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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 MELANIE GREBEN, individually
18 and on behalf of all others similarly
19 situated,

20 *Plaintiff,*

21 v.

22 CINMAR, LLC and FRONTGATE
23 MARKETING, INC.,

24 *Defendants.*

Case No. 2:24-cv-10140

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 **I. Introduction.**

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

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

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

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

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

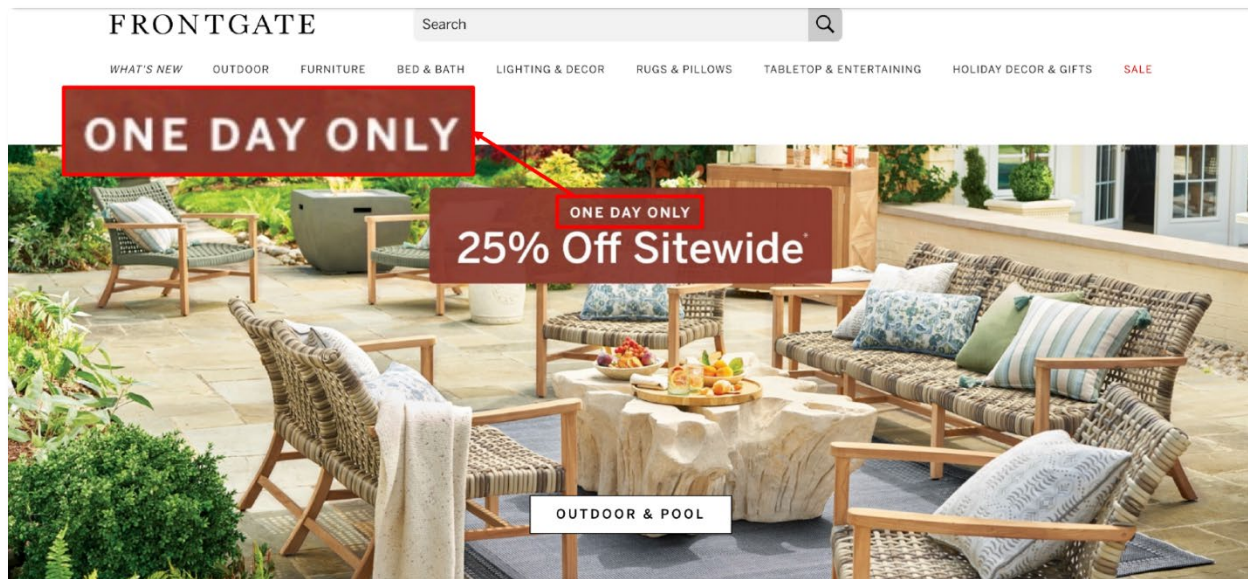
24 6. Moreover, the Federal Trade Commission’s regulations prohibit false or
25 misleading “former price comparisons,” for example, making up “an artificial, inflated
26 price ... for the purpose of enabling the subsequent offer of a large reduction” off that
27 price. 16 C.F.R. § 233.1. They also prohibit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

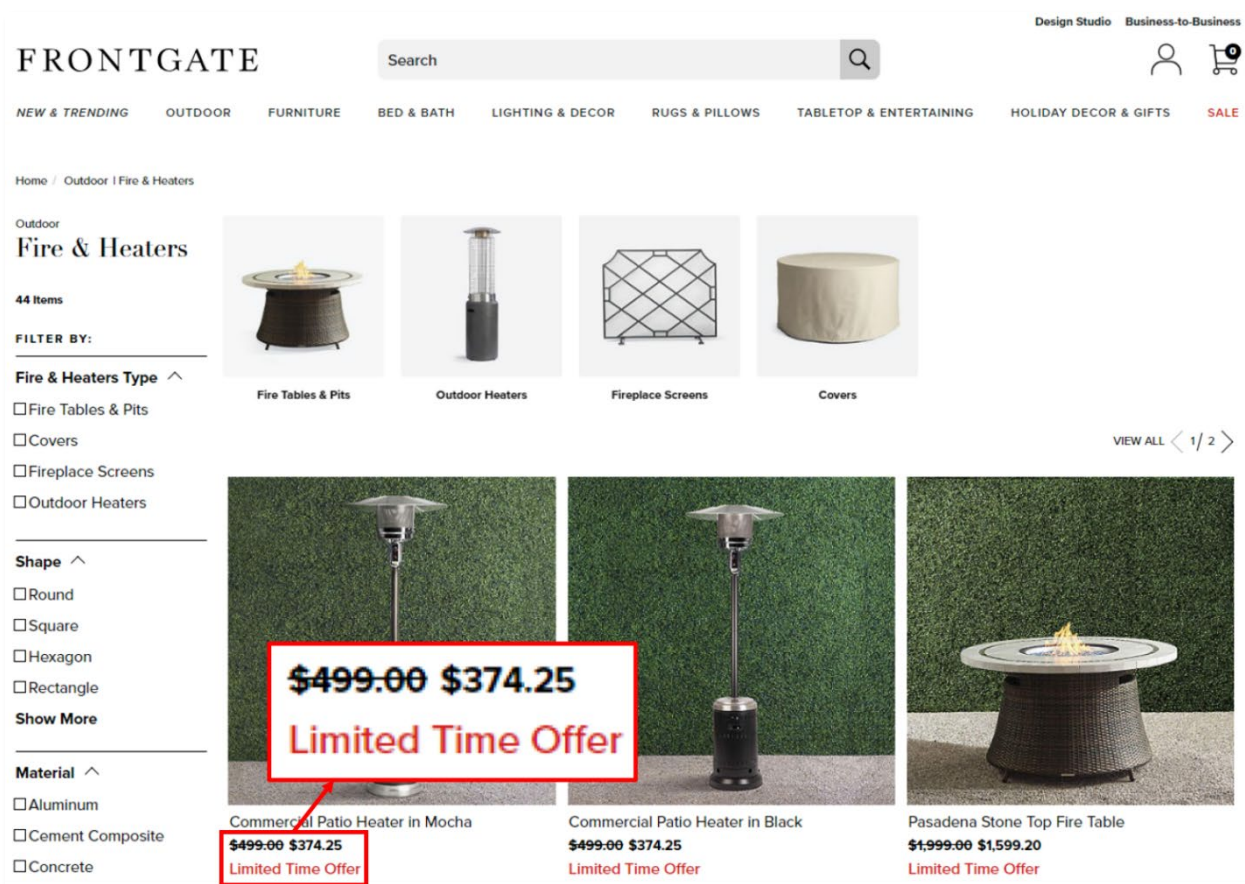
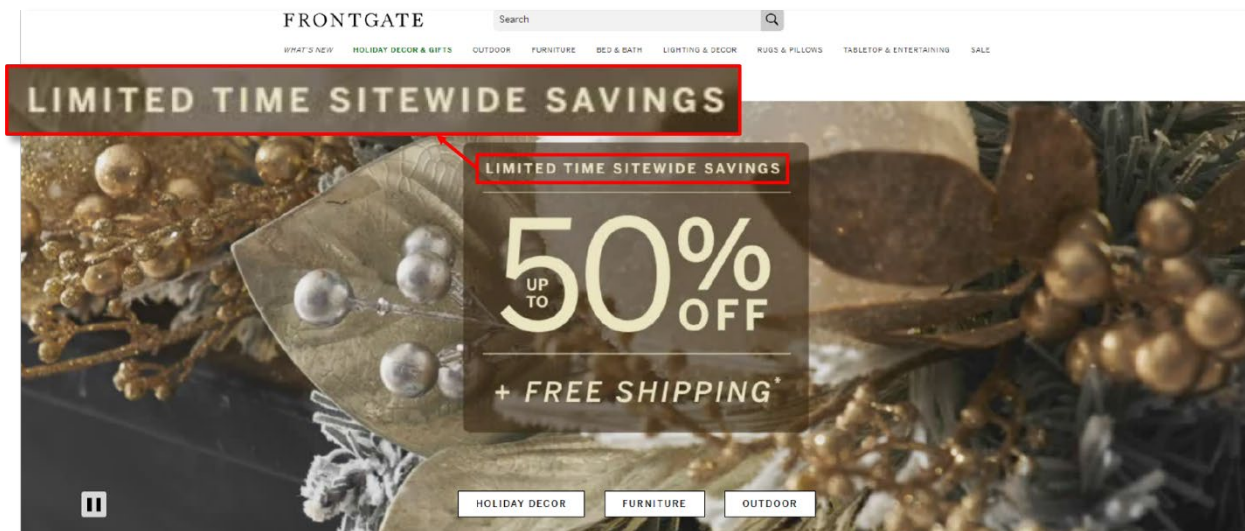
1 suggest that the seller is “offer[ing] goods at prices lower than those being charged by
2 others for the same merchandise” when this is not the case. 16 C.F.R. § 233.1.

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

6 8. Defendants Cinmar, LLC d/b/a Frontgate and Frontgate Marketing, Inc.
7 (“Defendants” or “Frontgate”) sell and market furniture and home décor products online
8 through the Frontgate brand and website, www.frontgate.com (“Frontgate Products” or
9 “Products”).

10 9. On their website, Defendants list purported regular prices and advertise
11 purported discounts from those listed regular prices. These include time-limited
12 discounts offering “up to X% off” and “X% off” sitewide. Defendants also advertise
13 that their Products have a lower discount price as compared to a higher, regular price
14 shown in grey and/or strikethrough font. Examples are shown below:





10. But in fact, Defendants' discounts are routinely available. As a result, everything about Defendants' price and purported discount advertising is false. The regular prices Defendants advertise are not actually Defendants' regular prices, because Defendants' Products are routinely available for less than that. The purported discounts

1 Defendants advertise are not the true discount the customer is receiving, and are often
2 not a discount at all. Nor are the purported discounts time-limited and limited to a
3 certain period of time (for example, Presidents' Day).

4 11. As described in greater detail below, Ms. Greben bought a Product from
5 Defendants from their website, www.frontgate.com. When Ms. Greben made her
6 purchase, Defendants advertised that a sale was going on, and so Defendants represented
7 that the Product Ms. Greben purchased was being offered at a steep discount from the
8 purported regular price that Defendants advertised. And based on Defendants'
9 representations, Ms. Greben believed that she was purchasing a Product whose regular
10 price and market value were the purported regular price that Defendants advertised, and
11 that she was receiving a substantial discount. These reasonable beliefs are what caused
12 Ms. Greben to buy from Defendants when she did.

13 12. The representations Ms. Greben relied on, however, were not true. The
14 purported regular price was not the true regular price that Defendants sell the Product
15 for, the purported discount was not a true discount, and the discount was ongoing—not
16 time-limited. Had Defendants been truthful, Ms. Greben and other consumers like her
17 would not have purchased the Products, or would have paid less for them.

18 13. Plaintiff brings this case for herself and the other customers who purchased
19 Frontgate Products.

20 **II. Parties.**

21 14. Plaintiff Melanie Greben is domiciled in Oak Park, California.

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

23 16. Defendant Cinmar, LLC is a Delaware limited liability company with its
24 principal place of business in West Chester, Ohio.

25 17. Defendant Frontgate Marketing, Inc. is a Delaware corporation with its
26 principal place of business in West Chester, Ohio.

27

28

1 **III. Jurisdiction and Venue.**

2 18. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2).
3 The amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and the
4 matter is a class action in which one or more members of the proposed class are citizens
5 of a state different from Defendants.

6 19. The Court has personal jurisdiction over Defendants because Defendants
7 sold Frontgate Products to consumers in California, including to Plaintiff.

8 20. Venue is proper under 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1391(d)
9 because Defendants would be subject to personal jurisdiction in this District if this
10 District were a separate state, given that Defendants sold Frontgate Products to
11 consumers in this District, including Plaintiff. Venue is also proper under 28 U.S.C.
12 § 1391(b)(2) because a substantial part of Defendants’ conduct giving rise to the claims
13 occurred in this District, including Defendants’ sale to Plaintiff.

14 **IV. Facts.**

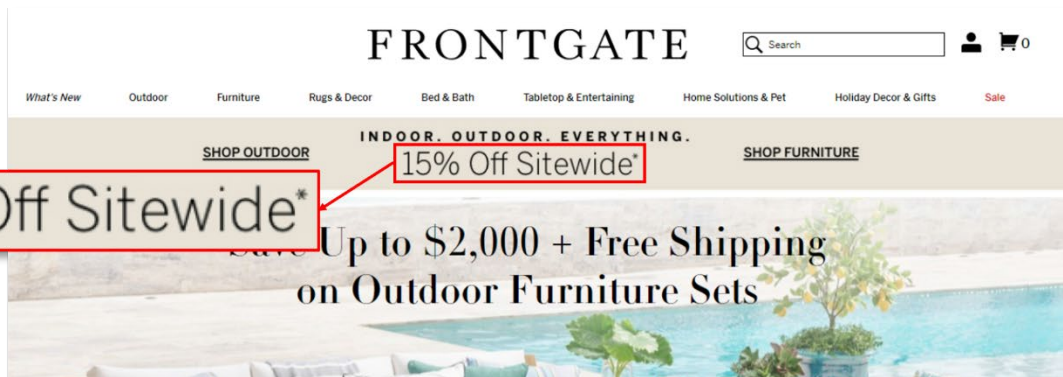
15 **A. Defendants’ fake prices and fake discounts.**

16 21. Defendants Cinmar, LLC d/b/a Frontgate and Frontgate Marketing, Inc.
17 distribute, market, and sell furniture and home décor products. Defendants sell their
18 Products directly to consumers through their website, www.frontgate.com.

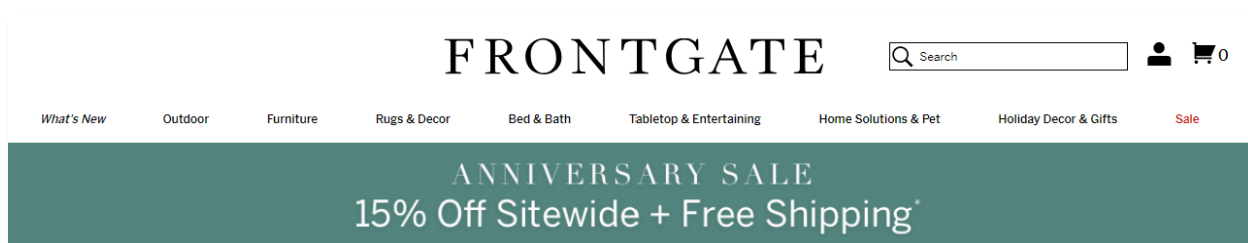
19 22. On their website, Defendants create the false impression that their
20 Products’ regular prices are higher than they truly are.

21 23. On their website, Defendants advertise steep discounts on their Products.
22 These discounts consistently offer “X%” or “up to X%” off the listed regular prices
23 Defendants advertise. Defendants also state that the discounts are time-limited or limited
24 to a certain period of time (for example, Presidents’ Day). And they advertise these
25 discounts extensively: in a large banner image on their homepage; on the products listing
26 pages; on the individual product pages for each Product; and during checkout. Example
27 screenshots are provided on the following pages:
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Captured April 28, 2022

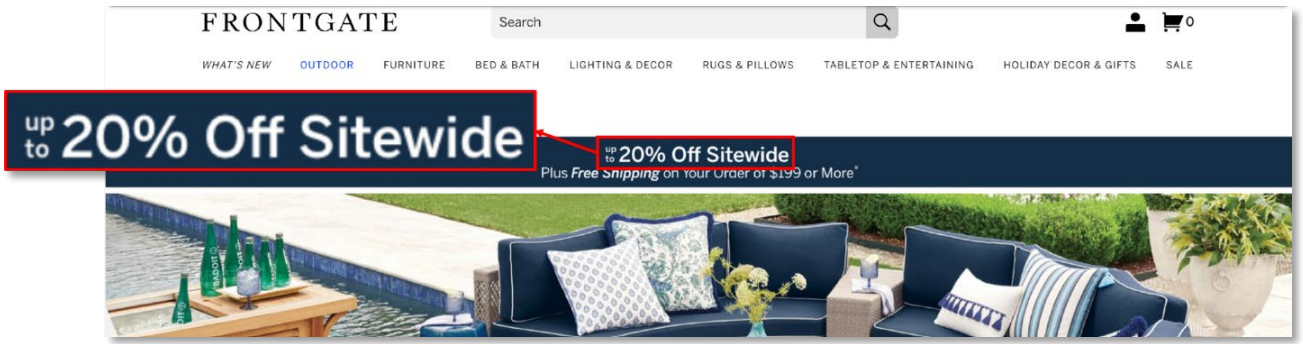


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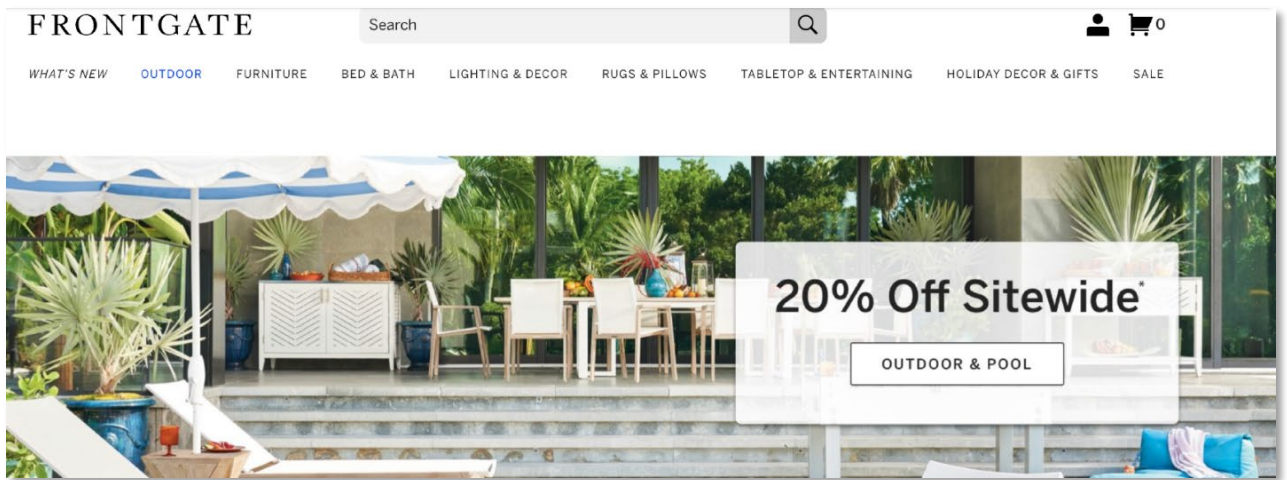


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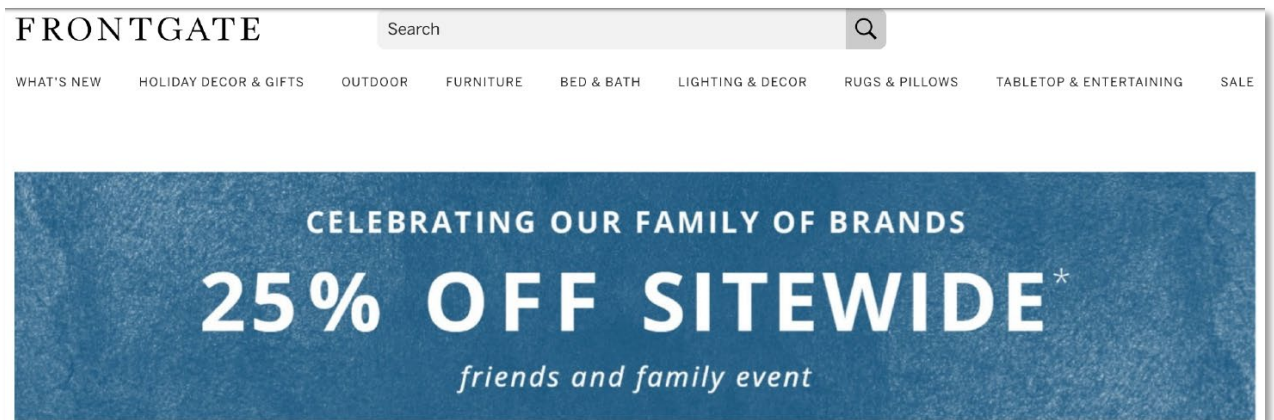
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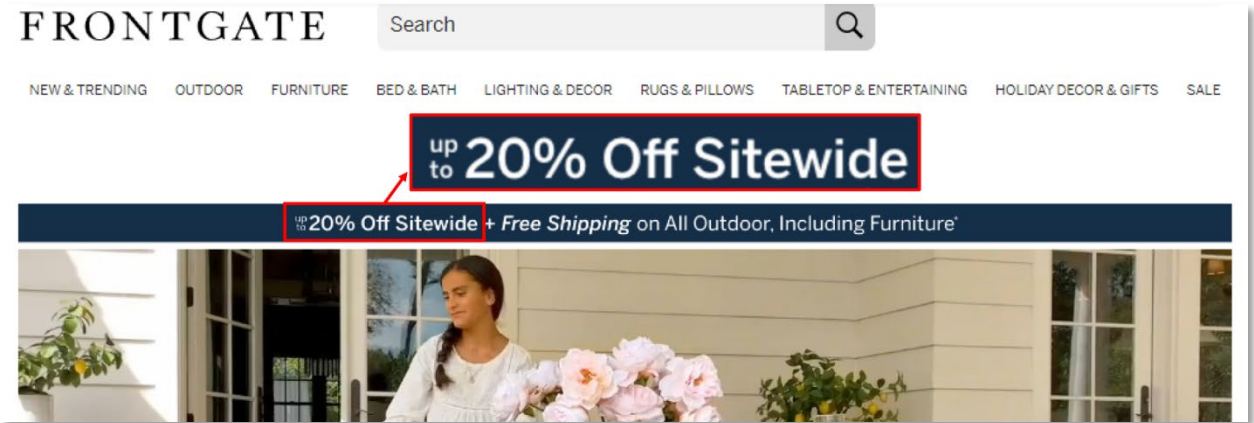


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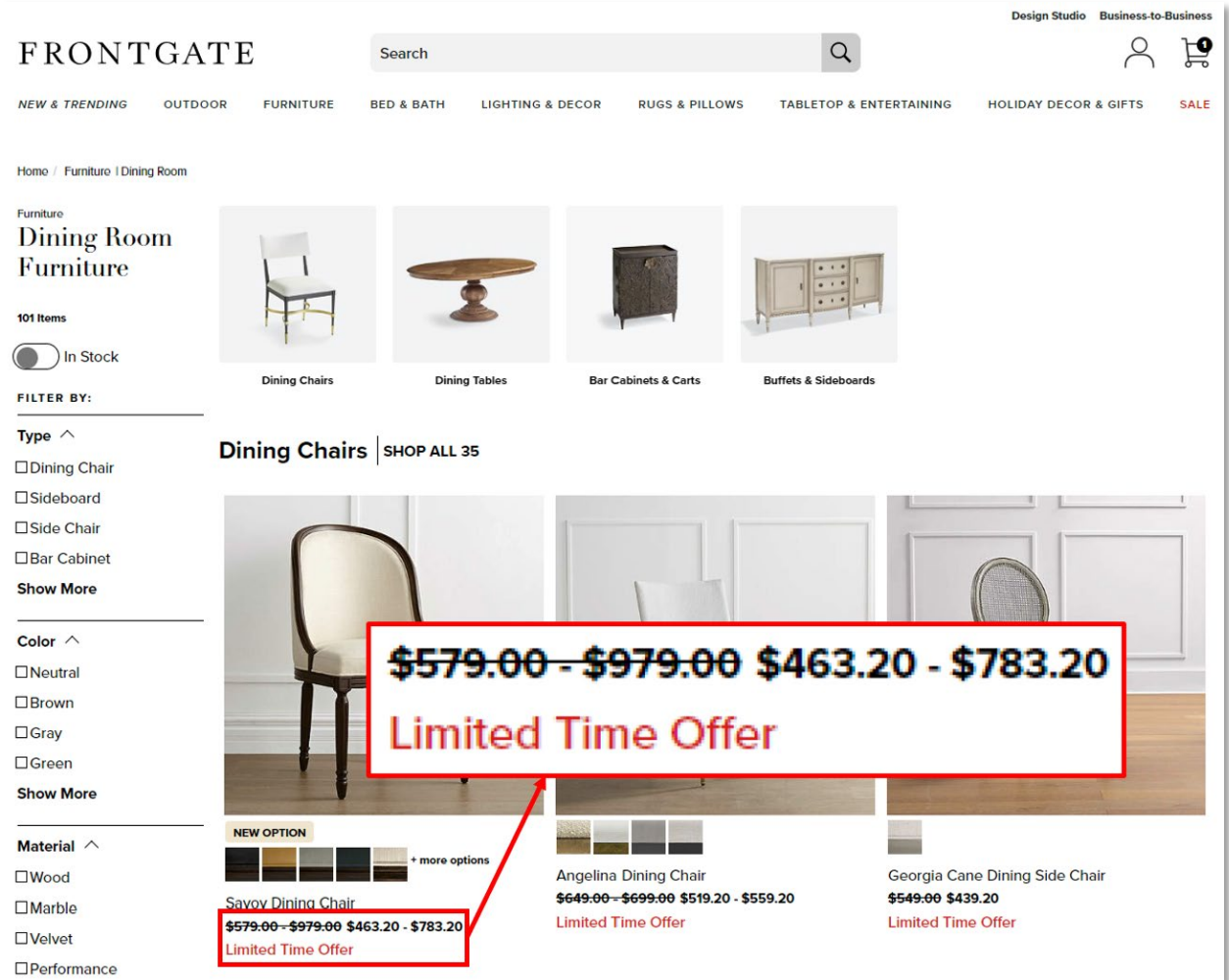


Captured October 4, 2023

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Captured February 22, 2024



Captured April 11, 2024

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FRONTGATE

Search

NEW & TRENDING OUTDOOR FURNITURE BED & BATH LIGHTING & DECOR RUGS & PILLOWS TABLETOP & ENTERTAINING HOLIDAY DECOR & GIFTS SALE

Home / Outdoor / Fire & Heaters / Log Racks

Item #160672

Log Racks

Limited Time Offer
~~\$449.00~~ **\$359.20**

Size: Standard

Standard Estate

Add Our:

Log Rack Covers
 + ~~\$229.00 - \$259.00~~ \$183.20 - \$207.20

Estimated to ship Jun 24, 2024

- 1 +

TOTAL:
\$359.20

Add To Cart

Captured May 16, 2024

FRONTGATE

Search

Design Studio Business-to-Business

NEW & TRENDING OUTDOOR FURNITURE BED & BATH LIGHTING & DECOR RUGS & PILLOWS TABLETOP & ENTERTAINING HOLIDAY DECOR & GIFTS SALE

Shopping Cart 1 Item CONTINUE SHOPPING

Log Racks

Size: Standard

Item #160672

Estimated to ship Jun 24, 2024

EDIT ITEM REMOVE SAVE FOR LATER

Log Rack Covers

Item: 165179

SELECT YOUR OPTIONS

Order Summary

SUBTOTAL: \$359.20

Estimated Shipping: TBD

Estimated Tax: TBD

Enter ZIP

CALCULATE SHIPPING & TAX

Estimated Total: \$359.20

You saved **\$89.80** today!

Offer Code APPLY

One code per order, gift cards entered in checkout.

BEGIN SECURE CHECKOUT

Check out with PayPal

Captured May 16, 2024

1 24. To confirm that Defendants' Products are consistently sold at a discount off
2 of their purported regular prices, Plaintiff's counsel performed an investigation of
3 Defendants' advertising practices using the Internet Archive's Wayback Machine
4 (available at www.archive.org).¹ This investigation revealed that Defendants' Products
5 have been regularly available at allegedly discounted prices for years. Plaintiff's counsel
6 gathered 49 randomly selected screenshots of Defendants' homepage from 2023. Of
7 those, 45 (over 90%) showed that Defendants were running a sitewide sale of at least up
8 to 15% off. Plaintiff's counsel also gathered all available screenshots on the Internet
9 Archive of Defendants' homepage from August 22, 2023, to November 20, 2023 (the 90-
10 day period immediately preceding Plaintiff's purchase). The homepage was available for
11 41 days during this period. The screenshots show that Defendants were constantly
12 running discounts on its Products. In every single available screenshot of Defendants'
13 website during this period, Defendants were running a sale. In 40 out of the 41
14 screenshots, Defendants were running a sitewide sale of at least up to 20% off. The one
15 other screenshot showed a sale for 30% off any single item on Defendants' website.
16 Thus, Plaintiff's counsel's investigation revealed that Defendants' Products are
17 consistently available for prices lower than Defendants' advertised regular prices.

18 25. Using these tactics, Defendants lead reasonable consumers to believe that
19 they will get a discount on the Products they are purchasing if they make purchases
20 during a limited time promotion. In other words, it leads reasonable consumers to
21 believe that if they buy now, they will get a Product worth X at a discounted, lower price
22 Y. This creates a sense of urgency: buy now, and you will receive something worth more
23 than you pay for it; wait, and you will pay more for the same thing later.

24 26. Based on Defendants' advertisements, reasonable consumers reasonably
25 believe that the prices displayed in "strikethrough font" (*e.g.*, "\$449.00") are Defendants'

26
27
28 ¹ The Internet archive, available at archive.org, is a library that archives web pages.
<https://archive.org/about>.

1 regular prices and former prices (that is, the price at which the goods were actually
2 offered for sale on Defendants' website before the limited-time offer went into effect).
3 In other words, reasonable consumers reasonably believe that the listed strikethrough
4 regular prices Defendants advertise represent the amount that consumers formerly had to
5 pay on Defendants' website for Defendants' goods, before the limited-time sale began.
6 Said differently, reasonable consumers reasonably believe that, prior to the supposedly
7 time-limited sale, consumers buying from Defendants on their website had to pay the
8 regular price to get the item and did not have the opportunity to get a discount from that
9 regular price.

10 27. Reasonable consumers also reasonably believe that the listed regular prices
11 Defendants advertise represent the true market value of the Products, and are the
12 prevailing prices for those Products; and that they are receiving reductions from those
13 listed regular prices in the amounts advertised. In truth, however, Defendants
14 consistently offer discounts off the purported regular prices they advertise. As a result,
15 everything about Defendants' price and purported discount advertising is false. The
16 regular prices Defendants advertise are not actually Defendants' regular or former prices,
17 or, as discussed below, the prevailing prices for the Products Defendants sell. And, the
18 listed regular prices do not represent the true market value for the Products, because
19 Defendants' Products are consistently available for less than that on Defendants' website,
20 and customers did not have to formerly pay that amount to get those items. The
21 purported discounts Defendants advertise are not the true discount the customer is
22 receiving, and are often not a discount at all. Nor are the purported discounts limited in
23 time—quite the opposite, they are regularly available.

24 **B. Defendants' advertisements are unfair, deceptive, and unlawful.**

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

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

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

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

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

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

1 **C. Defendants’ advertisements harm consumers.**

2 34. Based on Defendants’ advertisements, reasonable consumers would expect
3 that the listed regular prices are the regular prices at which Defendants usually sell their
4 Products and that these are former prices that Defendants sold their Products at before
5 the time-limited discount was introduced.

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

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

13 37. Consumers that are presented with discounts are substantially more likely to
14 make the purchase. “Nearly two-thirds of consumers surveyed admitted that a
15 promotion or a coupon often closes the deal, if they are wavering or are undecided on
16 making a purchase.”² And, “two-thirds of consumers have made a purchase they weren’t
17 originally planning to make solely based on finding a coupon or discount,” while “80%
18 [of consumers] said they feel encouraged to make a first-time purchase with a brand that
19 is new to them if they found an offer or discount.”³

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

22
23 ² [https://www.invespcro.com/blog/how-discounts-affect-online-consumer-
24 buying-behavior/](https://www.invespcro.com/blog/how-discounts-affect-online-consumer-buying-behavior/).

25 ³ RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases
26 Online, Especially Among Millennial Buyers (prnewswire.com).

27 ⁴ <https://cxl.com/blog/creating-urgency/> (addition of a countdown timer
28 increased conversion rates from 3.4%-10%); Dynamic email content leads to 400%
increase in conversions for Black Friday email | Adestra (uplandsoftware.com) (400%
higher conversation rate for ad with countdown timer).

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

9 **D. Plaintiff was misled by Defendants’ misrepresentations.**

10 40. On November 20, 2023, Ms. Greben purchased a Pascal 6 Light Chandelier
11 from Defendants’ website, www.frontgate.com. She made this purchase while living in
12 Oak Park, California. On this day, Defendants’ website advertised an “Up to 50% Off
13 Sitewide” sale:



22 *Captured November 20, 2023*

23 41. The website represented that the Pascal 6 Light Chandelier had a regular
24 price, but was on sale for a discounted price of \$419.98 plus tax and shipping costs.
25 Defendants represented that Ms. Greben was receiving a discount for the item that she
26 ordered. Ms. Greben’s email confirmation represented that Ms. Greben’s discounted
27 price was \$419.98 plus tax and shipping.
28

1 42. Defendants represented that the Pascal 6 Light Chandelier had a regular
2 price significantly higher than the discounted price Plaintiff was receiving and that
3 Plaintiff was receiving a steep discount on the Product. Plaintiff saw and relied on these
4 representations in deciding to make her purchase.

5 43. As highlighted above, Defendants' sales are always prominently advertised
6 on its website, www.frontgate.com. Plaintiff saw and relied on this advertising in deciding
7 to make her purchase.

8 44. The website homepage routinely advertises the sales with a banner near the
9 top of the page. On the day of Plaintiff's purchase, Defendants' website advertised an
10 "Up to 50% Off Sitewide" sale (shown above). Plaintiff saw and relied on this banner
11 when she made her purchase on Defendants' website. For example, she saw and relied
12 on the banner on Defendants' homepage when she viewed the website on November 20,
13 2023, to make her purchase, and reasonably believed that by purchasing during the sale
14 she would receive the advertised discount.

15 45. Before making her purchase, Ms. Greben viewed the Pascal 6 Light
16 Chandelier product page on www.frontgate.com and saw that Defendants represented
17 that the item was on sale compared to its regular price. The product page displayed a
18 purported regular price in strikethrough font next to the purported discount price of
19 \$419.98. The product page represented that the price was a "Limited Time Offer."
20 Plaintiff understood these representations to mean that Defendants were offering a
21 limited-time sale during which the Product was being sold at a discounted price below the
22 item's regular price. Plaintiff saw and relied on these representations when she made her
23 purchase.

24 46. And Defendants' Shopping Cart and Checkout pages make the same
25 misrepresentations. These pages showed the purported regular price in strikethrough
26 font, the purported discount price, an estimated total (before shipping and tax), the total,
27 and the amount the customer purportedly saved because of the purported sale. Ms.
28 Greben saw and relied on these misrepresentations when she made her purchase.

1 47. Based on Defendants' representations described and shown above, Ms.
2 Greben reasonably understood that Defendants regularly sold the Product she was
3 purchasing at the published regular price, that this regular price was the market value of
4 the Product that she was buying, and that she was receiving the advertised discount as
5 compared to the regular price. She would not have made the purchase if she had known
6 that the Product was not discounted as advertised, and that she was not receiving the
7 advertised discount.

8 48. In reality, as explained above, Defendants' Products, including the Product
9 that Ms. Greben purchased, are regularly available at discounted prices off the purported
10 regular prices. In other words, Defendants did not regularly sell the Product Ms. Greben
11 purchased at the purported regular price, and the Product was not discounted as
12 advertised. Plus, the sales are not time-limited—Defendants' Products are routinely on
13 sale. Because Defendants' Products, including the Pascal 6 Light Chandelier purchased
14 by Plaintiff, are regularly available at a discounted price off the purported regular price,
15 the purported regular price is not in fact the regular price of the Products. Instead,
16 because the Products are regularly available at a discounted price, the regular price is less
17 than the purported regular price.

18 49. Plaintiff faces an imminent threat of future harm. Plaintiff would purchase
19 Products from Defendants again in the future if she could feel sure that Defendants'
20 regular prices accurately reflected Defendants' former prices and the market value of the
21 Products, and that their discounts were truthful. But without an injunction, Plaintiff has
22 no realistic way to know which—if any—of Defendants' regular prices, discounts, and
23 sales are not false or deceptive. For example, while she could watch Defendants' website
24 for a sale on the day that it is supposed to end to see if the sale is permanent, doing so
25 could result in her missing out on the sale (*e.g.*, if the sale is actually limited in time, and
26 not permanent). Accordingly, Plaintiff is unable to rely on Defendants' advertising in the
27 future, and so cannot purchase Products she would like to purchase.

28

1 **E. Defendants breached their contract with and warranties to Ms.**
2 **Greben and the putative class.**

3 50. When Ms. Greben, and other members of the putative class, purchased and
4 paid for the Frontgate Products that they bought as described above, they accepted offers
5 that Defendants made, and thus, a contract was formed each time that they made
6 purchases. Each offer was to provide Products having a particular listed regular price
7 and market value, and to provide those Products at the discounted price advertised on
8 the website. For example, Defendants offered to sell Ms. Greben a Pascal 6 Light
9 Chandelier having a regular price and market value equal to the purported regular price in
10 strikethrough font advertised on Defendants' website at the time of Ms. Greben's
11 purchase, and to provide that product at the purported discount price advertised on the
12 website.

13 51. Defendants' website lists the purported market value of the items that
14 Defendants promised to provide. Defendants agreed to provide a discount equal to the
15 difference between the regular prices, and the purported discount prices paid by Ms.
16 Greben and putative class members. Defendants also warranted that the regular price
17 and market value of the Product Ms. Greben purchased was the advertised list price and
18 warranted that Ms. Greben was receiving a specific discount on that Product (for
19 example "15% off").

20 52. The regular price and market value of the items Ms. Greben and putative
21 class members would receive, and the amount of the discount they would be provided
22 off the regular price of those items, were specific and material terms of the contract.
23 They were also affirmations of fact about the Products and a promise relating to the
24 goods.

25 53. Ms. Greben and other members of the putative class performed their
26 obligations under the contract by paying for the items they purchased.

27 54. Defendants breached their contracts by failing to provide Ms. Greben and
28 other members of the putative class with Products that have a regular price and market

1 value equal to the regular price displayed, and by failing to provide the discount they
2 promised. In other words, instead of providing Products with regular price and market
3 value X at discounted price Y, Defendants provided Products with lower regular prices
4 and market values, depriving Ms. Greben and class members of the promised discount.
5 Defendants also breached warranties for the same reasons.

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

7 55. Plaintiff seeks damages and, in the alternative, restitution. Plaintiff is
8 permitted to seek equitable remedies in the alternative because she has no adequate
9 remedy at law.

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

18 57. In addition, to obtain a full refund as damages, Plaintiff must show that the
19 Products she bought has essentially no market value. In contrast, Plaintiff can seek
20 restitution without making this showing. This is because Plaintiff purchased Products
21 that she would not otherwise have purchased, but for Defendants' representations.
22 Obtaining a full refund at law is less certain than obtaining a refund in equity.

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

26 **V. Class action allegations.**

27 59. Plaintiff brings the asserted claims on behalf of the proposed class of:
28

- 1 • Nationwide Class: all persons who, within the applicable statute of
2 limitations period, purchased one or more Frontgate Products at a
3 purported discount on Defendants' website.
- 4 • California Subclass: all persons who, while in the state of California and
5 within the applicable statute of limitations period, purchased one or more
6 Frontgate Products at a purported discount on Defendants' website.

7 60. The following people are excluded from the class: (1) any Judge or
8 Magistrate Judge presiding over this action and the members of their family; (2)
9 Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in
10 which the Defendants or their parents have a controlling interest and their current
11 employees, officers, and directors; (3) persons who properly execute and file a timely
12 request for exclusion from the class; (4) persons whose claims in this matter have been
13 finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and
14 Defendants' counsel, and their experts and consultants; and (6) the legal representatives,
15 successors, and assigns of any such excluded persons.

16 ***Numerosity & Ascertainability***

17 61. The proposed class contains members so numerous that separate joinder of
18 each member of the class is impractical. There are tens or hundreds of thousands of
19 class members.

20 62. Class members can be identified through Defendants' sales records and
21 public notice.

22 ***Predominance of Common Questions***

23 63. There are questions of law and fact common to the proposed class.
24 Common questions of law and fact include, without limitation:

- 25 (1) whether Defendants made false or misleading statements of fact in their
26 advertisements;
- 27 (2) whether Defendants violated California's consumer protection statutes;
- 28 (3) whether Defendants committed a breach of contract;

- 1 (4) whether Defendants committed a breach of an express warranty;
- 2 (5) damages needed to reasonably compensate Plaintiff and the proposed class.

3 ***Typicality & Adequacy***

4 64. Plaintiff's claims are typical of the proposed class. Like the proposed class,
5 Plaintiff purchased a Frontgate Product advertised at a discount from Defendants. There
6 are no conflicts of interest between Plaintiff and the class.

7 ***Superiority***

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

13 **VI. Claims.**

14 **First Cause of Action:**

15 **Violation of California's False Advertising Law, Bus. & Prof. Code §§ 17500 &**
16 **17501 et. seq.**

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

18 66. Plaintiff incorporates each and every factual allegation set forth above.

19 67. Plaintiff brings this cause of action on behalf of herself and members of the
20 California Subclass.

21 68. Defendants have violated sections 17500 and 17501 of the Business and
22 Professions Code.

23 69. Defendants have violated, and continue to violate, section 17500 of the
24 Business and Professions Code by disseminating untrue and misleading advertisements to
25 Plaintiff and subclass members.

26 70. As alleged more fully above, Defendants advertise former prices along with
27 discounts. Defendants do this, for example, by crossing out a higher price (*e.g.*, \$449.00)
28 and displaying it next to a lower, discounted price. Reasonable consumers would

1 understand prices advertised in strikethrough font from which time-limited discounts are
2 calculated to denote “former” prices, i.e., the prices that Defendants charged before the
3 time-limited discount went into effect.

4 71. The prices advertised by Defendants are not Defendants’ regular prices. In
5 fact, those prices are not Defendants’ regular prices (i.e., the price you usually have to pay
6 to get the Product in question) because there is routinely a heavily-advertised promotion
7 ongoing entitling consumers to a discount. Moreover, for the same reasons, those prices
8 were not the former prices of the Products. Accordingly, Defendants’ statements about
9 the former prices of their Products, and their statements about their discounts from
10 those former prices, were untrue and misleading. In addition, Defendants’ statements
11 that their discounts are time-limited or specific to certain time periods (such as Memorial
12 Day or Presidents’ Day) are false and misleading too.

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

22 73. Defendants’ misrepresentations were intended to induce reliance, and, as
23 specifically identified above, Plaintiff and purported class members saw, read, and
24 reasonably relied on the statements when purchasing Frontgate Products. Defendants’
25 misrepresentations were a substantial factor in Plaintiff’s purchase decision.

26 74. In addition, subclass-wide reliance can be inferred because Defendants’
27 misrepresentations were material, i.e., a reasonable consumer would consider them
28 important in deciding whether to buy the Frontgate Products.

1 75. Defendants’ misrepresentations were a substantial factor and proximate
2 cause in causing damages and losses to Plaintiff and the subclass.

3 76. Plaintiff and the subclass were injured as a direct and proximate result of
4 Defendants’ conduct because (a) they would not have purchased Frontgate Products if
5 they had known the truth, (b) they overpaid for the Products because the Frontgate
6 Products were sold at a price premium due to the misrepresentation; and/or (c) they did
7 not receive the discounts they were promised, and received Products with market values
8 lower than the promised market values.

9 **Second Cause of Action:**

10 **Violation of California’s Consumer Legal Remedies Act**
11 **(by Plaintiff and the California Subclass)**

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

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

15 79. Plaintiff and the subclass are “consumers,” as the term is defined by
16 California Civil Code § 1761(d).

17 80. Plaintiff and the subclass have engaged in “transactions” with Defendants
18 as that term is defined by California Civil Code § 1761(e).

19 81. The conduct alleged in this Complaint constitutes unfair methods of
20 competition and unfair and deceptive acts and practices for the purpose of the CLRA,
21 and the conduct was undertaken by Defendants in transactions intended to result in, and
22 which did result in, the sale of goods to consumers.

23 82. As alleged more fully above, Defendants made and disseminated untrue and
24 misleading statements of facts in their advertisements to subclass members. Defendants
25 did this by using fake regular prices, i.e., regular prices that are not the prevailing prices,
26 and by advertising fake discounts.

27 83. Defendants violated, and continue to violate, section 1770 of the California
28 Civil Code.

1 84. Defendants violated, and continue to violate, section 1770(a)(5) of the
2 California Civil Code by representing that Products offered for sale have characteristics
3 or benefits that they do not have. Defendants represent that the value of their Products
4 is greater than it actually is by advertising inflated regular prices and fake discounts for
5 Products.

6 85. Defendants violated, and continue to violate, section 1770(a)(9) of the
7 California Civil Code. Defendants violate this by advertising their Products as being
8 offered at a discount, when in fact Defendants do not intend to sell the Products at a
9 discount.

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

18 87. Defendants’ representations were likely to deceive, and did deceive, Plaintiff
19 and reasonable consumers. Defendants knew, or should have known through the
20 exercise of reasonable care, that these statements were inaccurate and misleading.

21 88. Defendants’ misrepresentations were intended to induce reliance, and
22 Plaintiff saw, read, and reasonably relied on them when purchasing Frontgate Products.
23 Defendants’ misrepresentations were a substantial factor in Plaintiff’s purchase decision.

24 89. In addition, subclass-wide reliance can be inferred because Defendants’
25 misrepresentations were material, *i.e.*, a reasonable consumer would consider them
26 important in deciding whether to buy the Frontgate Products.

27 90. Defendants’ misrepresentations were a substantial factor and proximate
28 cause in causing damages and losses to Plaintiff and the subclass.

1 91. Plaintiff and the subclass were injured as a direct and proximate result of
2 Defendants' conduct because (a) they would not have purchased Frontgate Products if
3 they had known the discounts and/or regular prices were not real, (b) they overpaid for
4 the Products because the Products were sold at a price premium due to the
5 misrepresentation, and/or (c) they received products with market values lower than the
6 promised market values.

7 92. Accordingly, pursuant to California Civil Code § 1780(a)(2), Ms. Greben, on
8 behalf of herself and all other members of the subclass, seeks injunctive relief.

9 93. CLRA § 1782 NOTICE. On November 7, 2024, a CLRA demand letter
10 was sent to Defendants' headquarters and registered agent via certified mail (return
11 receipt requested), that provided notice of Defendants' violations of the CLRA and
12 demanded that Defendants correct the unlawful, unfair, false and/or deceptive practices
13 alleged here. Defendants do not have a California headquarters. If Defendants do not
14 fully correct the problem for Plaintiff and for each member of the California Subclass
15 within 30 days of receipt, Plaintiff and the California Subclass will seek all monetary relief
16 allowed under the CLRA, including reasonable attorneys' fees and punitive damages.

17 94. A CLRA venue declaration is attached.

18 **Third Cause of Action:**

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

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

21 95. Plaintiff incorporates each and every factual allegation set forth above.

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

24 97. Defendants have violated California's Unfair Competition Law (UCL) by
25 engaging in unlawful, fraudulent, and unfair conduct (i.e., violating each of the three
26 prongs of the UCL).

1 ***The Unlawful Prong***

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

8 ***The Deceptive Prong***

9 99. As alleged in detail above, Defendants’ representations that their Products
10 were on sale, that the sale was limited in time, that the Products had a specific regular
11 price, and that the customers were receiving discounts were false and misleading.

12 100. Defendants’ representations were misleading to Plaintiff and other
13 reasonable consumers.

14 101. Plaintiff relied upon Defendants’ misleading representations and omissions,
15 as detailed above.

16 ***The Unfair Prong***

17 102. As alleged in detail above, Defendants committed “unfair” acts by falsely
18 advertising that their Products were on sale, that the sale was limited in time, that the
19 Products had a specific regular price, and that the customers were receiving discounts.

20 103. Defendants violated established public policy by violating the CLRA, the
21 FAL, and the FTCA, as alleged above and incorporated here. The unfairness of this
22 practice is tethered to a legislatively declared policy (that of the CLRA, the FAL, and the
23 FTCA).

24 104. The harm to Plaintiff and the subclass greatly outweighs the public utility of
25 Defendants’ conduct. There is no public utility to misrepresenting the price of a
26 consumer product. This injury was not outweighed by any countervailing benefits to
27 consumers or competition. Misleading consumer products only injure healthy
28 competition and harm consumers.

1 105. Plaintiff and the subclass could not have reasonably avoided this injury. As
2 alleged above, Defendants' representations were deceptive to reasonable consumers like
3 Plaintiff.

4 106. Defendants' conduct, as alleged above, was immoral, unethical, oppressive,
5 unscrupulous, and substantially injurious to consumers.

6 * * *

7 107. For all prongs, Defendants' representations were intended to induce
8 reliance, and Plaintiff saw, read, and reasonably relied on them when purchasing
9 Frontgate Products. Defendants' representations were a substantial factor in Plaintiff's
10 purchase decision.

11 108. In addition, subclass-wide reliance can be inferred because Defendants'
12 representations were material, i.e., a reasonable consumer would consider them important
13 in deciding whether to buy Frontgate Products.

14 109. Defendants' representations were a substantial factor and proximate cause
15 in causing damages and losses to Plaintiff and the subclass members.

16 110. Plaintiff and the subclass were injured as a direct and proximate result of
17 Defendants' conduct because (a) they would not have purchased the Frontgate Products
18 if they had known that they were not discounted, (b) they overpaid for the Products
19 because the Products were sold at the regular price and not at a discount, and/or (c) they
20 did not receive the discounts they were promised, and received Products with market
21 values lower than the promised market values.

22 **Fourth Cause of Action:**

23 **Breach of Contract**

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

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

26 112. Plaintiff brings this cause of action on behalf of herself and the Nationwide
27 Class. In the alternative, Plaintiff brings this cause of action on behalf of herself and the
28 California Subclass.

1 113. Plaintiff and class members entered into contracts with Defendants when
2 they placed orders to purchase Products on Defendants' website.

3 114. The contracts provided that Plaintiff and class members would pay
4 Defendants for the Products purchased.

5 115. The contracts further required that Defendants provide Plaintiff and class
6 members with Products that have a market value equal to the regular prices displayed on
7 the website. They also required that Defendants provide Plaintiff and class members
8 with a discount equal to the difference between the price paid, and the regular prices
9 advertised. These were specific and material terms of the contract.

10 116. The specific discounts were a specific and material term of each contract.

11 117. Plaintiff and class members paid Defendants for the Products they
12 purchased, and satisfied all other conditions of their contracts.

13 118. Defendants breached their contracts with Plaintiff and class members by
14 failing to provide Products that had a regular price, former price, and/or prevailing
15 market value equal to the regular price displayed on their website, and by failing to
16 provide the promised discount. Defendants did not provide the discount that they had
17 promised.

18 119. Plaintiff provided Defendants with notice of this breach of contract, by
19 mailing a notice letter to Defendants' headquarters and registered agent on November 7,
20 2024.

21 120. As a direct and proximate result of Defendants' breaches, Plaintiff and class
22 members were deprived of the benefit of their bargained-for exchange, and have suffered
23 damages in an amount to be established at trial.

24 **Fifth Cause of Action:**

25 **Breach of Express Warranty**

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

27 121. Plaintiff incorporates each and every factual allegation set forth above.
28

1 122. Plaintiff brings this cause of action on behalf of herself and members of the
2 California Subclass.

3 123. Defendants, as the manufacturer, marketer, distributor, supplier, and/or
4 seller of the Frontgate Products, issued material, written warranties by advertising that the
5 Products had a prevailing market value equal to the regular price displayed on
6 Defendants' website. This was an affirmation of fact about the Products (i.e., a
7 representation about the market value) and a promise relating to the goods.

8 124. This warranty was part of the basis of the bargain and Plaintiff and
9 members of the subclass relied on this warranty.

10 125. In fact, the Frontgate Products' stated market value was not the prevailing
11 market value. Thus, the warranty was breached.

12 126. Plaintiff provided Defendants with notice of this breach of warranty, by
13 mailing a notice letter to Defendants' headquarters and registered agent on November 7,
14 2024.

15 127. Plaintiff and the subclass were injured as a direct and proximate result of
16 Defendants' breach, and this breach was a substantial factor in causing harm, because (a)
17 they would not have purchased Frontgate Products if they had known that the warranty
18 was false, (b) they overpaid for the Products because the Products were sold at a price
19 premium due to the warranty, and/or (c) they did not receive the Products as warranted
20 that they were promised.

21 **Sixth Cause of Action:**

22 **Quasi-Contract/Unjust Enrichment**

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

24 128. Plaintiff incorporates each and every factual allegation in paragraphs 1-49,
25 55-65 above.

26 129. Plaintiff brings this cause of action in the alternative to her Breach of
27 Contract claim (Claim IV) on behalf of herself and the Nationwide Class. In the
28 alternative, Plaintiff brings this claim on behalf of herself and the California Subclass.

1 130. As alleged in detail above, Defendants' false and misleading advertising
2 caused Plaintiff and the class to purchase Frontgate Products and to pay a price premium
3 for these Products.

4 131. In this way, Defendants received a direct and unjust benefit at Plaintiff's
5 expense.

6 132. (In the alternative only), due to Defendants' misrepresentations, their
7 contracts with Plaintiff and other class members are voidable.

8 133. Plaintiff and the class seek restitution, and in the alternative, rescission.

9 **Seventh Cause of Action:**

10 **Negligent Misrepresentation**

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

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

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

15 136. As alleged more fully above, Defendants made false representations and
16 material omissions of fact to Plaintiff and subclass members concerning the existence
17 and/or nature of the discounts and savings advertised.

18 137. These representations were false.

19 138. When Defendants made these misrepresentations, they knew or should
20 have known that they were false. Defendants had no reasonable grounds for believing
21 that these representations were true when made.

22 139. Defendants intended that Plaintiff and subclass members rely on these
23 representations and Plaintiff and subclass members read and reasonably relied on them.

24 140. In addition, subclass-wide reliance can be inferred because Defendants'
25 misrepresentations were material, i.e., a reasonable consumer would consider them
26 important in deciding whether to buy the Frontgate Products.

27 141. Defendants' misrepresentations were a substantial factor and proximate
28 cause in causing damages and losses to Plaintiff and subclass members.

1 142. Plaintiff and subclass members were injured as a direct and proximate result
2 of Defendants' conduct because (a) they would not have purchased Frontgate Products if
3 they had known that the representations were false, (b) they overpaid for the Products
4 because the Products were sold at a price premium due to the misrepresentation, and/or
5 (c) they did not receive the discounts they were promised, and received Products with
6 market values lower than the promised market values.

7 **Eighth Cause of Action:**

8 **Intentional Misrepresentation**

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

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

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

13 145. As alleged more fully above, Defendants made false representations and
14 material omissions of fact to Plaintiff and subclass members concerning the existence
15 and/or nature of the discounts and savings advertised.

16 146. These representations were false.

17 147. When Defendants made these misrepresentations, they knew that they were
18 false at the time that they made them and/or acted recklessly in making the
19 misrepresentations.

20 148. Defendants intended that Plaintiff and subclass members rely on these
21 representations and Plaintiff and subclass members read and reasonably relied on them.

22 149. In addition, subclass-wide reliance can be inferred because Defendants'
23 misrepresentations were material, i.e., a reasonable consumer would consider them
24 important in deciding whether to buy the Frontgate Products.

25 150. Defendants' misrepresentations were a substantial factor and proximate
26 cause in causing damages and losses to Plaintiff and subclass members.

27 151. Plaintiff and subclass members were injured as a direct and proximate result
28 of Defendants' conduct because (a) they would not have purchased Frontgate Products if

1 they had known that the representations were false, (b) they overpaid for the Products
2 because the Products were sold at a price premium due to the misrepresentation, and/or
3 (c) they did not receive the discounts they were promised, and received Products with
4 market values lower than the promised market values.

5 **VII. Relief.**

6 152. Plaintiff seeks the following relief for herself and the proposed class:

- 7 • An order certifying the asserted claims, or issues raised, as a class action;
- 8 • A judgment in favor of Plaintiff and the proposed class;
- 9 • Damages, treble damages, and punitive damages where applicable;
- 10 • Restitution;
- 11 • Rescission;
- 12 • Disgorgement, and other just equitable relief;
- 13 • Pre- and post-judgment interest;
- 14 • An injunction prohibiting Defendants' deceptive conduct, as allowed by
15 law;
- 16 • Reasonable attorneys' fees and costs, as allowed by law;
- 17 • Any additional relief that the Court deems reasonable and just.

18 **VIII. Demand for Jury Trial.**

19 153. Plaintiff demands the right to a jury trial on all claims so triable.
20

21 Dated: November 22, 2024

Respectfully submitted,

22 By: /s/ Christin Cho

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