defendant’s misrepresentations, Plaintiff and the Class would not
7 have purchased the items they purchased from Defendant, or, at minimum, they would not
8 have paid as much for the items as they ultimately did. Plaintiff and the Class’s reliance
9 was a substantial factor in causing them harm.

10 73. Had the omitted information been disclosed, Plaintiff would have been aware
11 of it and reasonably would have behaved differently. Among other things, Plaintiff would
12 not have purchased the items she purchased from Defendant, or, at minimum, would not
13 have paid as much for the items as she did.

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

16 ***Unfairness***

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

21 76. Defendant’s deceptive marketing gave consumers the false impression that
22 its products were regularly listed or sold on the website for a substantially higher price in
23 the recent past than they were and, thus, led to the false impression that Defendant’s
24 products were worth more than they were.

25 77. Defendant’s conduct was and continues to be of no benefit to reasonable
26 consumers. It is misleading, unfair, unlawful, and is injurious to consumers. It is also
27 against public policy, as it harms fair competition. For example, the federal Lanham Act
28 includes prohibitions on “commercial advertising or promotion” that “misrepresents the

1 nature, characteristics, qualities, or geographic origin of his or her or another person's
2 goods, services, or commercial activities." 41 U.S.C. § 1125(a). Similarly, the FTCA and
3 implementing regulations prohibit advertising a former price "for the purpose of
4 establishing a fictitious [] price on which a deceptive comparison might be based" (16
5 C.F.R. § 233.1) and prohibit "offer[ing] an advance sale under circumstances where they
6 do not in good faith expect to increase the price at a later date" (16 C.F.R. § 233.5).
7 Defendant is siphoning sales away from sellers who compete fairly on price and do not
8 promote fake former prices and fake sales of limited duration. Further, there is no benefit
9 to consumers who pay a sale price that is actually a regular price.

10 78. The harm to Plaintiff and members of the California Class outweighs the
11 utility of Defendant's practices. There were reasonably available alternatives to further
12 Defendant's legitimate business interests, other than the unfair conduct described herein.

13 79. As a result of Defendant's unfair business acts and practices, Defendant has
14 and continues to unfairly obtain money from Plaintiff and members of the proposed Class.

15 ***Unlawful***

16 80. A cause of action may be brought under the "unlawful" prong of the UCL if
17 a practice violates another law. Such action borrows violations of other laws and treats
18 these violations as unlawful practices independently actionable under the UCL.

19 81. By engaging in false advertising, as well as the false, deceptive, and
20 misleading conduct alleged above, Defendant engaged in unlawful business acts and
21 practices in violation of the UCL, including violations of state and federal laws and
22 regulations. Specifically, as detailed herein, Defendant violated 16 C.F.R. §§ 233.1 and
23 233.5, and California Business & Professions Code sections 17501.

24 * * *

25 82. In the alternative to those claims seeking remedies at law, Plaintiff and class
26 members allege that there is no plain, adequate, and complete remedy that exists at law to
27 address Defendant's unlawful and unfair business practices. The legal remedies available
28 to Plaintiff are inadequate because they are not "equally prompt and certain and in other

1 ways efficient” as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214
2 (1937); *see also United States v. Bluitt*, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct. 6, 1992)
3 (“The mere existence’ of a possible legal remedy is not sufficient to warrant denial of
4 equitable relief.”); *Quist v. Empire Water Co.*, 2014 Cal. 646, 643 (1928) (“The mere fact
5 that there may be a remedy at law does not oust the jurisdiction of a court of equity. To
6 have this effect, the remedy must also be speedy, adequate, and efficacious to the end in
7 view ... It must reach the whole mischief and secure the whole right of the party in a
8 perfect manner at the present time and not in the future.”). For example, equitable claims
9 may be tried by the court, whereas legal claims are tried by jury, and the need for a jury
10 trial may result in delay and additional expense. Additionally, unlike damages, the Court’s
11 discretion in fashioning equitable relief is very broad and can be awarded in situations
12 where the entitlement to damages may prove difficult. *Cortez v. Purolator Air Filtration*
13 *Products Co.*, 23 Cal.4th 163, 177-180 (2000) (restitution under the UCL can be awarded
14 “even absent individualized proof that the claimant lacked knowledge of the overcharge
15 when the transaction occurred.”). Thus, restitution would allow recovery even when
16 normal consideration associated with damages would not. *See, e.g., Fladeboe v. Am. Isuzu*
17 *Motors Inc.*, 150 Cal. App. 4th 42, 68 (2007) (noting that restitution is available even in
18 situations where damages may not be available). Furthermore, the standard, showing, and
19 necessary elements for a violation of the UCL “unlawful” and “unfair” prongs are different
20 from those that govern legal claims.

21 83. Plaintiff, on behalf of herself and the members of the Class, seeks restitution
22 and restitutionary disgorgement of all moneys received by Defendant through the conduct
23 described above.

24 84. Plaintiff, on behalf of herself and the members of the Class, seeks an
25 injunction from this Court prohibiting Defendant from engaging in the patterns and
26 practices described herein, including putting a stop to the deceptive advertisements and
27 false reference prices in connection with the sale of products on the website. Plaintiff and
28

1 class members are entitled to injunctive relief. On information and belief, the
2 dissemination of Defendant’s false and misleading advertising is ongoing.

3 **SECOND CAUSE OF ACTION**

4 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW, CAL. BUS. &**
5 **PROF. CODE § 17500, et seq.**

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

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

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

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

18
19 For the purpose of this article the worth or value of any thing advertised is the
20 prevailing market price, wholesale if the offer is at wholesale, retail if the offer is at
21 retail, at the time of publication of such advertisement in the locality wherein the
advertisement is published.

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

26 88. As used in Cal Bus. & Prof. Code § 17501:

- 27 • The term “prevailing market price” refers to the “retail [price] if the offer is
28 at retail.” *Id.*

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

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

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

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

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

28 93. Defendant’s deceptive marketing practice gave consumers the false
 impression that their products were regularly offered and sold for a substantially higher

1 price in the recent past than they were and, thus, led to the false impression that
2 Defendant's products were worth more than they were.

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

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

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

13 97. In the alternative to those claims seeking remedies at law, Plaintiff and Class
14 members allege that there is no plain, adequate, and complete remedy that exists at law to
15 address Defendant's unlawful and unfair business practices. The legal remedies available
16 to Plaintiff are inadequate because they are not "equally prompt and certain and in other
17 ways efficient" as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214
18 (1937); *see also United States v. Bluitt*, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct. 6, 1992)
19 ("The mere existence' of a possible legal remedy is not sufficient to warrant denial of
20 equitable relief."); *Quist v. Empire Water Co.*, 2014 Cal. 646, 643 (1928) ("The mere fact
21 that there may be a remedy at law does not oust the jurisdiction of a court of equity. To
22 have this effect, the remedy must also be speedy, adequate, and efficacious to the end in
23 view ... It must reach the whole mischief and secure the whole right of the party in a
24 perfect manner at the present time and not in the future."). For example, equitable claims
25 may be tried by the court, whereas legal claims are tried by jury, and the need for a jury
26 trial may result in delay and additional expense. Additionally, unlike damages, the Court's
27 discretion in fashioning equitable relief is very broad and can be awarded in situations
28 where the entitlement to damages may prove difficult. *Cortez v. Purolator Air Filtration*

1 *Products Co.*, 23 Cal.4th 163, 177-180 (2000) (restitution under the UCL can be awarded
2 “even absent individualized proof that the claimant lacked knowledge of the overcharge
3 when the transaction occurred.”). Thus, restitution would allow recovery even when
4 normal consideration associated with damages would not. *See, e.g., Fladeboe v. Am. Isuzu*
5 *Motors Inc.*, 150 Cal. App. 4th 42, 68 (2007) (noting that restitution is available even in
6 situations where damages may not be available). Furthermore, the standard, showing, and
7 necessary elements for a violation of the FAL under Cal Bus. & Prof. Code § 17501 are
8 different from those that govern legal claims.

9 **THIRD CAUSE OF ACTION**

10 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**
11 **CAL. CIV. CODE § 1750, et seq.**

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

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

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

19 100. Plaintiff and each member of the Class are “consumers” as defined by
20 California Civil Code section 1761(d). Defendant’s sale of products on the website to
21 Plaintiff and the Class were “transactions” within the meaning of California Civil Code
22 section 1761(e). The products purchased by Plaintiff and the class are “goods” within the
23 meaning of California Civil Code section 1761(a).

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

28

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

9 102. Regarding section 1770(a)(13), Defendant made false or misleading
10 statements of fact concerning the “existence of” and the “amounts of price reductions”
11 because (a) no true price reductions existed in that Defendant’s merchandise was rarely, if
12 ever, offered for sale and/or sold *on the website* at the higher reference prices, let alone on
13 a regular basis for a reasonably substantial period of time, (b) the reference prices
14 Defendant advertised in connection with its products are not prevailing market prices
15 because, on information and belief, the products were not sold elsewhere at the reference
16 prices for a reasonably substantial period of time, and (c) Defendant falsely represents the
17 products as on sale for limited time when in truth a new substantially equivalent sale is
18 promptly instituted after the expiration of an existing sale.

19 103. Regarding section 1770(a)(9), (7), and (5), Defendant advertised and
20 represented products on the website with the “intent not to sell” them as advertised and
21 misrepresenting product characteristics and standard because, as explained herein, (a) the
22 false reference prices advertised in connection with products offered on the website misled
23 and continue to mislead customers into believing (i) the merchandise was previously
24 offered for sale and/or sold *on the website* at the higher reference prices on a regular basis
25 for a reasonably substantial period of time, and (ii) were valued in the market at the
26 advertised “regular” price, and (b) Defendant falsely represents the products as on sale for
27 limited time when in truth a new substantially equivalent sale is promptly instituted after
28 the expiration of an existing sale.

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

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

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

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

24 **FOURTH CAUSE OF ACTION**

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

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

27 108. Plaintiff restates the preceding allegations as if set forth herein.

28 109. Plaintiff pleads this claim under California law.

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

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

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

21 113. Defendant's representations were made with the intent that Plaintiff and the
22 Class rely on the false representations and spend money they otherwise would not have
23 spent, purchase items they otherwise would not have purchased, and/or spend more money
24 for an item than they otherwise would have absent the deceptive marketing scheme.

25 114. Defendant's conduct was made with the intent to maximize its profits at the
26 detriment of reasonable consumers.

27 115. Plaintiff and the Class reasonably relied on Defendant's representations.
28 Absent Defendant's misrepresentations, Plaintiff and the Class would not have purchased

1 the items they purchased from Defendant, or, at the very least, they would not have paid
2 as much for the items as they ultimately did. Plaintiff and the Class's reliance was a
3 substantial factor in causing them harm.

4 116. Had the omitted information been disclosed, Plaintiff and the Class
5 reasonably would have behaved differently. Among other things, they would not have
6 purchased the items they purchased from Defendant or, at the very least, would not have
7 paid as much for the items as they ultimately did.

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

10 118. Plaintiff and the Class are also entitled to punitive or exemplary damages.
11 Defendant, through its senior executives and officers, undertook the illegal acts
12 intentionally or with conscious disregard of the rights of Plaintiff and the Class, and did
13 so with fraud, malice, and/or oppression. Based on the allegations above, Defendant's
14 actions were fraudulent because Defendant intended to and did deceive and injure Plaintiff
15 and the Class. Based on the allegations above, Defendant's conduct was made with malice
16 because Defendant acted with the intent to and did cause injury to Plaintiff and the Class,
17 and because Defendant willfully and knowingly disregarded the rights of Plaintiff and the
18 Class.

19 **FIFTH CAUSE OF ACTION**

20 **UNJUST ENRICHMENT/QUASI-CONTRACT**

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

22 119. Plaintiff restates the preceding allegations as if set forth herein.

23 120. Plaintiff pleads this claim under California law and in the alternative to her
24 remaining claims.

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

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

4 123. California law requires disgorgement of unjustly earned profits regardless of
5 whether a defendant's actions caused a plaintiff to directly expend his or her own financial
6 resources or whether a defendant's actions directly caused the plaintiff's property to
7 become less valuable.

8 124. Under California law, a stake in unjustly earned profits exists regardless of
9 the plaintiff's actual loss.

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

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

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

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

25 **SIXTH CAUSE OF ACTION**

26 **NEGLIGENT MISREPRESENTATION**

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

28 129. Plaintiff restates the preceding allegations as if set forth herein.

1 130. Plaintiff pleads this claim under California law.

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

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

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

23 134. Defendant had no good faith or reasonable basis to believe that its
24 representations were true when made.

25 135. Defendant's representations were made with the intent that Plaintiff and the
26 Class rely on the false representations and spend money they otherwise would not have
27 spent, purchase items they otherwise would not have purchased, and/or spend more money
28 for an item than they otherwise would have absent the deceptive marketing scheme.

1 136. Defendant engaged in this fraud to the Plaintiff and the Class's detriment to
2 increase Defendant's own sales and profits.

3 137. Plaintiff and the Class reasonably relied on Defendant's representations.
4 Absent Defendant's misrepresentations, Plaintiff and the Class would not have purchased
5 the items they purchased from Defendant, or, at the very least, they would not have paid
6 as much for the items as they ultimately did. Plaintiff and the Class's reliance was a
7 substantial factor in causing them harm.

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

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

14 **PRAYER FOR RELIEF**

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

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

- e. An award of nominal, punitive, and statutory damages where available;
- f. Reasonable expenses and attorneys' fees;
- g. Pre- and post-judgment interest, to the extent allowable; and
- h. For such further relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

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

Dated: August 1, 2024

MILBERG COLEMAN BRYSON
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By: /s/ Alexander E. Wolf

ALEXANDER E. WOLF
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