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**UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

SARA ADRA and WAYNE
 MITCHELL, individually and on
 behalf of all others similarly situated,

Plaintiffs,

v.

PILLOW CUBE, INC. and JAY
 DAVIS,

Defendants.

Case No.: '24CV2313 JO BJC

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs Sara Adra and Wayne Mitchell (“Plaintiffs”) bring this action against
2 Pillow Cube, Inc. (“Pillow Cube”) and Jay Davis, CEO of Pillow Cube (“Davis”)
3 (collectively “Defendants”), individually and on behalf of all others similarly situated,
4 and allege upon personal knowledge as to Plaintiffs’ acts and experiences, and, as to
5 all other matters, upon information and belief, including investigation conducted by
6 Plaintiff’s attorneys as follows:

7 **NATURE OF THE ACTION**

8 1. Discounts of products benefit both sellers and their customers—when
9 they are legitimate discounts. However, “fake sales” are deceptive and illegal.

10 2. This is a consumer protection action that seeks to remedy Defendants’
11 unlawful and deceptive business practices with respect to misleading sale promotions
12 advertised on Pillow Cube’s website as limited time discounted offers that, in reality,
13 never end.

14 3. To the detriment of consumers, as explained by the Ninth Circuit, sellers
15 like Defendants are “well aware of consumers’ susceptibility to a bargain, [and]
16 therefore have an incentive to lie to their customers.” *Hinojos v. Kohl’s Corp.*, 718
17 F.3d 1098, 1101 (9th Cir. 2013).

18 4. Advertised “sale” prices are important to consumers as they are more
19 likely to purchase an item if they know they are getting a good deal. Moreover, if
20 consumers think a sale will end soon, they are more likely to buy now, rather than
21 wait, comparison shop, and/or buy a different product.

22 5. False reference pricing occurs when a seller fabricates a false “original”
23 price for a product and then offers that product at a substantially lower price under
24 the guise of a sale. The resulting artificial price disparity misleads consumers into
25 believing the product they are buying has a higher market value, and it induces them
26 into purchasing the product. This practice artificially inflates the true market price for
27 these products by raising consumers’ internal reference price and in turn the value
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1 consumers ascribe to these products (i.e., demand). Consequently, false reference
2 pricing schemes enable retailers, like Pillow Cube, to sell products above their true
3 market price and value—and consumers are left to pay the price.

4 6. Consumers that are presented with discounts are substantially more likely
5 to make the purchase. For example, “two-thirds of consumers have made a purchase
6 they weren’t originally planning to make solely based on finding a coupon or
7 discount,” while “80% [of consumers] said they feel encouraged to make a first-time
8 purchase with a brand that is new to them if they found an offer or discount.”¹

9 7. Here, Defendants sell Pillow Cube pillows (the “Products”) on the Pillow
10 Cube website and at other online retailers at a supposed discount, when in fact no
11 discount exists at all. This is a false reference pricing scheme that violates California
12 and federal law.

13 8. As the Federal Trade Commission advises in its *Guides Against*
14 *Deceptive Pricing*, it is deceptive to make up an “artificial, inflated price ... for the
15 purpose of enabling the subsequent offer of a large reduction” of that price. 16 C.F.R.
16 § 233.1. As a result, false sales violate California’s general prohibition on unfair and
17 deceptive business practices. See Cal. Bus. Prof. Code § 17200.

18 9. Additionally, California law provides that “No price shall be advertised
19 as a former price unless the alleged former price was the prevailing market price ...
20 within three months next immediately preceding” the advertising. Cal. Bus. & Prof.
21 Code § 17501.

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24 ¹ RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases
25 Online, Especially Among Millennial Buyers (prnewswire.com).
26 [https://www.prnewswire.com/news-releases/retailmenot-survey-deals-and-](https://www.prnewswire.com/news-releases/retailmenot-survey-deals-and-promotional-offers-drive-incremental-purchases-online-especially-among-millennial-buyers-300635775.html#:~:text=SocialBoost-)
27 [promotional-offers-drive-incremental-purchases-online-especially-among-](https://www.prnewswire.com/news-releases/retailmenot-survey-deals-and-promotional-offers-drive-incremental-purchases-online-especially-among-millennial-buyers-300635775.html#:~:text=SocialBoost-)
28 [millennial-buyers-300635775.html#:~:text=SocialBoost-](https://www.prnewswire.com/news-releases/retailmenot-survey-deals-and-promotional-offers-drive-incremental-purchases-online-especially-among-millennial-buyers-300635775.html#:~:text=SocialBoost-)
[,RetailMeNot%20Survey%3A%20Deals%20and%20Promotional%20Offers%20Dr](https://www.prnewswire.com/news-releases/retailmenot-survey-deals-and-promotional-offers-drive-incremental-purchases-online-especially-among-millennial-buyers-300635775.html#:~:text=SocialBoost-)
[ive%20Incremental%20Purchases%20Online,finding%20a%20coupon%20or%20di](https://www.prnewswire.com/news-releases/retailmenot-survey-deals-and-promotional-offers-drive-incremental-purchases-online-especially-among-millennial-buyers-300635775.html#:~:text=SocialBoost-)
[scout.](https://www.prnewswire.com/news-releases/retailmenot-survey-deals-and-promotional-offers-drive-incremental-purchases-online-especially-among-millennial-buyers-300635775.html#:~:text=SocialBoost-)

1 10. Through their false and misleading pricing scheme, marketing, and
2 advertising, Defendants violated, and continue to violate, California’s Unfair
3 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq* and California
4 Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq*.

5 11. Plaintiffs bring this action individually and on behalf of other similarly
6 situated consumers who have purchased one or more products online that were
7 deceptively represented as discounted from a false reference price. Plaintiffs seek to
8 halt the dissemination of this deceptive pricing scheme and to obtain redress for those
9 who have purchased products as a result of its sales offered at a false discount.

10 **JURISDICTION AND VENUE**

11 12. This Court has original jurisdiction over this action pursuant to 28 U.S.C.
12 § 1332(d) because this is a class action in which: (1) there are over 100 members in
13 the proposed class; (2) members of the proposed class have a different citizenship
14 from Defendants; and (3) the claims of the proposed class members exceed
15 \$5,000,000 in the aggregate, exclusive of interest and costs. In 2022 alone,
16 Defendants earned approximately \$4,000,000 a year in revenue from sales of Pillow
17 Cube Products.²

18 13. This Court has personal jurisdiction over Defendants because Defendants
19 conduct and transact business in the State of California, contract to supply goods
20 within the State of California, and supply goods within the State of California.
21 Defendants, on their own and through their agents, are responsible for the distribution,
22 marketing, labeling, and sale of the Products in California, specifically in this judicial
23 district. The marketing of the Products, including the decision of what to include and
24 not include on the labels, emanates from Defendants. Thus, Defendants have
25 intentionally availed themselves of the markets within California through their
26 advertising, marketing, and sale of the Products to consumers in California, including
27 Plaintiff. The Court also has specific jurisdiction over Defendants as it has

28 ² <https://www.oco.co/successes/pillowcube>

1 purposefully directed activities towards the forum state, Plaintiffs' claims arise out of
2 those activities, and it is reasonable for Defendants to defend this lawsuit because
3 they have sold deceptively advertised Products to Plaintiff and members of the Class
4 in California. By distributing and selling the Products in California, Defendants have
5 intentionally and expressly aimed conduct at California which caused harm to
6 Plaintiffs and the Class that Defendants know is likely to be suffered by Californians.

7 14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2)
8 because a substantial part of the events or omissions giving rise to the claim occurred
9 in this District as Plaintiff Sara Adra purchased a Pillow Cube Product within this
10 judicial district.

11 **PARTIES**

12 15. Plaintiff Sara Adra is an individual consumer who, at all times relevant to
13 this action, was a citizen of and resided in San Diego County, California. Before
14 purchasing Defendants' Product, Plaintiff saw Defendant's representations relating to
15 the purported sale price for the Product. Had Plaintiff known the truth—that the
16 Product was not marked down from the price it supposedly was, Plaintiff would not
17 have purchased the Product. On August 1, 2023, Plaintiff Adra purchased a Pillow
18 Cube Side Sleeper Pro from Amazon.com for an actual price of \$89.99 with a higher
19 false reference price. The false reference price was not the prevailing market price of
20 the Product within three months immediately preceding the publication of the
21 reference price on the Amazon website.

22 16. Plaintiff Wayne Mitchell is an individual consumer who, at all times
23 relevant to this action, was a citizen of and resided in Sacramento County, California.
24 Before purchasing Defendant's Product, Plaintiff saw Defendant's representations on
25 the site relating to the purported sale price for the Product. Had Plaintiff known the
26 truth—that the Product was not marked down from the price it supposedly was,
27 Plaintiff would not have purchased the Product. On January 29, 2023, Plaintiff
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1 Mitchell purchased the Side Sleeper Ice Cube Pillow from pillowcube.com for an
2 actual price of \$134.99, with a false reference price of \$179.99. The false reference
3 price of \$179.99 was not the prevailing market price of the Product within three
4 months immediately preceding the publication of the reference price on the Pillow
5 Cube website.

6 17. Defendant Pillow Cube, Inc. is a Delaware corporation with its principal
7 place of business in Orem, Utah. Defendant Pillow Cube, Inc. manufactures, markets,
8 advertises, and distributes the Products throughout the United States, including in
9 California. Defendant Pillow Cube, Inc. manufactured, marketed, and sold the
10 Product during the proposed class period.

11 18. Defendant Jay Davis is an individual who resides in Utah County, Utah.
12 Defendant Davis is the founder and CEO of Defendant Pillow Cube, Inc. Defendant
13 Davis personally oversaw and directed the false pricing scheme alleged herein.

14 19. At all times mentioned in this Complaint, Defendant Davis was an agent
15 of Defendant Pillow Cube, Inc. and in doing the acts alleged herein, was acting within
16 the course and scope of such agency. Defendant Pillow Cube, Inc. had actual and/or
17 constructive knowledge of the acts of Defendant Davis and ratified, approved, joined
18 in, acquiesced and/or authorized the wrongful acts, and/or retained the benefits of said
19 wrongful acts.

20 20. At all times mentioned in this complaint, each Defendant knew that each
21 and every other Defendant was engaged in the unlawful acts subject to this complaint.
22 Each Defendant gave substantial assistance or encouragement to the other Defendant
23 who committed the predicate unlawful acts by supplying that Defendant with the
24 means or instrumentalities to commit the unlawful acts, which were substantial
25 factors in causing harm to Plaintiffs and the Classes.

26 21. Defendant Davis is liable for the conduct of Pillow Cube, Inc. because
27 Defendant Davis abused the organizational form as corporation to accomplish
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1 fraudulent objects, namely, to fraudulently promote the sale of Pillow Cube Products,
2 to conceal the proceeds of those frauds, and to frustrate the ability of victims to obtain
3 redress for the fraud. Defendant Davis totally dominates and controls Pillow Cube,
4 Inc. to such an extent that the independence of Pillow Cube, Inc. is a sham. Defendant
5 Davis founded Pillow Cube, Inc., has majority ownership of Pillow Cube, Inc., and
6 completely dominates the management and control of Defendant Pillow Cube, Inc. as
7 its CEO. Defendant Davis has operated Pillow Cube, Inc. in a manner that there is
8 such a unity of interest and ownership between Defendant Davis and Pillow Cube,
9 Inc. that any sense of independence is non-existent. In fact, Defendant Davis exercises
10 total operational control and decision-making power over all business activities at
11 Pillow Cube, including but not limited to pricing for the Pillow Cube Products.
12 Defendant Davis actively manages and oversees all business operations of Pillow
13 Cube, Inc. and retains final decision-making power.

14 22. Defendant Davis actually participated in the conduct alleged in this
15 complaint and Defendant Davis is personally liable for all unlawful acts described
16 herein because he authorized, directed, or participated in such acts notwithstanding
17 the fact that he acted as an agent of the corporation.

18 **FACTUAL ALLEGATIONS**

19 **A. Defendants' False Reference Pricing**

20 23. Defendants engage in a false and misleading reference price scheme in
21 the marketing and selling of Pillow Cube Products. Defendants advertise pillows and
22 other related items for sale by listing them with a fictitious original price and a
23 corresponding sale price. The original price communicates "the product's worth and
24 the prestige that ownership of the product conveys." *Hinojos*, 718 F.3d at 1106 (citing
25 Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative or*
26 *Deceptive?*, 11 J. PUB. POL'Y & MKTG. 52, 55 (Spring 1992) ("By creating an
27 impression of savings, the presence of a higher reference price enhances subjects'
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1 perceived value and willingness to buy the product.”). “Misinformation about a
2 product’s ‘normal’ price is . . . significant to many consumers in the same way as a
3 false product label would be.” *Hinojos*, 718 F.3d at 1106.

4 24. Defendants advertise a seemingly original price (the false reference price)
5 with a “strikethrough,” which tells customers that Defendants’ previously offered the
6 Products at the strikethrough price. However, the Products are never sold at the
7 strikethrough price because the Products are perpetually on sale.

8 25. For example, on January 29, 2023, Defendants’ Products, including the
9 Side Sleeper Ice Cube Pillow, were listed as being on sale. Defendants represented
10 that the Side Sleeper Ice Cube Pillow had an original price of \$179.99 and a sale
11 price of \$134.99 as shown below:³

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14 **Ice Cube Cooling Pillows**

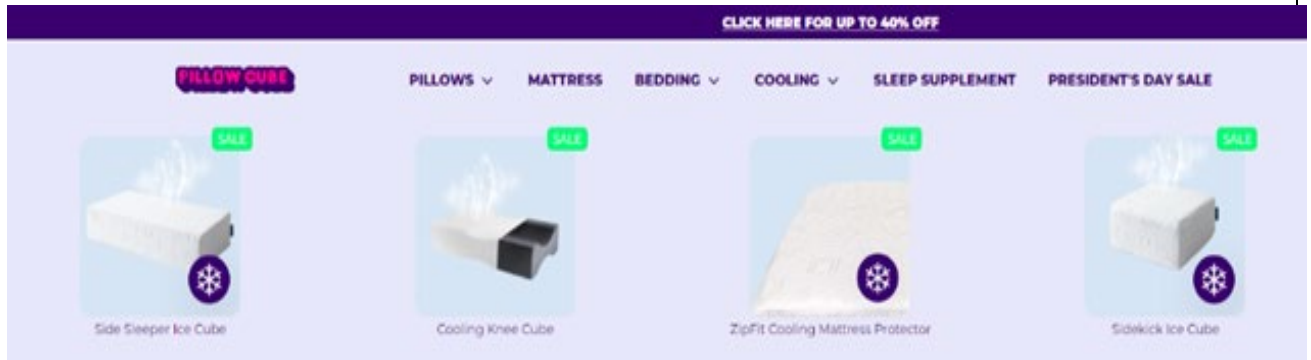
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16 Availability ▾ Price ▾

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Product Name	Current Price	Original Price	Discount	Reviews
Side Sleeper Ice Cube Pillow	\$134.99	\$179.99	25% OFF	933 reviews
Cooling Knee Cube	\$62.99	\$89.99	30% OFF	2 reviews
Sidekick Ice Cube Pillow	\$69.99	\$99.99	30% OFF	11 reviews

28 ³ <https://web.archive.org/web/20230129130412/https://www.pillowcube.com/collections/pillow-cube-collection> attached hereto as **Exhibit 1**.

1 26. On February 7, 2023, Defendants’ Products, including the Side Sleeper
 2 Ice Cube Pillow, were listed as being on sale as shown below⁴:



9 27. On March 21, 2023, Defendants’ Products, including the Side Sleeper Ice
 10 Cube Pillow, were still listed as being on sale as shown below:⁵



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16 28. On April 1, 2023, the Side Sleeper Ice Cube Pillow was still listed as
 17 having an original price of \$179.99 and a sale price of \$134.99 as shown below:⁶

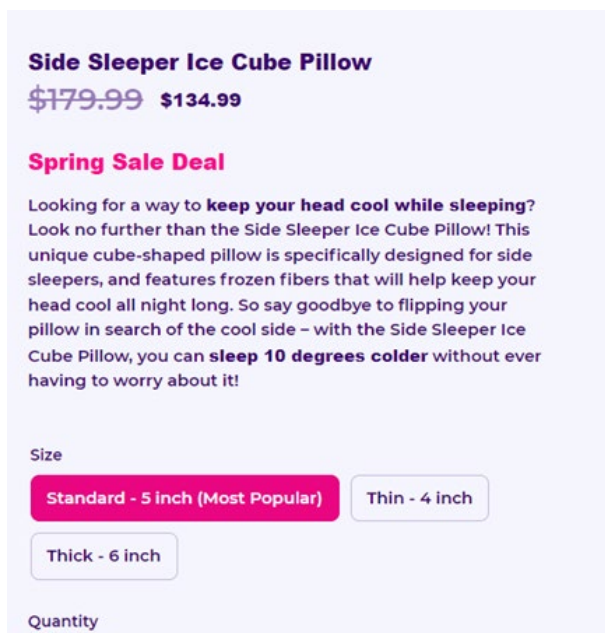


25 ⁴ <https://web.archive.org/web/20230227081507/https://www.pillowcube.com/> attached hereto as
 26 **Exhibit 2.**

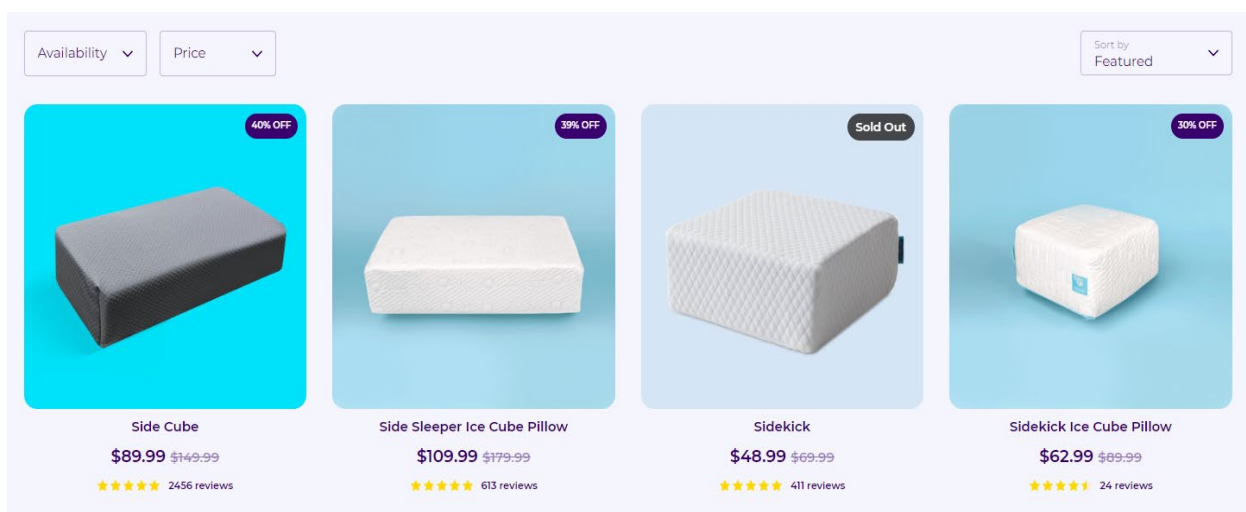
27 ⁵ <https://web.archive.org/web/20230321042652/https://www.pillowcube.com/> attached hereto as
 28 **Exhibit 3.**

⁶ <https://web.archive.org/web/20230401172036/https://www.pillowcube.com/products/side-sleeper-ice-cube-pillow> attached hereto as **Exhibit 4.**

1 29. On May 10, 2023, the Side Sleeper Ice Cube Pillow was still listed as
2 having an original price of \$179.99 and a sale price of \$134.99 as shown below:⁷



13 30. On June 7, 2023, all of Defendants’ pillows, including the Side Sleeper
14 Ice Cube Pillow, were still listed on sale as shown below:⁸



26 ⁷ <https://web.archive.org/web/20230510145637/https://www.pillowcube.com/products/side-sleeper-ice-cube-pillow> attached hereto as **Exhibit 5**.

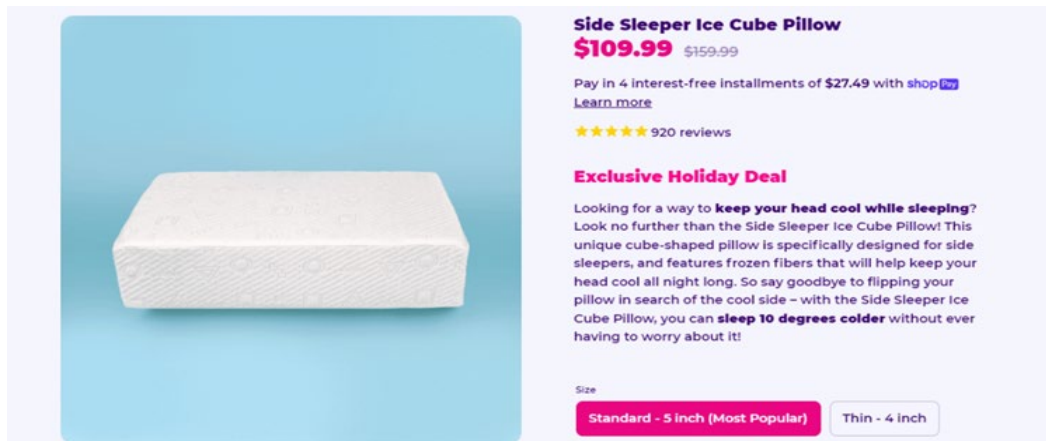
28 ⁸ <https://web.archive.org/web/20230607130651/https://www.pillowcube.com/collections/pillow-cube-collection> attached hereto as **Exhibit 6**.

1 31. On July 11, 2023, all of Defendants’ pillows were still listed as being on
2 sale as shown below:⁹



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8 32. In sum, the advertised discounts were fictitious because the reference
9 prices did not represent a bona fide price at which Defendants previously sold or
10 offered to sell the products, on a regular basis, for a commercially reasonable period
11 of time, as required by the Federal Trade Commission (“FTC”). In addition, the
12 represented advertised reference prices were not the prevailing market retail price
13 within the three months (90 days) immediately preceding the publication of the
14 advertised former reference price, as required by California law.

15 33. As another example, on December 10, 2022, Defendants advertised that
16 the reference price of the Side Sleeper Product that Plaintiff Mitchell purchased was
17 \$159.99. However, the Product was listed as being on sale for \$109.99 as shown
18 below.¹⁰



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26 ⁹ <https://web.archive.org/web/20230711115641/https://www.pillowcube.com/> attached hereto as
27 **Exhibit 7**

28 ¹⁰ <https://web.archive.org/web/20221210020248/https://www.pillowcube.com/products/side-sleeper-ice-cube-pillow> attached hereto as **Exhibit 8**.

1 34. The items Plaintiffs purchased were listed as having an original price of
2 roughly \$45 more than the sale price displayed on the website. Defendants advertised
3 the items as having a sale price at a discount. However, the Products never actually
4 sold at the fake reference price within three months prior to Plaintiffs' purchase of the
5 Products.

6 35. After observing that the original price of the Products, based on that
7 number being displayed with a strikethrough, and the accompanying sale price itself,
8 Plaintiffs believed they was receiving a significant discount on the Products they had
9 chosen. Because they was interested in the Products and felt that the discounted price
10 would likely not last, and that they were getting a significant bargain on the Products,
11 Plaintiffs proceeded to finish checking out and purchased the Products.

12 36. Plaintiffs reasonably relied upon Defendants' artificially inflated
13 reference prices and false discounts when purchasing the Products. Plaintiffs would
14 not have made such a purchase but for Defendants' misrepresentations regarding the
15 substantial discount being offered for the Products. Plaintiffs would like to continue
16 buying the Products in the future but cannot be certain of the veracity of Defendants'
17 advertised bargains.

18 **NO ADEQUATE REMEDY AT LAW**

19 37. Plaintiffs and members of the class are entitled to equitable relief as no
20 adequate remedy at law exists. The statutes of limitations for the causes of action pled
21 herein vary. Class members who purchased the Products more than three years prior
22 to the filing of the complaint will be barred from recovery if equitable relief were not
23 permitted under the UCL.

24 38. The scope of actionable misconduct under the unfair prong of the UCL is
25 broader than the other causes of action asserted herein. It includes Defendants' overall
26 unfair marketing scheme to promote and brand the Products, across a multitude of
27 media platforms, including the product labels, packaging, and online advertisements,
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1 over a long period of time, in order to gain an unfair advantage over competitor
2 products. The UCL also creates a cause of action for violations of law (such as
3 statutory or regulatory requirements and court orders related to similar representations
4 and omissions made on the type of products at issue). This is especially important
5 here because Plaintiffs allege Defendants have committed “unlawful” acts and bring
6 a claim for violation of the UCL’s “unlawful prong.” Specifically, Defendants have
7 violated Cal. Bus. & Prof. Code § 17501 among other laws. Plaintiffs and class
8 members may also be entitled to restitution under the UCL, while not entitled to
9 damages under other causes of action asserted herein (e.g., the CLRA is limited to
10 certain types of plaintiffs (an individual who seeks or acquires, by purchase or lease,
11 any goods or services for personal, family, or household purposes) and other
12 statutorily enumerated conduct).

13 39. A primary litigation objective in this litigation is to obtain injunctive
14 relief. Injunctive relief is appropriate on behalf of Plaintiffs and members of the class
15 because Defendants continue to misrepresent the price of the Products. Injunctive
16 relief is necessary to prevent Defendants from continuing to engage in the unfair,
17 fraudulent, and/or unlawful conduct described herein and to prevent future harm—
18 none of which can be achieved through available legal remedies (such as monetary
19 damages to compensate past harm). Injunctive relief, in the form of affirmative
20 disclosures or halting the sale of unlawful sold products is necessary to dispel the
21 public misperception about the Products that has resulted from years of Defendants’
22 unfair, fraudulent, and unlawful marketing efforts. Further, because a public
23 injunction is available under the UCL, and damages will not adequately benefit the
24 general public in a manner equivalent to an injunction.

25 40. It is premature to determine whether an adequate remedy at law exists.
26 This is an initial pleading and discovery has not yet commenced and/or is at its initial
27 stages. No class has been certified yet. No expert discovery has commenced and/or
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1 completed. The completion of fact/non-expert and expert discovery, as well as the
2 certification of this case as a class action, are necessary to finalize and determine the
3 adequacy and availability of all remedies, including legal and equitable, for Plaintiffs’
4 individual claims and any certified class or subclass. Plaintiffs therefore reserve their
5 right to amend this complaint and/or assert additional facts that demonstrate this
6 Court’s jurisdiction to order equitable remedies where no adequate legal remedies are
7 available for either Plaintiffs and/or any certified class or subclass. Such proof, to the
8 extent necessary, will be presented prior to the trial of any equitable claims for relief
9 and/or the entry of an order granting equitable relief.

10 **CLASS ACTION ALLEGATIONS**

11 41. Plaintiffs bring this action as a class action, pursuant to Federal Rules of
12 Civil Procedure 23(b)(2) and 23(b)(3), on behalf of the following classes (both class
13 are hereinafter referred to as the “class”):

14 **Nationwide Class**

15 All persons who purchased Products at a discount from an advertised
16 referenced price for personal use in the United States within the applicable
17 statute of limitations until the date class notice is disseminated.

18 **California Class**

19 All persons who purchased Products at a discount from an advertised
20 referenced price for personal use in California within the applicable statute
21 of limitations until the date class notice is disseminated.

22 42. Excluded from the class are: (i) Defendants and their officers, directors,
23 and employees; (ii) any person who files a valid and timely request for exclusion; and
24 (iii) judicial officers and their immediate family members and associated court staff
25 assigned to the case.

26 43. Plaintiffs reserve the right to amend or otherwise alter the class definitions
27 presented to the Court at the appropriate time, or to propose or eliminate subclasses,
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1 in response to facts learned through discovery, legal arguments advanced by
2 Defendants, or otherwise.

3 44. The Class is appropriate for certification because Plaintiffs can prove the
4 elements of the claims on a classwide basis using the same evidence as would be used
5 to prove those elements in individual actions alleging the same claims.

6 45. Numerosity: Class Members are so numerous that joinder of all members
7 is impracticable. Plaintiffs believe that there are thousands of consumers who are
8 Class Members described above who have been damaged by Defendants' deceptive
9 and misleading practices.

10 46. Commonality: There is a well-defined community of interest in the
11 common questions of law and fact affecting all Class Members. The questions of law
12 and fact common to the Class Members which predominate over any questions which
13 may affect individual Class Members include, but are not limited to:

- 14 a. Whether Defendants are responsible for the conduct alleged herein which
15 was uniformly directed at all consumers who purchased the Products;
- 16 b. Whether Defendants' misconduct set forth in this Complaint
17 demonstrates that Defendants engaged in unfair, fraudulent, or unlawful
18 business practices with respect to the advertising, marketing, and sale of
19 the Products;
- 20 c. Whether Defendants made misrepresentations concerning the Products
21 that were likely to deceive the public;
- 22 d. Whether Plaintiffs and the Class are entitled to injunctive relief;
- 23 e. Whether Plaintiffs and the Class are entitled to money damages and/or
24 restitution under the same causes of action as the other Class Members.

25 47. Typicality: Plaintiffs are members of the Class that Plaintiffs seek to
26 represent. Plaintiffs' claims are typical of the claims of each Class Member in that
27 every member of the Class was susceptible to the same deceptive, misleading conduct
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1 and purchased the Products. Plaintiffs re entitled to relief under the same causes of
2 action as the other Class Members.

3 48. Adequacy: Plaintiffs are adequate Class representatives because
4 Plaintiffs' interests do not conflict with the interests of the Class Members Plaintiffs
5 seek to represent; the consumer fraud claims are common to all other members of the
6 Class, and Plaintiffs have a strong interest in vindicating the rights of the class;
7 Plaintiffs have retained counsel competent and experienced in complex class action
8 litigation and Plaintiffs intend to vigorously prosecute this action. Plaintiffs have no
9 interests which conflict with those of the Class. The Class Members' interests will be
10 fairly and adequately protected by Plaintiffs and proposed Class Counsel. Defendants
11 have acted in a manner generally applicable to the Class, making relief appropriate
12 with respect to Plaintiffs and the Class Members. The prosecution of separate actions
13 by individual Class Members would create a risk of inconsistent and varying
14 adjudications.

15 49. The Class is properly brought and should be maintained as a class action
16 because a class action is superior to traditional litigation of this controversy. A class
17 action is superior to the other available methods for the fair and efficient adjudication
18 of this controversy because:

- 19 a. The joinder of hundreds of individual Class Members is impracticable,
20 cumbersome, unduly burdensome, and a waste of judicial and/or litigation
21 resources;
- 22 b. The individual claims of the Class Members may be relatively modest
23 compared with the expense of litigating the claim, thereby making it
24 impracticable, unduly burdensome, and expensive to justify individual
25 actions;
- 26 c. When Defendants' liability has been adjudicated, all Class Members'
27 claims can be determined by the Court and administered efficiently in a
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1 manner far less burdensome and expensive than if it were attempted
2 through filing, discovery, and trial of all individual cases;

- 3 d. This class action will promote orderly, efficient, expeditious, and
4 appropriate adjudication and administration of Class claims;
- 5 e. Plaintiffs know of no difficulty to be encountered in the management of
6 this action that would preclude its maintenance as a class action;
- 7 f. This class action will assure uniformity of decisions among Class
8 Members;
- 9 g. The Class is readily definable and prosecution of this action as a class
10 action will eliminate the possibility of repetitious litigation; and
- 11 h. Class Members' interests in individually controlling the prosecution of
12 separate actions is outweighed by their interest in efficient resolution by
13 single class action;

14 50. Notice: Plaintiffs and counsel anticipate that notice to the proposed Class
15 will be effectuated through recognized, Court-approved notice dissemination
16 methods, which may include United States mail, electronic mail, Internet postings,
17 and/or published notice.

18 51. Additionally, or in the alternative, the Class also may be certified because
19 Defendants have acted or refused to act on grounds generally applicable to the Class
20 thereby making final declaratory and/or injunctive relief with respect to the members
21 of the Class as a whole, appropriate.

22 52. Plaintiffs seek preliminary and permanent injunctive and equitable relief
23 on behalf of the Class, on grounds generally applicable to the Class, to enjoin and
24 prevent Defendants from engaging in the acts described, and to require Defendants to
25 provide full restitution to Plaintiffs and the Class members.

26 53. Unless the Class is certified, Defendants will retain money that was taken
27 from Plaintiffs and Class members because of Defendants' wrongful conduct. Unless
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1 a classwide injunction is issued, Defendants will continue to commit the violations
2 alleged and the members of the Class and the general public will continue to be
3 misled.

4 **First Cause of Action**

5 **Violation of Unfair Competition Law**

6 **Business & Professional Code §§ 17200, *et seq.***

7 54. Plaintiffs and Class Members reallege and incorporate by reference each
8 allegation set forth above as if fully set forth herein.

9 55. Plaintiffs bring this claim individually and on behalf of members of the
10 Class against Defendants.

11 56. Defendants are subject to the UCL, Bus. & Prof. Code § 17200 *et seq.*
12 The UCL provides, in pertinent part: “Unfair competition shall mean and include
13 unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or
14 misleading advertising” The UCL also provides for injunctive relief and
15 restitution for violations.

16 57. “By proscribing any unlawful business practice, § 17200 borrows
17 violations of other laws and treats them as unlawful practices that the UCL makes
18 independently actionable.” *Cel-Tech Communications, Inc. v. Los Angeles Cellular*
19 *Telephone Co.*, 20 Cal. 4th 163, 180 (1999) (citations and internal quotation marks
20 omitted).

21 58. Virtually any law or regulation—federal or state, statutory, or common
22 law—can serve as a predicate for a UCL “unlawful” violation. *Klein v. Chevron*
23 *U.S.A., Inc.*, 202 Cal. App. 4th 1342, 1383 (2012).

24 59. Defendants have violated the UCL’s “unlawful prong” as a result of their
25 violations of the CLRA and numerous state and federal laws governing pricing.

26 60. Defendants’ acts and practices alleged above constitute unlawful business
27 acts or practices as they have violated state and federal law in connection with their
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1 deceptive pricing scheme. The FTCA prohibits “unfair or deceptive acts or practices
2 in or affecting commerce” (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of
3 any false advertisements. 15 U.S.C. § 52(a). Under the FTC, false former pricing
4 schemes, like Defendants’, are described as deceptive practices that would violate the
5 FTCA:

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

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

27 16 C.F.R. § 233.1(a) and (b) (emphasis added).

28 61. In addition to federal law, California law also expressly prohibits false
former pricing schemes. The FAL, Cal. Bus. & Prof. Code § 17501, entitled “Worth
or value; statements as to former price,” states:

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

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

Cal. Bus. & Prof. Code § 17501.

62. As detailed in Plaintiffs’ Second Cause of Action below, the CLRA, Cal. Civ. Code § 1770(a)(9), prohibits a business from “[a]dvertising goods or services with intent not to sell them as advertised,” and subsection (a)(13) prohibits a business from “[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.”

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

64. Throughout the Class Period, Defendants committed acts of unfair competition, as defined by § 17200, by using unlawful and misleading statements to promote the sale of the Product, as described above.

65. Defendants’ misrepresentations and other conduct, described herein, violated the “unfair prong” of the UCL because the conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any alleged benefits. Defendants’ conduct is unfair in that the harm to Plaintiffs and members of the Class arising from Defendants’ conduct outweighs the utility, if any, of those practices.

66. Defendants’ actions constitute “unfair” business practices because, as alleged above, Defendants engaged in misleading and deceptive price comparison advertising that represented false reference prices and corresponding deeply discounted phantom “sale” prices. Defendants’ acts and practices offended an established public policy of transparency in pricing, and constituted immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to

1 consumers.

2 67. The harm to Plaintiffs and Class members outweighs the utility of
3 Defendants' practices because Defendants' practice of advertising false discounts
4 provides no utility and only harms consumers. There were reasonably available
5 alternatives to further Defendants' legitimate business interests other than the
6 misleading and deceptive conduct described herein.

7 68. As a direct and proximate result of these acts, consumers have been and
8 are being harmed. Plaintiffs and members of the Class have suffered injury and actual
9 out of pocket losses as a result of Defendants' unfair and unlawful business acts and
10 practices because: (a) Plaintiffs and members of the Class would not have purchased
11 the Products on the same terms if they had known the true facts regarding the price of
12 the product; and (b) Plaintiffs and members of the Class paid a price premium due to
13 the misrepresentations of Defendants' Product.

14 69. Pursuant to California Business & Professions Code § 17203, Plaintiffs
15 and members of the Class are therefore entitled to: (a) an Order requiring Defendants
16 to cease the acts of unfair competition alleged herein; (b) restitution of money paid to
17 Defendants as a result of its deceptive practices; (c) interest at the highest rate
18 allowable by law; and (d) the payment of Plaintiffs' attorneys' fees and costs pursuant
19 to the private attorney general doctrine codified in Code of Civil Procedure § 1021.5,
20 or any other statutory basis.

21 **Second Cause of Action**

22 **Violation of Consumers Legal Remedies Act ("CLRA")**

23 **Civil Code §§ 1750, *et seq.***

24 70. Plaintiffs re-allege and incorporate by reference all allegations set forth
25 in the preceding paragraphs as if fully set forth verbatim herein.

26 71. Plaintiffs bring this claim individually and on behalf of the Class against
27 Defendants.
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1 72. At all times relevant hereto, Plaintiffs and members of the Class were
2 “consumer[s],” as defined in Civil Code section 1761(d).

3 73. At all relevant times, Defendants were a “person,” as defined in Civil
4 Code section 1761(c).

5 74. At all relevant times, the Products manufactured, marketed, advertised,
6 and sold by Defendants constituted “goods,” as defined in Civil Code section 1761(a).

7 75. The purchases of the Products by Plaintiffs and members of the Class
8 were and are “transactions” within the meaning of Civil Code section 1761(e).

9 76. Defendants disseminated, or caused to be disseminated, through their
10 advertising, marketing, and listing for sale—that the Products were sold at a discount
11 from a normally advertised price. Defendants’ representations violate the CLRA by:

- 12 (a) advertising goods or services with intent not to sell them as advertised; §
13 1770(a)(9); and
- 14 (b) making false or misleading statements of fact concerning reasons for,
15 existence of, or amounts of price reductions; § 1770(a)(13).

16 77. Defendants violated the CLRA because the Products were misleadingly
17 priced. Defendants knew or should have known that the Products were not truly on
18 sale and were misleadingly priced.

19 78. Defendants’ actions as described herein were done with conscious
20 disregard of Plaintiffs’ rights and was wanton and malicious.

21 79. Defendants’ wrongful business practices constituted, and constitute, a
22 continuing course of conduct in violation of the CLRA since Defendants are still
23 representing that their Product has characteristics which they do not have.

24 80. Pursuant to Civil Code section 1782(d), Plaintiffs and members of the
25 Class seek an order enjoining Defendants from engaging in the methods, acts, and
26 practices alleged herein, and for restitution and disgorgement.

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1 81. Pursuant to Civil Code section 1782, Plaintiff Mitchell notified
2 Defendants in writing by certified mail of the alleged violations of the CLRA and
3 demanded that Defendants rectify the problems associated with the actions detailed
4 above and give notice to all affected consumers of its intent to so act. More than 30
5 days have now passed since Defendants' receipt of Plaintiff's letter and Defendants
6 have failed to take any corrective action. Accordingly, Plaintiffs seek damages,
7 injunctive relief, punitive damages, and attorneys' fees and costs for Defendants'
8 violations of the CLRA.

9 **REQUEST FOR RELIEF**

10 Plaintiffs, individually, and on behalf of all others similarly situated, request
11 for relief as follows:

12 82. Declaring that this action is a proper class action, certifying the Class as
13 requested herein, designating Plaintiffs as the Class Representatives and appointing
14 the undersigned counsel as Class Counsel;

15 83. Ordering restitution and disgorgement of all profits and unjust enrichment
16 that Defendants obtained from Plaintiffs and the Class members as a result of
17 Defendants' unlawful, unfair, and fraudulent business practices;

18 84. Ordering injunctive relief as permitted by law or equity, including
19 enjoining Defendants from continuing the unlawful practices as set forth herein, and
20 ordering Defendants to engage in a corrective advertising campaign;

21 85. Ordering actual damages;

22 86. Ordering Defendants to pay attorneys' fees and litigation costs to
23 Plaintiffs and the other members of the Class;

24 87. Ordering Defendants to pay both pre- and post-judgment interest on any
25 amounts awarded; and

26 88. Ordering such other and further relief as may be just and proper.
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JURY DEMAND

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Plaintiffs demand a trial by jury of all triable claims in this complaint.

Dated: December 12, 2024

CROSNER LEGAL, P.C.

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