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

13 CAMERON PEREZ, individually and  
 14 on behalf of all others similarly  
 15 situated,

16 Plaintiff,

17 v.

18 BUILD-A-BEAR WORKSHOP,  
 19 INC.,

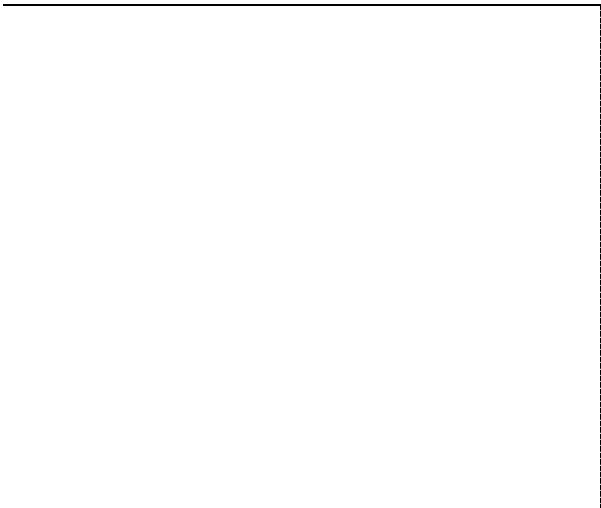
20 Defendant.

Civil Action No.: '24CV2268 BEN DEB

21 **COMPLAINT – CLASS**  
 22 **ACTION**

- 23 **1. FRAUD**
- 24 **2. NEGLIGENT**
- 25 **MISREPRESENTATION**
- 26 **3. BREACH OF CONTRACT**
- 27 **4. UNJUST ENRICHMENT**
- 28 **5. VIOLATION OF**
- CALIFORNIA’S**
- CONSUMER LEGAL**
- REMEDIES ACT**
- 6. VIOLATION OF**
- CALIFORNIA’S FALSE**
- ADVERTISING LAW**
- 7. VIOLATION OF**
- CALIFORNIA’S FALSE**
- ADVERTISING LAW,**

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**BUS, & PROF. CODE**  
**8. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**  
  
**JURY TRIAL DEMANDED**

Plaintiff Cameron Perez (“Plaintiff”), individually and on behalf of all others similarly situated, brings this action against Defendant Build-A-Bear Workshop, Inc. (“Build-A-Bear” or “Defendant”), and alleges based upon personal knowledge with respect to himself and on information and belief derived from, among other things, investigation of counsel and review of public documents as to all other matters:

**NATURE OF THE ACTION**

1. With the sheer volume of online products being offered, consumers rely on accurate pricing to make informed decisions. Unfortunately, many retailers engage in deceptive and misleading practices by advertising products as “sales” or “markdowns” by showing significantly inflated “reference prices” or “regular prices” that are rarely, if ever, actually charged. These fake reference prices fool consumers into thinking they are getting a great deal at

1 the “sale” price, when in fact, they have merely been tricked by the retailer,  
2 and in reality the consumer is paying the same amount, or even more than,  
3 the usual price of the item. The effect of this unlawful tactic is to set  
4 consumers’ perception of the value of a product at a grossly inflated level,  
5 thereby inducing consumers to unwittingly pay more for the product than they  
6 might normally pay. Furthermore, researchers have found that when  
7 consumers believe that the supposedly reduced price will end soon, they are  
8 more likely to buy now, rather than wait or comparison shop, and buy  
9 someplace else.<sup>1</sup> But in many instances, the reference price is not a true  
10 discount.

14 2. Highlighting how these false sales have become a true problem in the  
15 marketplace, the Federal Trade Commission (“FTC”) created a rule  
16 prohibiting the practice. 16 C.F.R. § 233.1. The FTC identified this practice  
17 as a form of “deceptive pricing” that denies consumers the value of the  
18 bargain that they thought they were receiving.

21 3. Build-A-Bear has engaged in just such a deceptive pricing scheme.  
22 Build-A-Bear advertises perpetual or near perpetual discounts on many of its  
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25 <sup>1</sup> Patrick Coffee, Thought You Saved \$60 on that Vacuum Cleaner? Think  
26 Again, Wall St. J. (Aug. 24, 2023), available at:  
27 [https://www.wsj.com/articles/thought-you-saved-60-on-that-vacuum-  
cleaner-think-again-c89ce344](https://www.wsj.com/articles/thought-you-saved-60-on-that-vacuum-cleaner-think-again-c89ce344) (Last accessed November 18, 2024).

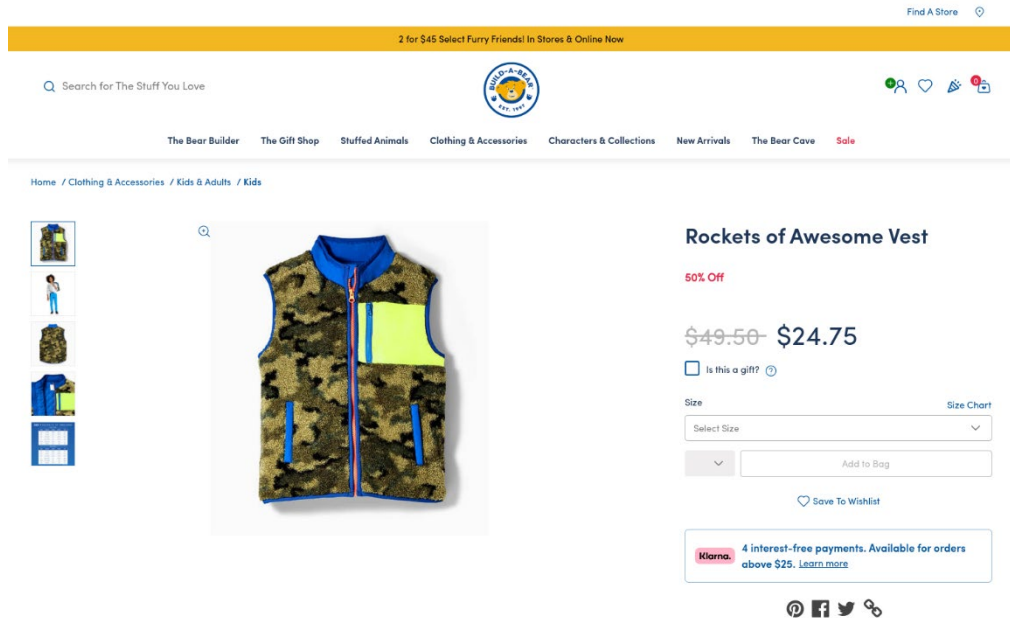
1 products, supposedly offering discounts of up to 50% off Build-A-Bear’s self-  
2 created, fictitious reference prices. Build-A-Bear represents to consumers that  
3 its reference price is the “regular” or “normal” price of the item, which  
4 functions as a new and inflated reference point from which consumers  
5 discount their “savings” on various products.  
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7  
8 4. Build-A-Bear’s reference prices are false because Build-A-Bear rarely,  
9 if ever, offers the products for the reference price. Instead, the inflated  
10 reference prices allow Build-A-Bear to continually advertise “sale” events  
11 and product discounts in order to induce consumers into purchasing products.  
12 In reality, the “sale” price is the price at which Build-A-Bear regularly sells  
13 the product, but the consumer has been tricked into thinking she found a great  
14 discount.  
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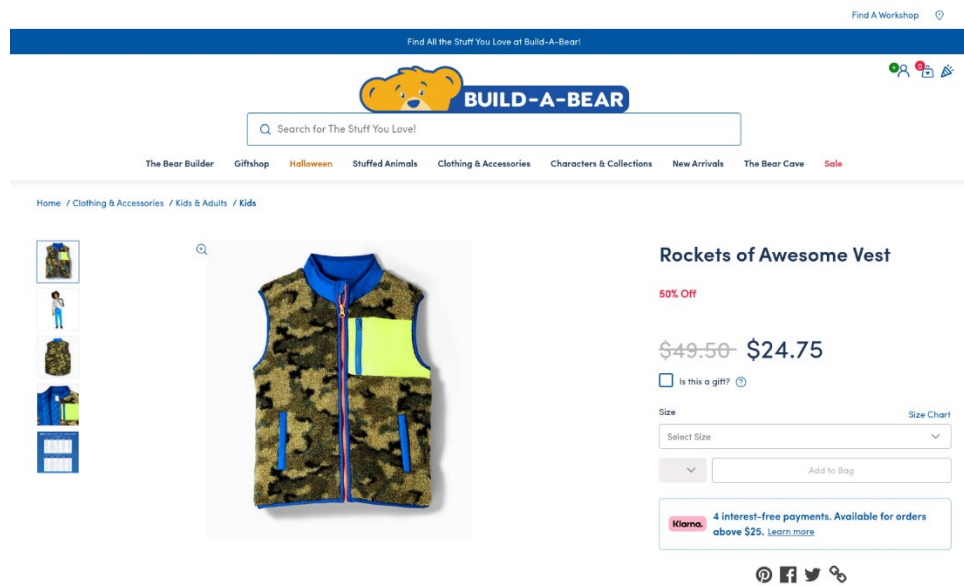
16  
17 5. To illustrate, below is a June 10, 2024 screengrab from Build-A-Bear’s  
18 website for Rockets of Awesome Vest “on sale” for \$24.75 from an original  
19 price of \$49.50.  
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6. Below is a screengrab of the same product, taken from Build-A-Bear’s website more than three months later, on September 30, 2024, which still reveals the inflated reference price of \$49.50 and false discount price of \$24.75.



1 7. Build-A-Bear’s practice of falsely inflating reference prices in order to  
2 give the illusion of higher value, bigger discounts, and a false sense of time  
3 pressure, constitutes false advertising, and is an unfair and deceptive practice  
4 under California’s Consumer Legal Remedies Act (“CLRA”) Cal. Civ. Code  
5 §§ 1750 *et seq.*  
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8 8. Accordingly, Plaintiff, on behalf of himself and the Classes (as defined  
9 below) now seeks to hold Build-A-Bear accountable for its unfair, deceptive,  
10 and unlawful policy of displaying false or misleading discount or “sale”  
11 prices. Plaintiff seeks to bring claims on behalf of a Nationwide Class and a  
12 California Subclass (collectively “Classes”) of consumers who purchased  
13 falsely discounted products on Build-A-Bear’s website and is seeking, among  
14 other things, to recover damages and injunctive or declaratory relief ordering  
15 Defendant to disgorge all revenues unjustly received from the proposed  
16 Classes due to its intentional and unlawful practice of using false reference  
17 prices and false discounts.  
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21 **PARTIES**

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23 9. Plaintiff Cameron Perez is an individual citizen of the State of  
24 California and a natural adult person who resides in San Diego County,  
25 California.  
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27 10. Build-A-Bear Workshop, Inc. is a Delaware corporation with  
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1 corporate offices located at 415 South 18<sup>th</sup> Street, Suite 200, Saint Louis,  
2 Missouri. Build-A-Bear Workshop, Inc. posted consolidated revenues of  
3 \$486.1 million for fiscal 2023.<sup>2</sup>  
4

5 **JURISDICTION AND VENUE**

6 11. The Court has subject matter jurisdiction over this action under  
7 the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). The amount in  
8 controversy exceeds \$5 million, exclusive of interest and costs. Upon  
9 information and belief, the number of class members is over 100, many of  
10 whom have different citizenship from Defendant. Thus, minimal diversity  
11 exists under 28 U.S.C. § 1332(d)(2)(A).  
12  
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14 12. This Court has personal jurisdiction over Defendant because it  
15 can be found in and operates in this District, and generally conducts  
16 substantial business in the State of California. Defendant has sufficient  
17 minimum contacts in California, and/or otherwise intentionally avails itself to  
18 the California market through the operation of its e-commerce website within  
19 the State of California, knowingly and intentionally shipping goods into the  
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24 <sup>2</sup> Press Release, September 12, 2024 available at:  
25 <https://ir.buildabear.com/news-releases/news-release-details/build-bear-workshop-names-david-henderson-chief-revenue-officer#:~:text=cherished%20memories%20worldwide.-,Build%2DA%2DBear%20Workshop%2C%20Inc.,%24486.1%20million%20for%20fiscal%202023> (last accessed December 5, 2024).  
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1 State of California for decades, and a substantial part of the unlawful business  
2 practices which give rise to this action occurred in this District.

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4 13. This Court may exercise personal jurisdiction over Defendant to  
5 the fullest extent allowed under the Federal Due Process Clause. Defendant  
6 has certain minimum contacts with the State of California. Defendant has and  
7 continues to purposefully perform some acts or consummate some  
8 transactions in the State of California, and Plaintiff's claims arise from, or are  
9 connected with, Defendant's transactions. The assumption of jurisdiction by  
10 this Court does not offend traditional notions of fair play and substantial  
11 justice, consideration being given to the quality, nature, and extent of the  
12 activity in the State of California, the relative convenience of the parties, the  
13 benefits and protection of laws of the State of California afforded the  
14 respective parties, and the basic equities of the situation.

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18 14. Build-A-Bear operates a website, [www.BuildABear's.com](http://www.BuildABear's.com), by  
19 which Build-A-Bear advertises and sells its goods in California. The website  
20 is regularly viewed by and used to purchase products by consumers in  
21 California.  
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23  
24 15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)  
25 because a substantial part of the events giving rise to this action occurred in  
26 this District. For example, Plaintiff was in San Diego County, California  
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1 when he saw the false discount representations on Build-A-Bear’s website  
2 and placed the order on Build-A-Bear’s website after relying on the deceptive  
3 advertised price displayed. Build-A-Bear’s shipped the goods Plaintiff  
4 purchased to Plaintiff’s home in La Mesa, California. Pursuant to Cal. Civ.  
5 Code § 1780(d), the venue affidavit is attached as **Exhibit A**.

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8 **FACTUAL BACKGROUND**

9 **I. FALSE REFERENCE PRICING SCHEMES**

10 16. Consumers’ reactions to sales and to false sales are well studied  
11 in academic literature. Research shows that reference prices, such as those  
12 used by Defendant, materially impact consumers’ behavior. A reference price  
13 affects a consumer’s perception of the value of the transaction, the consumer’s  
14 willingness to make the purchase, and the amount of money the consumer is  
15 willing to pay for the product.<sup>3</sup>

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18 17. This deceptive practice involves three elements, most easily  
19 shown through an example using a retailer that wants to sell a blue shirt with  
20 a market value of \$35. First, the retailer advertises an inflated “reference  
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24 <sup>3</sup> Urbany, Joel E., William O. Bearden and Dan Weilbaker (1988), “The  
25 Effect of Plausible and Exaggerated Reference Prices on Consumer  
26 Perceptions and Price Search,” Journal of Consumer Research, 15 (June), 95–  
27 110; Chandrashekar, Rajesh (2004), “The Influence of Redundant  
28 Comparison Prices and Other Price Presentation Formats on Consumers’  
Evaluations and Purchase Intentions,” Journal of Retailing, 80 (1), 53–66.

1 price” or the “strike through price” for that shirt, which the retailer wants the  
2 consumer to believe is that shirt’s normal price. For this example, that price  
3 is \$50. The problem is that the retailer has not actually sold the shirt for \$50,  
4 nor could it do so because the market will not bear such an inflated price when  
5 other similar blue shirts are sold for less. Instead that \$50 price is fictitious,  
6 created by the retailer in order to show the consumer the second element in  
7 the fraud: a supposed “discount” off that fictitious reference price. In this  
8 example, that amounts to a 30% discount. Then, in the third element, the  
9 retailer presents the consumer with the “new” discounted price of \$35 for the  
10 blue shirt, which the retailer wanted to sell the shirt for all along. As part of  
11 this scheme, the retailer wants the consumer to believe that the shirt is worth  
12 \$50 and that the consumer is getting a deal by actually paying \$15 less, which  
13 induces the consumer to make a purchase under the false belief that he is  
14 getting a bargain on a more valuable shirt (30% off a \$50 product in this  
15 example) and creates a false sense of urgency that the purported “discount”  
16 or “sale” will end and the consumer will have to pay the “reference price” for  
17 the shirt. Using this deception, retailers can even falsely induce consumers to  
18 pay prices above the market price, for example \$40 for the blue shirt, because  
19 the consumer still believes she is getting a deal, i.e., a 20% markdown.

26 18. Accurate reference prices play an important role in consumers’  
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1 ability to compare products because they allow consumers to make informed  
2 decisions by comparing one retailer’s prices to another. This is especially true  
3 where the consumer is comparing similar, though not identical, products such  
4 as two white T-shirts. In such circumstances, reference prices increase a  
5 consumer’s interest in the product by increasing the consumer’s estimate of  
6 savings offered by one retailer.<sup>4</sup> “[A] higher plausible reference price . . .  
7 consistently makes the offer appear to be a better value than if no reference  
8 price appears.”<sup>5</sup> Therefore, when a retailer advertises its products with  
9 inflated reference prices, consumers are harmed because they are denied the  
10 ability to accurately compare prices across the market, and they imbue the  
11 advertised product with a false sense of value that they would not have  
12 developed if the inflated reference price had not been listed.

17 19. Unsurprisingly, research shows that consumers prefer to get a  
18 bargain. Indeed, “shoppers sometimes expend more time and energy to get a  
19 discount than seems reasonable given the financial gain involved,” and “often  
20 derive more satisfaction from finding a sale price than might be expected on  
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25 <sup>4</sup> Blair, Edward A. and E. Laird Landon, Jr. (1981), "The Effects of Reference  
26 Prices in Retail Advertisements," *Journal of Marketing*, 45 (Spring), 61-69.

27 <sup>5</sup> Urbany, The Effect of Plausible and Exaggerated Reference Prices on  
28 Consumer Perceptions and Price Search, *supra* n. 1 at 106.

1 the basis of the amount of money they actually save.”<sup>6</sup> The fear of losing such  
2 a discount, because of the false impression given the retailer that the discount  
3 or sale price will not last forever, often induces the consumer to purchase  
4 quickly, without performing comparison shopping.  
5

6 20. Studies also show that consumers are driven by internal and  
7 external reference prices.<sup>7</sup> Internal reference prices are a consumer’s price  
8 expectations based on past experiences, stored in their memory. External  
9 reference prices are prices encountered during the shopping experience, such  
10 as suggested retail prices or sale tags.<sup>8</sup> Research suggests that consumers  
11 adjust their internal value expectations (i.e., internal reference prices) to align  
12 with external reference prices they encounter.<sup>9</sup> In addition, for infrequently  
13 purchased items, or unique items, consumers may lack an actual internal  
14 reference price simply because they have not priced the product previously,  
15 and in such situations, consumers rely more heavily on the external reference  
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21 <sup>6</sup> Darke, Peter and Darren Dahl. “Fairness and Discounts: The Subjective  
22 Value of a Bargain.” *Journal of Consumer Psychology* 13, No. 3 (2003): 328–  
338, at 328.

23 <sup>7</sup> Mayhew, Glenn E. and Russell S. Winer. “An Empirical Analysis of Internal  
24 and External Reference Prices using Scanner Data.” *Journal of Consumer  
25 Research* 19, No. 1 (1992): 62-70, at 68.

26 <sup>8</sup> *Id.* at 62.

27 <sup>9</sup> Grewal, Dhruv, Kent B. Monroe, and Ramayya Krishnan. “The Effects of  
28 Price-Comparison Advertising on Buyers’ Perceptions of Acquisition Value,  
Transaction Value, and Behavioral Intentions.” *The Journal of Marketing* 62  
(1998): 46-59, at 48.

1 prices.

2 21. Retailers, including Defendant, understand that consumers are  
3 vulnerable to perceived bargains. Thus, Build-A-Bear has a substantial  
4 financial interest in exploiting consumers’ well-known behavioral tendencies  
5 by inducing consumers into believing they are receiving a bargain—even  
6 when they are not. The phenomena of people disproportionately relying on an  
7 initial piece of information when making a decision, known as “anchoring,”<sup>10</sup>  
8 is especially relevant in this context. Especially when shopping online,  
9 consumers often encounter reference prices as the first, if not the only, insight  
10 into a product’s value besides the sale price itself. Thus, consumers use the  
11 reference price as a baseline upon which to calculate a product’s true value.  
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13 22. Deceptive and misleading pricing such as that employed by  
14 Defendant causes consumers to pay more than they otherwise would have  
15 paid for products. It also misleadingly resets consumers’ true value  
16 expectations by falsely representing the value of products in order to trick  
17 consumers into paying more than the products are actually worth.  
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19 23. In addition to harming consumers, employing false reference  
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25 <sup>10</sup> See Program on Negotiation, Anchoring Effect, HARV. L. SCH.,  
26 <http://www.pon.harvard.edu/tag/anchoring-effect> (“[T]he anchoring effect,  
27 [is] the tendency for the first offer to “anchor” the bargaining that follows in  
28 its direction, even if the offer recipient thinks the offer is out of line.”) (last  
accessed December 5, 2024).

1 pricing disrupts the integrity and fairness that underlies retail markets. When  
2 unethical retailers use misleading reference prices, they gain an unfair  
3 advantage over honest competitors offering similar products. In the forgoing  
4 example, if the dishonest retailer is selling a blue shirt that is purportedly  
5 valued at \$50 for just \$35, and the honest retailer is selling a similar \$35 blue  
6 shirt for \$35, the online consumer, who cannot otherwise evaluate the true  
7 value of the shirt, is more likely to buy the supposedly more valuable \$50  
8 shirt, rather than the supposedly less valuable \$35 shirt. If such unlawful  
9 advertising practices remain unchecked, businesses that adhere to honest  
10 practices will continue to be unfairly disadvantaged.

14 24. Defendant knew or should have known that the use of false  
15 reference prices was misleading consumers to believe that they were  
16 receiving a “sale” when, in fact, they were not. Moreover, Build-A-Bear  
17 intended for reasonable consumers to understand the “sale” prices to be new  
18 prices that Build-A-Bear had reduced from its “regular” or “former” prices.  
19 Defendant intentionally failed to disclose to Plaintiff and members of the  
20 Classes the truth about its reference prices, i.e. that the prices were fabricated,  
21 and Defendant never offered the items at the reference prices during the  
22 relevant period. Defendant intentionally sought to convey to consumers that  
23 they were receiving a true markdown.  
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1 25. Defendant intentionally enacted a broad pricing scheme designed  
2 to mislead customers into believing that the reference prices were the prices  
3 at which the advertised product was formerly listed and the prevailing market  
4 rate of the advertised product.  
5

6 **II. FALSE REFERENCE PRICING VIOLATES BOTH**  
7 **FEDERAL LAW AND STATE LAW**

8 26. It is well-established that false reference pricing violates federal  
9 and state law. Even so, retailers, including Defendant, continue to use the  
10 tactic because they know they will be able to increase sales and profits by  
11 tricking consumers into making purchase decisions based on the falsely  
12 inflated reference prices. Though the information available to consumers  
13 varies between different types of products, consumers frequently lack full  
14 information about products and, as a result, often use information from  
15 retailers to make purchase decisions.  
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19 27. California law prohibits false reference pricing practices like  
20 those used by Defendant. *See* Cal. Bus. & Prof. Code § 17501 (expressly  
21 prohibiting false former pricing schemes); *see also* Cal. Civ. Code §  
22 1770(a)(9) (prohibiting a business from “[a]dvertising goods or services with  
23 intent not to sell them as advertised”), and Cal. Civ. Code § 1770(a)(13)  
24 (prohibiting a business from “[m]aking false or misleading statements of fact  
25 concerning reasons for, existence of, or amounts of price reductions”).  
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1       28.       The Ninth Circuit Court of Appeals recognizes the harm that can  
2 come from advertising false and deceptive reference prices. In *Hinojos v.*  
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4 *Kohl's Corp.*, 718 F.3d 1098 (9th Cir. 2013), the court found that “[m]ost  
5 consumers have, at some point, purchased merchandise that was marketed as  
6 being ‘on sale’ because the proffered discount seemed too good to pass up.  
7  
8 Retailers, well aware of consumers’ susceptibility to a bargain, therefore have  
9 an incentive to lie to their customers by falsely claiming that their products  
10 have previously sold at a far higher ‘original’ price in order to induce  
11 customers to purchase merchandise at a purportedly marked- down ‘sale’  
12 price. Because such practices are misleading—and effective—the California  
13 legislature has prohibited them.” *Id.* at 1101.  
14

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16       29.       The FTC also recognizes the fraudulent nature of fictitious and  
17 artificial sale pricing. The FTC’s rules have long included “Part 233—Guides  
18 Against Deceptive Pricing” which states in relevant part:  
19

20               One of the most commonly used forms of bargain  
21 advertising is to offer a reduction from the  
22 advertiser’s own former price for an article. If the  
23 former price is the actual, bona fide price at which  
24 the article was offered to the public on a regular  
25 basis for a reasonably substantial period of time, it  
26 provides a legitimate basis for the advertising of a  
27 price comparison. Where the former price is  
28 genuine, the bargain being advertised is a true one.  
If, on the other hand, the former price being  
advertised is not bona fide but fictitious  
-- for example, where an artificial, inflated price



1 was established for the purpose of enabling the  
2 subsequent offer of a large reduction -- the  
3 “bargain” being advertised is a false one; the  
4 purchaser is not receiving the unusual value he  
5 expects. In such cases, the “reduced price” is, in  
6 reality, probably just the seller’s regular price. 16  
7 C.F.R § 233.1(a).

8 The FTC guidance provides several useful examples of such deceptive sales:

9 An advertiser might use a price at which he never  
10 offered the article at all; he might feature a price  
11 which was not used in the regular course of  
12 business, or which was not used in the recent past  
13 but at some remote period in the past, without  
14 making disclosure of that fact; he might use a price  
15 that was not openly offered to the public, or that was  
16 not maintained for a reasonable length of time, but  
17 was immediately reduced. 16 C.F.R § 233.1(d).

18 **III. DEFENDANT USED FALSE REFERENCE PRICING TO**  
19 **DECEIVE ITS CUSTOMERS**

20 30. Using deceptive pricing tactics, Defendant lures consumers by  
21 advertising its products at seemingly discounted “sale” prices compared to  
22 significantly marked-up reference prices. These fictitious reference prices are  
23 never actually charged, making the “discounts” misleading.

24 31. Defendant’s advertised discounts are fictitious because the  
25 reference prices do not represent a bona fide price at which Defendant  
26 previously sold, or offered to sell, the products on a regular basis, for a  
27 commercially reasonable period of time, as required by the FTC. In addition,  
28 the advertised reference prices were not the prevailing market retail price

1 within the three months (90 days) immediately preceding the publication of  
2 the advertised former reference price, as required by California law.

3  
4 32. As a direct result of Defendant’s actions, all consumers who  
5 purchased products that were advertised with false reference prices and/or  
6 misleading discounts on Defendant’s website have been deceived and have  
7 been undeniably harmed, in that they would not have purchased these  
8 products but for the misleading pricing. They have suffered an economic  
9 injury by being misled into paying more than the products were actually  
10 worth.  
11

12  
13 33. Defendant’s false pricing scheme has directly harmed all  
14 customers who were tricked into buying discounted products on its website.  
15 By creating a false perception of significant savings, Build-A-Bear  
16 fraudulently inflated demand for its products. This has shifted the demand  
17 curve, allowing Build-A-Bear to charge higher prices and generate more sales  
18 than would have been possible had it used honest pricing practices.  
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21 34. Consumers, like Plaintiff, were deceived by Defendant’s  
22 misleading discounts. They did not receive the substantial savings that were  
23 advertised, nor were the products actually worth the inflated reference prices.  
24 Moreover, consumers would not have purchased the products at the purported  
25 “sale” price but for the misleading reference price.  
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1 35. The misleading nature of Defendant’s reference prices and  
2 discounts was cleverly disguised and could not be detected by a reasonable  
3 consumer exercising due diligence, particularly because the deception was  
4 hidden over an extended period of time. The only way for a consumer to  
5 detect Defendant’ deception would be if the consumer meticulously followed  
6 the price of the product every day for months, especially for retailers like  
7 Defendant, who often sells custom items (i.e., items under its own brand).

10 36. Defendant continues to engage in these deceptive practices on its  
11 website by advertising false reference prices and misleading discounts. There  
12 is no indication that it will voluntarily cease these tactics. Even if it were to  
13 stop temporarily, there is a high risk that it would resume these deceptive  
14 practices in the future.

17 37. Defendant’s actions towards consumers and the general public  
18 demonstrate malice, fraud, and/or oppression. Its deceptive practices have had  
19 a significant negative impact on the Plaintiff, the Classes of affected  
20 consumers, and the public at large.

22 38. The advertised reference prices and discounts for Defendant’s  
23 products on Defendant’s website are misleading. The “sale” price is often  
24 very close to, if not higher than, the true price for these products. The listed  
25 reference price of Defendant’s products is inflated and does not reflect the  
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1 actual selling price.

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 3 39. For example, during the 99-day period from January 1, 2024  
 4 through April 9, 2024, the following products have been offered at a  
 5 “discount,” when in fact they were not sold at the reference price at any point  
 6 during that time period:  
 7

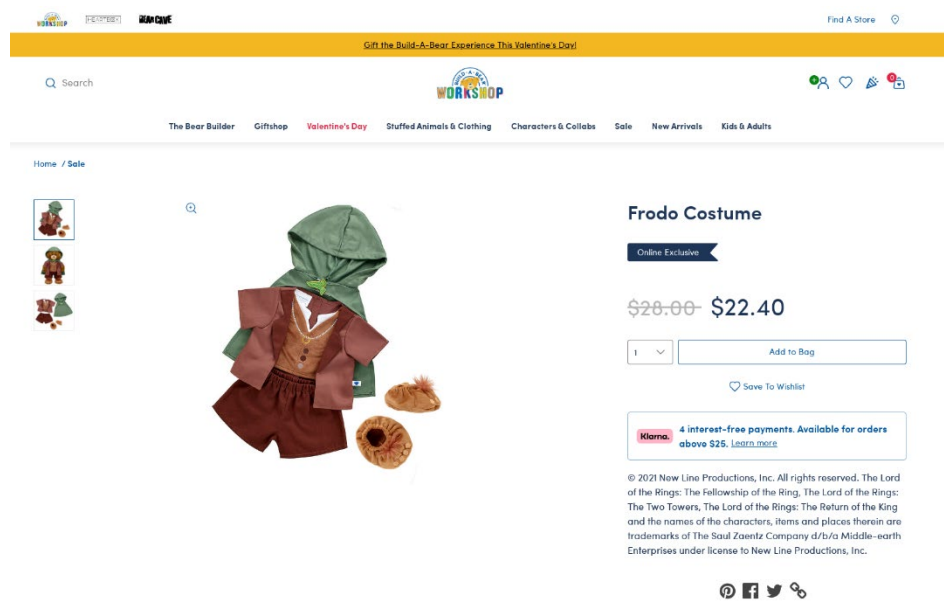
8 <b>Product Name</b>	9 <b>Reference Price</b>	10 <b>Days Sold at Reference Price</b>	11 <b>Days “On Sale”</b>
12 Washington Capitals Uniform 3 pc.	13 \$18	14 0	15 98
16 Los Angeles Kings Uniform 3 pc.	17 \$18	18 0	19 98
20 Buffalo Sabres Uniform 3 pc.	21 \$18	22 0	23 98
24 Triceratops Stuffed Animal	25 \$25.50	26 0	27 98
28 Plush Barbecue Grill Set	\$12.50	0	98
Houston Rockets T-Shirt	\$8	0	98
Chicago Blackhawks Uniform 3 pc.	\$18	0	98
Lovable Lion Stuffed Animal	\$25.50	0	98
Genie Costume 2 pc.	\$18	0	98
Aladdin Costume 3 pc.	\$12.50	0	98
Florida Panthers Uniform 3 pc.	\$18	0	98
The Wizard of Oz Tin Man Costume	\$18	0	98

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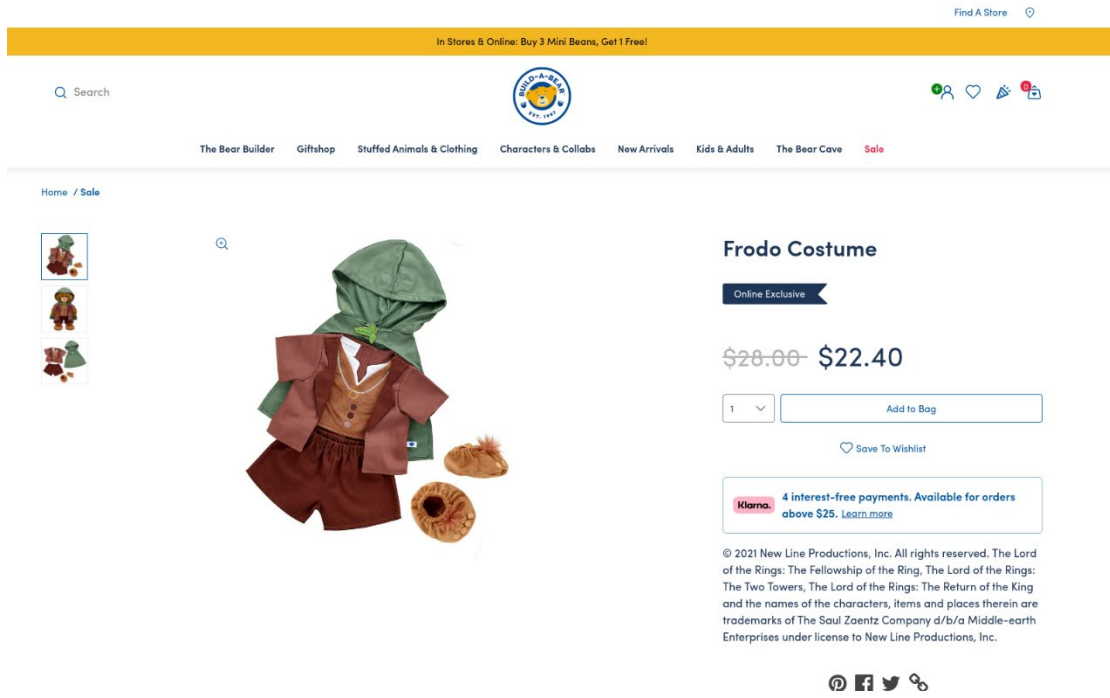
The Wizard of Oz Cowardly Lion Costume	\$18	0	98
Great Gobbles Turkey Stuffed Animal	\$25.50	0	98
St. Louis Blues Uniform 3 pc.	\$18	0	98
Pink Unicorn Basket	\$15	0	98

40. The reference chart above contains merely a fraction of those products listed as “discounted” on Build-A-Bear’s website when, in fact, they were not listed any time for the referenced price in the preceding 90 days.

41. The below screen shot is an example of how Build-A-Bear’s presents its deceptive pricing to consumers. It shows the Frodo Costume, listed at a discount price of \$22.40, which reflects approximately 20% savings off of the “reference” price of \$28. This screenshot is from February 14, 2024.

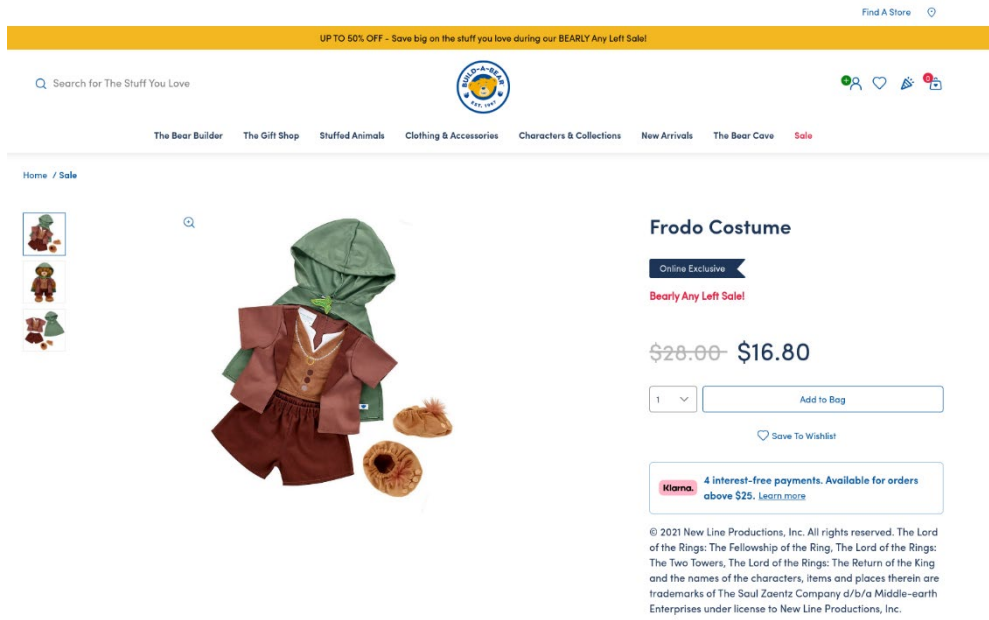


1 42. Just under two months later, on April 8, 2024, the Frodo Costume  
2 was still listed at a supposedly discounted price of \$22.40, reflecting  
3 approximately 20% savings off of the “reference” price of \$28.  
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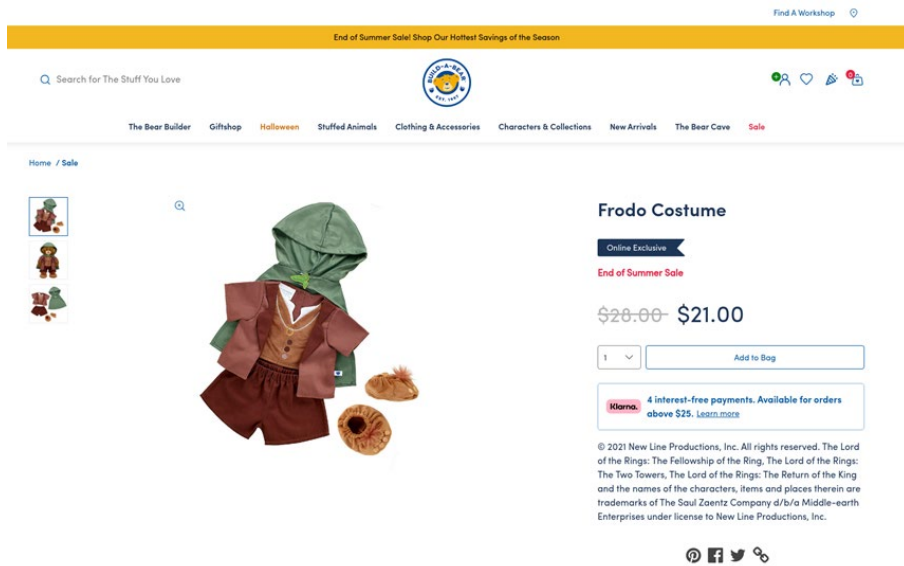


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17 43. Approximately two months later, on June 17, 2024, the Frodo  
18 Costume, was listed at a supposedly discounted price of \$16.80, reflecting  
19 approximately 40% savings off of the claimed “reference” price of \$28.  
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44. And approximately two more months later, on August 26, 2024, the Frodo Costume, was listed at a supposedly discounted price of \$21, reflecting approximately 25% savings off the claimed “reference” price of – still - \$28.



45. For a significant and uninterrupted period of time over several

1 months, Build-A-Bear ran what appeared to be sales on many of its products.  
2 These supposed discounts were often substantial, reaching up to 50%. Even  
3 though the exact discount amount might fluctuate slightly, the products were  
4 advertised as on “sale;” however, all or nearly all the advertised sale products  
5 are never actually offered for purchase or sold at the reference price.  
6

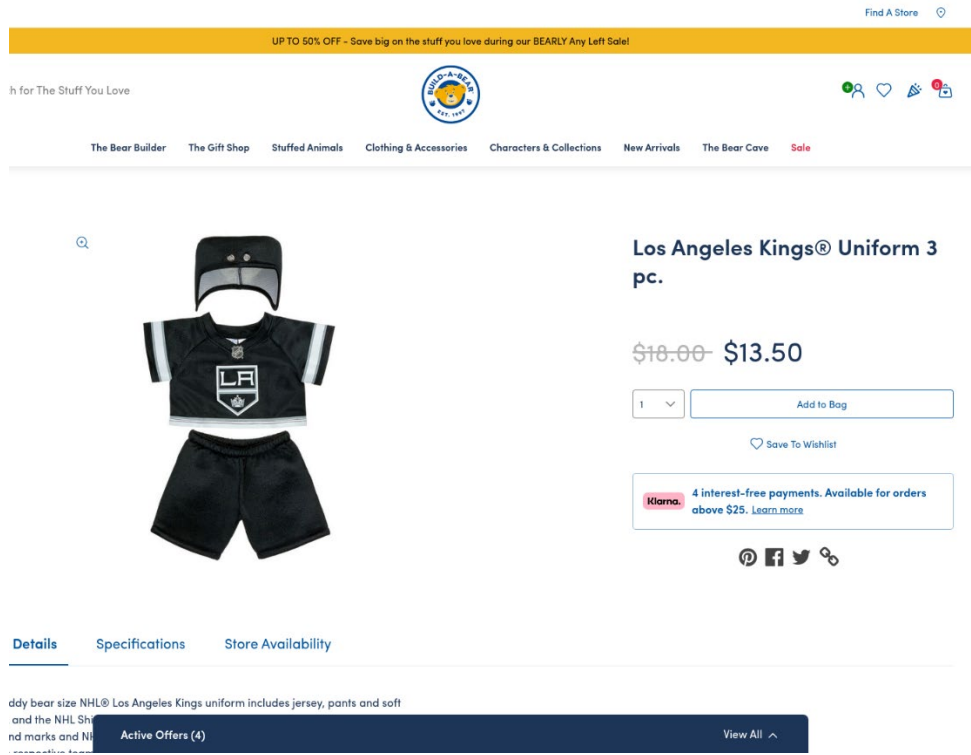
7  
8 **IV. PLAINTIFF FELL VICTIM TO DEFENDANT’S**  
9 **DECEPTIVE PRACTICES**

10 46. Plaintiff is, and at all relevant times has been, a resident and  
11 citizen of the State of California. On or around June 11, 2024, while browsing  
12 Defendant’ website, Plaintiff saw an advertisement boasting significant  
13 “savings” on various products.  
14

15 47. Defendant’s website presented an original marked-through price,  
16 which was the reference price, to the right of the lower “sale price.” The below  
17 image represents what Plaintiff saw when purchasing the outfit:  
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48. After seeing the reference price of \$18, Plaintiff specifically chose to purchase the product because Plaintiff believed he was receiving a significant discount on the product he had chosen. Because he was interested in the product and felt that the discounted price would likely not last, and that he was getting a significant bargain on the product, Plaintiff chose to immediately move forward with purchasing it. As a reasonable consumer, he trusted that the products had a value commensurate with the reference price. Thus, the advertised “sale” appeared to be a genuine discount.

49. Relying on the advertised savings, Plaintiff added the products to his cart and completed the purchase. A copy of the receipt is attached hereto as **Exhibit B**.

1        50.        Unbeknownst to Plaintiff, Build-A-Bear rarely, if ever, offered  
2 its products at the advertised “regular” reference prices, and did not do so for  
3 the product Plaintiff purchased at any time in the 90 days prior to that  
4 purchase. Simply put, Defendant intentionally deceived Plaintiff. The actual  
5 value of the product purchased did not match the inflated reference price  
6 Plaintiff was led to believe was the true value of the uniform. Thus, the  
7 advertised “sale” wasn't a deal, or even a sale, at all.

10        51.        Defendant’s inflated reference prices and misleading discounts  
11 were significant and material misrepresentations that directly influenced  
12 Plaintiff’s purchase. Plaintiff relied on this false information in good faith.  
13 Had Plaintiff known the truth, he would not have bought the product for the  
14 price that she did.

17        52.        Defendant’s misrepresentations were material because a  
18 reasonable consumer relies on such information when making purchasing  
19 decisions.

21        53.        As a direct consequence of Defendant’ actions, Plaintiff was  
22 financially harmed. Hee would not have purchased the product at the same  
23 price absent Defendant’ misrepresentation. The advertised discounts were  
24 illusory, and the products were not worth the reference price listed by  
25 Defendant, as Plaintiff was led to believe.

1 54. Moreover, Plaintiff was damaged because Defendant’s false  
2 pricing scheme inflated the true market value of the item Plaintiff purchased.  
3  
4 Even though Defendant’s false pricing scheme is pervasive on its website, not  
5 every advertised sale is in fact false, and as such, without substantial effort,  
6 Plaintiff and other consumers cannot know which sales are false and which  
7  
8 are true. Thus, Plaintiff is susceptible to this reoccurring harm because he  
9 cannot be certain that Defendant has corrected the deceptive pricing scheme,  
10 and Plaintiff desires to shop at Defendant’s website in the future. Plaintiff  
11  
12 does not have the resources to always (or even regularly) determine whether  
13 Build-A-Bear is complying with state and federal law with respect to its  
14 pricing practices by watching the price over the course of several months.  
15

16 55. Plaintiff has the legal right – now and in the future – to expect  
17 truthful and accurate information from Defendant regarding advertised prices  
18 and discounts. Plaintiff, and the other members of the Classes, will be harmed  
19 if, in the future, they are left to guess as to whether Build-A-Bear is providing  
20 a legitimate sale, and whether products are actually worth the amount that  
21 Defendant is representing. If Plaintiff were to trust that Defendant has  
22 reformed its pricing practices and were to purchase again from Defendant, he  
23 would have no way of knowing if the advertised discounts were legitimate.  
24 Plaintiff continues to be interested in purchasing products that are sold by  
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1 Defendant and offered at discounted prices, but he will be unable to trust and  
2 rely on Defendant’s website pricing. Absent injunctive relief, Plaintiff cannot  
3 know whether Defendant’s reference prices represent true former prices, and  
4 the true value of the item, or inflated reference prices employed in order to  
5 deceive customers into believing that a legitimate discount is being offered.  
6 Thus, Plaintiff will be harmed on an ongoing basis and/or will be harmed once  
7 or more in the future.

10 56. The deceptive practices described herein are not limited to the  
11 specific product Plaintiff purchased or categorical group of products. The  
12 misleading advertising and sales tactics employed by Build-A-Bear are  
13 systematic and widespread across its entire website, impacting customers  
14 nationwide.

17 **V. CLASS DEFINITION AND ALLEGATIONS**

18 57. Plaintiff brings this action pursuant to Rule 23(b)(2) and (b)(3)  
19 of the Federal Rules of Civil Procedure on behalf of himself and on behalf of  
20 all other persons similarly situated.

22 58. Plaintiff proposes the following Class definitions, subject to  
23 amendment as appropriate:

25 **Nationwide Class (the “Nationwide Class” or**  
26 **“Class”)**

27 All individuals who, within the applicable  
28 limitations period, purchased from the Defendant’s

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website one or more products that were advertised or promoted by displaying or disseminating a reference price or discount for an item that was not advertised for sale at the reference price at any point in the 90 days preceding their purchase.

**California Subclass (“California Subclass” or “Subclass”)**

All individuals who, within the applicable limitations period, purchased from the Defendant’s website one or more products that were advertised or promoted by displaying or disseminating a reference price or discount for an item that was not advertised for sale at the reference price at any point in the 90 days preceding their purchase.

59. Excluded from the Class and Subclass (collectively “Classes”)

are Defendant, their parents, subsidiaries, affiliates, officers and directors, and judicial officers and their immediate family members and associated court staff assigned to this case.

60. Plaintiff reserves the right to modify or amend the definitions of the proposed Classes before the Court determines whether certification is appropriate.

61. The proposed Classes meet the criteria for certification under Fed. R. Civ. P. 23(a), (b)(2), and (b)(3).

62. **Numerosity:** This action is appropriately suited for a class action. The members of the Classes are so numerous that the joinder of all members is impracticable. Upon information and belief, the proposed Classes

1 contain well over 100 members, and likely thousands of individual purchasers  
2 who have been damaged by Defendant’s conduct as alleged herein, the  
3 identity of whom is within the knowledge of Defendant and can be easily  
4 determined through Defendant’s records.  
5

6       **63. Commonality:** This action involves questions of law and fact  
7 common to the Classes. The common legal and factual questions include, but  
8 are not limited to, the following:  
9

- 10       a. Whether Defendant made false or misleading statements of fact  
11       in its advertisements;
- 12       b. Whether Defendant’s policies and actions regarding its  
13       advertising were unfair, deceptive, or misleading;
- 14       c. The accuracy of Defendant’s advertised reference prices and  
15       discounts;
- 16       d. Whether Defendant breached its contract with Plaintiff and the  
17       Class members;
- 18       e. Whether Defendant was unjustly enriched as a result of its  
19       actions with respect to reference pricing and discounts  
20       advertised;
- 21       f. Whether the alleged conduct of Defendant violates California  
22       Civil Code §§ 1750 *et seq.*, California Business & Professions  
23       Code §§ 17500 *et seq.*, California Business & Professions Code  
24       §§ 17501 *et seq.* and/or California Business & Professions Code  
25       §§ 17200 *et seq.*
- 26       g. Whether Plaintiff and the members of the Classes have suffered  
27       injury and have lost money or property as a result of such false  
28       or misleading discounts and reference prices;

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- h. Whether Defendant should be enjoined from further engaging in the misconduct alleged herein.
- i. Whether Plaintiff and the members of the Classes are entitled to declaratory and injunctive relief and the nature of that relief.

64. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the Classes, because, *inter alia*, Plaintiff and all members of the Classes purchased Defendant’s products advertised at a discount on Defendant’s website. Moreover, Plaintiff’s claims are typical of the Class members’ claims because Plaintiff is advancing the same claims and legal theories on behalf of himself and all members of the Classes. In addition, Plaintiff is entitled to relief under the same causes of action and upon the same facts as all other members of the proposed Classes.

65. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests of the members of the Classes and has retained competent counsel experienced in complex litigation and class action litigation. Plaintiff has no interests antagonistic to those of the members of the Classes and Defendant has no defenses that are unique to Plaintiff.

66. **Superiority:** A class action is superior to other methods for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual class members is relatively small

1 compared to the burden and expense that would be created by individual  
2 litigation of their claims against Defendant. It would be virtually impossible  
3 for a member of the Classes, on an individual basis, to obtain effective redress  
4 for the wrongs done to him or her. Further, even if the members of the Classes  
5 could afford such individualized litigation, the court system could not.  
6 Individualized litigation would create the danger of inconsistent or  
7 contradictory judgments arising from the same set of facts. Individualized  
8 litigation would also increase delay and expense to all parties and the court  
9 system arising from such individual claims. By contrast, the class action  
10 device provides the benefits of adjudication of these issues in a single  
11 proceeding, economies of scale, and comprehensive supervision by a single  
12 court, and presents no management difficulties under the circumstances here.

17 67. Plaintiff seeks monetary damages, including compensatory  
18 damages on behalf of the Classes, and other equitable relief on grounds  
19 generally applicable to the Classes as a whole and to the public. Unless a Class  
20 is certified, Build-A-Bear will be allowed to profit from its unfair and  
21 unlawful practices, while Plaintiff and the members of the Classes will have  
22 suffered damages. Unless a Class-wide injunction is issued, Build-A-Bear  
23 will likely continue to benefit from the violations alleged, and the members  
24 of the Classes and the general public will likely continue to be victimized.  
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1 68. Build-A-Bear has acted and refused to act on grounds generally  
2 applicable to the Classes, making final injunctive relief appropriate with  
3 respect to the Classes as a whole.  
4

5 69. All applicable statutes of limitations have been tolled by the  
6 delayed discovery doctrine. Plaintiff and members of the Classes could not  
7 have reasonably discovered Defendant's practice of running perpetual and/or  
8 extended sales, based on deceptive reference prices and deceptive sale prices,  
9 at any time prior to commencing this class action litigation.  
10

11 70. A reasonable consumer viewing Build-A-Bear's website on  
12 multiple occasions would simply believe that a product just happens to be on  
13 sale when the consumer is on the website. Short of visiting and checking the  
14 website for months continuously or creating automated means of recording  
15 the price over a substantial period of time, a reasonable consumer would not  
16 suspect that Defendant's sales and pricing practices were false or misleading.  
17 Nor would a reasonable consumer be able to ascertain the true value of the  
18 products being sold absent extensive investigation, which reasonable  
19 consumers would not be on notice to have to do.  
20

21 71. Plaintiff did not learn of Defendant's deceptive practices alleged  
22 herein until shortly before retaining counsel in this action.  
23

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

2 **CAUSES OF ACTION**

3 **COUNT I**

4 **FRAUD – INTENTIONAL MISREPRESENTATION AND**  
5 **OMISSION**

6 **(On behalf of Plaintiff and the Class)**

7 73. Plaintiff repeats and realleges each and every allegation  
8 contained in paragraphs 1–72 as if fully set forth herein.

9  
10 74. Defendant made false and misleading statements of fact and  
11 material omissions concerning the existence reference prices and the amounts  
12 of price reductions. These representations were false because the false  
13 reference prices advertised in connection with products offered on the website  
14 misled, and continue to mislead, consumers into believing the products were  
15 previously sold on the website at the higher reference prices, when in fact they  
16 were not. Defendant knew that these representations were false at the time  
17 that it made them and/or acted recklessly in making the misrepresentations.

18  
19  
20 75. Defendant had a duty to accurately disclose the truth about its  
21 pricing information, including that the reference prices advertised on the  
22 website were not truly former prices and that the “discount” price advertised  
23 was not truly a discount. Reasonable consumers were likely to be deceived,  
24 and were deceived, by Defendant’s failure to disclose material information.

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26  
27 76. Defendant knew that the items Plaintiff and the members of the  
28

1 Class purchased had rarely, if ever, been offered or sold on the website at the  
2 higher reference price in the recent past.

3  
4 77. Defendant's representations were made with the intent that  
5 Plaintiff and the members of the Class would rely on the false representations  
6 and spend money they otherwise would not have spent, purchase items they  
7 otherwise would not have purchased, and/or spend more money for an item  
8 than they otherwise would have absent the deceptive pricing scheme.

9  
10 78. Defendant employed this scheme in order to incentivize  
11 consumers with the sole intent of maximizing profits to the detriment of those  
12 same consumers.

13  
14 79. Defendant intended that Plaintiff, and all members of the Class,  
15 rely on its false representations. Plaintiff and all members of the Class  
16 reasonably relied on Defendant's representations. Absent Defendant's  
17 misrepresentations, Plaintiff and the members of the Class would not have  
18 purchased the items from Defendant, or, at the very least, they would not have  
19 paid as much for the items as they ultimately did. Plaintiff's and the Class  
20 members' reliance was a substantial factor in causing their harm.

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24 80. Had the true reference price not been omitted, Plaintiff and the  
25 members of the Class reasonably would have behaved differently. Among  
26 other things, they would not have purchased the items they purchased from  
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1 Defendant or, at the very least, would not have paid as much for the items as  
2 they ultimately did.

3  
4 81. As a direct and proximate result of the above, Plaintiff and the  
5 members of the Class have suffered damages because: (a) they would not have  
6 purchased Defendant's products if they had known that the representations  
7 were false, and/or (b) they overpaid for the products because the products  
8 were sold at a premium price due to the misrepresentations.  
9

10 82. Plaintiff and the members of the Class are also entitled to  
11 punitive or exemplary damages. Defendant, through senior executives and  
12 officers, undertook the illegal acts intentionally or with conscious disregard  
13 of the rights of Plaintiff and the Class, and did so with fraud, malice, and/or  
14 oppression.  
15  
16

17 83. Based on the allegations above, Defendant's actions were  
18 fraudulent because Defendant intended to and did deceive and injure Plaintiff  
19 and the members of the Class. Based on the allegations above, Defendant's  
20 conduct was made with malice because Defendant acted with the intent to  
21 cause and did cause injury to Plaintiff and all members of the Class, and  
22 because Defendant willfully and knowingly disregarded the rights of Plaintiff  
23 and all members of the Class.  
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26

27 **COUNT II**  
28 **NEGLIGENT MISREPRESENTATION**

**(On behalf of Plaintiff and the Class)**

1  
2 84. Plaintiff repeats and realleges each and every allegation  
3  
4 contained in paragraphs 1 – 83 as if fully set forth herein.

5 85. As alleged more fully herein, Defendant made false or  
6  
7 misleading statements and/or material omissions of fact concerning the  
8  
9 existence of and the amounts of price reductions because Defendant falsely  
10  
11 represents the products as on sale, when in truth the reference price was a  
12  
13 fictitious price, rendering the purported “sale” a fictitious discount. When  
14  
15 Defendant made these misrepresentations, it knew or should have known that  
16  
17 they were false. Defendant had no reasonable grounds for believing that these  
18  
19 representations were true when made.

20 86. By choosing to advertise a reference price, Defendant had a duty  
21  
22 to accurately disclose the truth about its pricing, including the fact that the  
23  
24 reference prices advertised and published on the website were not truly former  
25  
26 prices and that the “discount” price advertised was not a true discount.

27 87. Defendant knew its sales were falsely advertised with a false  
28  
reference price. Defendant also knew or should have known that the reference  
prices were not the prevailing market prices or true value of the products.  
Defendant further knew that the items Plaintiff and the Class purchased had  
rarely, if ever, been offered or sold on the website at the false reference price.

1 88. Defendant had no good faith or reasonable basis to believe that  
2 its representations were true when made.

3  
4 89. Defendant's representations were made with the intent that  
5 Plaintiff and the members of the Class rely on the false representations and  
6 spend money they otherwise would not have spent, purchase items they  
7 otherwise would not have purchased, and/or spend more money for an item  
8 than they otherwise would have absent the deceptive pricing scheme.

9  
10 90. Class-wide reliance can be inferred because Defendant's  
11 misrepresentations were material, i.e. a reasonable consumer would consider  
12 them important in deciding whether to buy Defendant's products.

13  
14 91. Defendant's misrepresentations were a substantial factor and  
15 proximate cause in causing damage and losses to Plaintiff and the members  
16 of the Class.

17  
18 92. Defendant engaged in this fraud to the Plaintiff and the Class  
19 members' detriment to increase Defendant's own sales and profits.

20  
21 93. Plaintiff and the members of the Class reasonably relied on  
22 Defendant's representations. Absent Defendant's misrepresentations,  
23 Plaintiff and the members of the Class would not have purchased the items  
24 they purchased from Defendant, or, at the very least, they would not have paid  
25 as much for the items as they ultimately did. Plaintiff and the Class members'  
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1 reliance was a substantial factor in causing them harm.

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

8  
9 95. As a direct and proximate result of the above, Plaintiff and the  
10 members of the Class have suffered damages because they would not have  
11 purchased Defendant's products if they had known that the representations  
12 were false, and/or they overpaid for the products because the products were  
13 sold at a price premium due to the misrepresentations.  
14

15  
16 **COUNT III**  
17 **BREACH OF CONTRACT**  
18 **(On behalf of Plaintiff and the Class)**

19 96. Plaintiff repeats and realleges each and every allegation  
20 contained in paragraphs 1–95 as if fully set forth herein.

21 97. Defendant offered products for sale to Plaintiff and the members  
22 of the Class under the terms advertised on Defendant's website.  
23

24 98. The terms of Defendant's offer provided that Defendant would  
25 sell Plaintiff and the members of the Class products that have a market value  
26 equal to the reference prices displayed. The terms also required that  
27

28

1 Defendant provide Plaintiff and the members of the Class with the discount  
2 listed on Defendant’s website.

3  
4 99. The specific discount was a material term of each contract.

5 100. The terms of the offer also provided that Plaintiff and the  
6 members of the Class would pay Defendant for the products purchased.

7  
8 101. Plaintiff and the members of the Class accepted Defendant’s  
9 offer and paid Defendant for the products they ordered, thereby satisfying all  
10 conditions of their contracts.

11  
12 102. Defendant breached the contracts with Plaintiff and the members  
13 of the Class by failing to provide products that had a market value equal to  
14 the reference price displayed on its website, and by failing to provide the  
15 promised discount.

16  
17 103. As a direct and proximate result of Defendant’s breaches,  
18 Plaintiff and the members of the Class were deprived of the benefit of their  
19 bargained-for exchange, and have suffered damages in an amount to be  
20 established at trial.

21  
22 **COUNT IV**  
23 **UNJUST ENRICHMENT**  
24 **(On behalf of Plaintiff and the members of the Class)**

25 104. Plaintiff repeats and realleges each and every allegation  
26 contained in paragraphs 1–103 as if fully set forth herein.  
27



1 105. Plaintiff brings this claim in the alternative to the contract-based  
2 claims, including her breach of contract claim.

3  
4 106. Plaintiff brings this claim individually and on behalf of the  
5 members of the Class against Defendant.

6 107. Plaintiff and the members of the Class conferred a benefit on  
7 Defendant, which Defendant knew about, when it initiated its false pricing  
8 scheme.

9  
10 108. Plaintiff and members of the Class were, and many continue to  
11 be, consumers of Defendant’s products. They reasonably believed that  
12 Defendant would not falsely advertise discounted products. Plaintiff and  
13 members of the Class suffered financial losses when they were deceived into  
14 purchasing products that they reasonably believed to be on sale. By inflating  
15 the reference price and then offering a “sale,” Defendant creates a false sense  
16 of urgency, a misleading perception of value, and a misleading perception of  
17 savings, tricking customers into paying more than they should or would for  
18 Defendant’s product. Customers who rely on advertised sales to make  
19 informed decisions are deceived into paying a premium for the product and  
20 do not receive a product worth as much as Defendant represented the product  
21 to be worth.

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26 109. This deceptive practice undermines fair competition and allows  
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1 Defendant to profit unfairly. Defendant has accepted and retained these  
2 benefits as a result of its sales of merchandise offered at a false discounted  
3 price, making Defendant's retention of them unjust.  
4

5 110. By its wrongful acts and omission described herein, including  
6 engaging in deceitful and misleading advertising practices by using false  
7 discounts to lure in consumers to purchase products they would not have  
8 otherwise purchased or for amounts they would not have otherwise paid,  
9 Defendant was unjustly enriched at the expense of Plaintiff and the members  
10 of the Class.  
11  
12

13 111. Plaintiff's and the Class members' detriment, and Defendant's  
14 enrichment, were related to and flowed from the wrongful conduct alleged in  
15 this Complaint.  
16

17 112. Defendant has profited from its unlawful, unfair, misleading, and  
18 deceptive practices at the expense of Plaintiff and the members of the Class.  
19 It would be inequitable for Defendant to retain the profits, benefits, and other  
20 compensation obtained from its wrongful conduct described herein.  
21

22 113. Plaintiff and the members of the Class have been damaged as a  
23 direct and proximate result of Defendant's unjust enrichment.  
24

25 114. Plaintiff and the members of the Class are entitled to recover  
26 from Defendant all amounts wrongfully collected and improperly retained by  
27  
28

1 Defendant.

2 115. As a direct and proximate result of Defendant’s wrongful  
3 conduct and unjust enrichment, Plaintiff and the members of the Class are  
4 entitled to restitution of, disgorgement of, and/or imposition of a constructive  
5 trust upon all profits, benefits, and other compensation obtained by Defendant  
6 for its inequitable and unlawful conduct.  
7  
8

9 **COUNT V**  
10 **VIOLATION OF CALIFORNIA’S CONSUMER LEGAL REMEDIES**  
11 **ACT (“CLRA”)**  
12 **Cal. Civ. Code §§ 1750 *et seq.***  
13 **(On behalf of Plaintiff and the California Subclass)**

14 116. Plaintiff repeats and realleges each and every allegation  
15 contained in paragraphs 1–115 as if fully set forth herein.

16 117. Plaintiff brings this claim individually and on behalf of the  
17 members of the California Subclass against Defendant.

18 118. Plaintiff and all members of the California Subclass are  
19 “persons” and “consumers” as defined in Cal. Civ. Code § 1761(d).  
20

21 119. Defendant is a “person” as defined in Cal. Civ. Code § 1761(c).  
22

23 120. The products purchased by Plaintiff and the members of the  
24 California Subclass from Defendant are “goods” as defined by Cal. Civ. Code  
25 § 1761(a).  
26

27 121. Plaintiff’s and the California Subclass members’ purchases from  
28

1 Defendant constitute “transactions,” as defined by Cal. Civ. Code § 1761(e).

2 122. The CLRA prohibits “unfair methods of competition and unfair  
3 or deceptive acts or practices undertaken by any person in a transaction  
4 intended to result or which results in the sale or lease of goods or services to  
5 any consumer.” Cal. Civ. Code § 1770.  
6

7 123. As alleged herein, Defendant engaged in unfair and deceptive  
8 acts or practices insofar as they made and disseminated false and misleading  
9 statements of facts in its advertisements to class members by using false  
10 reference prices and advertising fake discounts in violation of the CLRA. *See*  
11 *Id.*  
12

13 124. Defendant’s conduct as described herein was and is in violation  
14 of the CLRA. Defendant’s conduct violates at least the following enumerated  
15 CLRA provisions:  
16

17 a. Cal. Civ. Code § 1770(a)(5): Representing that goods or  
18 services have characteristics, uses, benefits, or quantities  
19 that they do not have or that a person has a sponsorship,  
20 approval, status, affiliation, or connection that the person  
21 does not have;

22 b. Cal. Civ. Code § 1770(a)(9): Advertising goods or  
23 services with intent not to sell them as advertised; and

24 c. Cal. Civ. Code § 1770(a)(13): Making false or  
25 misleading statements of fact concerning reasons for,  
26 existence of, or amounts of price reductions.

27 125. Defendant has violated Section 1770(a)(5) by representing that  
28

1 products offered for sale on its website have characteristics or benefits that  
2 they do not have. Specifically, Defendant represents that the value of their  
3 products is greater than it actually is by advertising inflated reference prices  
4 and false discounts.  
5

6 126. Defendant has violated Section 1770(a)(9) by advertising its  
7 products as being offered at a discount, when in fact Defendant does not  
8 intend to sell the products at a discount.  
9

10 127. Defendant has violated Section 1770(a)(13) by misrepresenting  
11 the regular reference price of products on the Build-A-Bear's website and by  
12 advertising false discounts and savings.  
13

14 128. Defendant's practice of misrepresenting, actively concealing,  
15 and/or failing to disclose the true prices of the products listed on its website  
16 violated and continues to violate the CLRA.  
17

18 129. Defendant's misrepresentations were likely to deceive, and did  
19 deceive, Plaintiff and reasonable consumers. Defendant knew, or should have  
20 known, that these statements were inaccurate and misleading.  
21

22 130. Defendant's misrepresentations were intended to induce  
23 reliance, and Plaintiff reasonably relied on them when making her purchase.  
24 Defendant's misrepresentations were a substantial factor in Plaintiff's  
25 purchase decision.  
26  
27  
28

1 131. Defendant’s deceptive practices significantly impacted Plaintiff  
2 and the members of the California Subclass. The misleading information  
3 presented was material, meaning a reasonable person would consider it  
4 heavily when deciding to buy products. This false information directly caused  
5 financial harm. Plaintiff and the members of California Subclass ended up  
6 purchasing goods they otherwise would not have purchased or spending more  
7 than the products’ true value.  
8

9  
10 132. Class-wide reliance can be inferred because Defendant’s  
11 misrepresentations were material, in that a reasonable consumer would  
12 consider them important when deciding whether to buy a product and how  
13 much to pay for a product.  
14

15  
16 133. Defendant’s misrepresentations were a substantial factor and  
17 proximate cause in causing damages and losses to Plaintiff and the members  
18 of the California Subclass.  
19

20 134. Plaintiff and the members of the California Subclass were injured  
21 as a direct and proximate result of Defendant’s conduct because they would  
22 not have purchased the products if they had known the truth, and/or they  
23 overpaid for the products because the products were sold at a price premium  
24 due to the misrepresentation.  
25

26 135. Accordingly, pursuant to Cal. Civ. Code § 1780(a)(2), Plaintiff,  
27  
28

1 on behalf of himself and all other members of the California Subclass, seeks  
2 injunctive relief.

3  
4 136. The practices outlined above have caused significant harm to  
5 Plaintiff, the California Subclass, and the public at large. Plaintiff and the  
6 California Subclass members' injuries were proximately caused by  
7 Defendant's unlawful and deceptive business practices. These unlawful and  
8 unfair practices are ongoing and will likely continue unless stopped.  
9 Therefore, Plaintiff seeks a permanent injunction to prevent Defendant from  
10 engaging in such deceptive tactics. Additionally, Plaintiff seeks compensation  
11 for attorney fees and costs incurred. Finally, under the CLRA, Plaintiff seeks  
12 a public injunction to protect the general public from Defendant' misleading  
13 advertising and omissions.  
14  
15  
16

17 137. Pursuant to Cal. Civ. Code § 1782(a), on July 31, 2024,  
18 Plaintiff's counsel served Defendant with notice of its CLRA violations by  
19 certified mail, return receipt requested. Defendant acknowledged receipt of  
20 the CLRA demand notice on August 9, 2024.  
21

22 138. Defendant has failed to provide appropriate relief for their CLRA  
23 violations within 30 days of its receipt of Plaintiff's demand notice.  
24 Accordingly, pursuant to §§ 1780 and 1782(b) of the CLRA, Plaintiff is  
25 entitled to recover actual damages, punitive damages, attorneys' fees and  
26  
27  
28

1 costs, and any other relief the Court deems proper.

2  
3 **COUNT VI**  
4 **VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW**  
5 **(“FAL”)**  
6 **Cal. Bus. & Prof. Code §§ 17501 *et seq.***  
7 **(On behalf of Plaintiff and the California Subclass)**

8 139. Plaintiff repeats and realleges each and every allegation  
9 contained in paragraphs 1–138 as if fully set forth herein.

10 140. Plaintiff brings this claim individually, and on behalf of the  
11 members of the California Subclass against Defendant.

12 141. Defendant has violated Section 17501 of the California Business  
13 and Professions Code.

14 142. Defendant has engaged in false or misleading advertising in  
15 violation of the FAL. Defendant advertised, and continues to advertise,  
16 reference prices and “sale” prices that are false, misleading and/or have the  
17 tendency and likelihood to deceive reasonable consumers. *Brady v. Bayer*  
18 *Corp.*, 26 Cal. App. 5th 1156, 1173 (2018) (“these laws prohibit ‘not only  
19 advertising which is false, but also advertising which[,] although true, is either  
20 actually misleading or which has a capacity, likelihood or tendency to deceive  
21 or confuse the public.’”). To state a claim under the FAL “‘it is necessary only  
22 to show that ‘members of the public are likely to be deceived.’” *Id.* (citations  
23 omitted).  
24  
25  
26  
27  
28



1 143. Defendant engaged in deceptive advertising practices within  
2 California and nationwide. These practices involved promoting its products  
3 through online platforms that contained untrue or misleading statements about  
4 the advertised goods. Notably, Defendant knew, or should have known with  
5 reasonable diligence, the information they disseminated was inaccurate.  
6

7  
8 144. As alleged more fully above, Defendant advertises reference  
9 prices on its website along with discounts.

10 145. The reference prices advertised by Defendant were not the  
11 prevailing market prices for the products within three months preceding  
12 publication of the advertisement.  
13

14 146. Defendant's reference price advertisements do not state clearly,  
15 exactly, and conspicuously when, if ever, the former reference prices  
16 prevailed. Indeed, the advertisements do not indicate whether or when the  
17 purported former reference prices were offered at all.  
18

19  
20 147. The deceptive advertising practices employed by Defendant led  
21 Plaintiff and the members of the California Subclass to make decisions based  
22 on inaccurate information. Defendant's misrepresentations were intended to  
23 induce reliance, and Plaintiff reasonably relied on these misrepresentations  
24 when making her purchase decision.  
25

26 148. Class-wide reliance can be inferred because Defendant's  
27  
28

1 misrepresentations were material.

2 149. Defendant’s misrepresentations were a substantial factor and  
3 proximate cause in damages to Plaintiff and the members of the California  
4 Subclass.  
5

6 150. Plaintiff and the members of the California Subclass were injured  
7 as a direct and proximate result of Defendant’ conduct because they would  
8 not have purchased the products if they had known the truth, and/or they  
9 overpaid for the products because the products were sold at a price premium  
10 due to the misrepresentation.  
11  
12

13 **COUNT VII**  
14 **Violation of California’s False Advertising Law, Bus & Prof. Code**  
15 **§§17500 *et seq.***  
16 **(On behalf of Plaintiff and the California Subclass)**

17 151. Plaintiff repeats and realleges each and every allegation  
18 contained in paragraphs 1–150 as if fully set forth herein.

19 152. Plaintiff brings this claim individually and on behalf of the  
20 California Subclass.  
21

22 153. Defendant has violated Section 17500 of the California Business  
23 and Professions Code.  
24

25 154. As alleged more fully above, Defendant has made and  
26 disseminated false and misleading statements of facts in advertisements to  
27 Plaintiff and the California Subclass members by advertising false reference  
28

1 prices and false discounts regarding its products.

2 155. Defendant’s representations were likely to deceive, and did  
3 deceive, Plaintiff and reasonable consumers. Defendant knew, or should have  
4 known, that these statements were inaccurate and misleading.  
5

6 156. Defendant’s misrepresentations were intended to induce  
7 reliance, and Plaintiff reasonably relied on the statements when purchasing  
8 the products. Defendant’s misrepresentations were a substantial factor in  
9 Plaintiff’s purchase decision.  
10

11 157. Class-wide reliance can be inferred because Defendant’s  
12 misrepresentations were material in that they concerned the price of the  
13 product.  
14

15 158. Defendant’s misrepresentations were a substantial factor and  
16 proximate cause in damages to Plaintiff and the members of the California  
17 Subclass.  
18

19 159. Plaintiff and the members of the California Subclass were injured  
20 as a direct and proximate result of Defendant’s conduct because they would  
21 not have purchased the products if they had known the truth, and/or they  
22 overpaid for the products because the products were sold at a price premium  
23 due to the misrepresentation.  
24  
25

26 **COUNT VIII**  
27 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**  
28

1 (“UCL”)  
2 **Bus. Prof. Code §§ 17200, et seq.**  
3 **(On behalf of Plaintiff and the California Subclass)**

4 160. Plaintiff repeats and realleges each and every allegation  
5 contained in paragraphs 1–159 as if fully set forth herein.

6 161. Plaintiff brings this claim individually and on behalf of himself  
7 and all members of the California Subclass.  
8

9 162. The UCL prohibits and provides civil remedies for unfair  
10 competition. Its purpose is to protect both consumers and competitors by  
11 promoting fair competition in commercial markets for goods and services. In  
12 service of that purpose, the California legislature framed the UCL’s  
13 substantive provisions in broad, sweeping language. By defining unfair  
14 competition to include any “any unlawful, unfair or fraudulent business act or  
15 practice,” the UCL permits violations of other laws to serve as the basis of an  
16 independently actionable unfair competition claim and sweeps within its  
17 scope acts and practices not specifically proscribed by any other law.  
18  
19

20  
21 163. Defendant’s acts and omissions alleged herein, specifically  
22 Defendant’s violations of the CLRA and FLA, constitute unfair competition  
23 and/or unlawful, unfair, or fraudulent business practices in violation of the  
24 UCL.  
25

26 164. Defendant’s actions and omissions have violated, and continue  
27  
28

1 to violate, the “unlawful” prong of the UCL by creating misleading  
2 advertisements with inflated reference prices and false discounts.  
3  
4 Additionally, Defendant has engaged in deceitful practices as outlined in Cal.  
5 Civ. Code §§ 1705, 1709, and 1713. Further, Defendant engaged in unlawful  
6 conduct by violating the Federal Trade Commission Act (“FTCA”), which  
7 prohibits “unfair or deceptive acts or practices in or affecting commerce” and  
8 prohibits the dissemination of false advertisements. 15 U.S.C. § 45(a)(1), 15  
9 U.S.C. § 52(a). As the FTC’s regulations make clear, Defendant’s false  
10 pricing scheme violates the FTCA. 16 C.F.R. §§ 233.1, *et seq.*  
11  
12

13 165. As further alleged herein, Defendant’s conduct also violates the  
14 “deceptive” prong of the UCL in that Defendant’s representations that its  
15 products were on sale, that the sale was limited in time, that the products had  
16 a specific regular price, and that the customers were being offered discounts  
17 from a higher value, were false and misleading.  
18  
19

20 166. Defendant’s material misrepresentations, omissions, and lack of  
21 disclosure are likely to mislead reasonable and potential customers, along  
22 with the general public. These practices are inherently deceptive and mislead  
23 consumers.  
24

25 167. Plaintiff and the members of the California Subclass relied upon  
26 Defendant’s misrepresentations and omissions, as set forth above.  
27  
28

1 168. Defendant’s misrepresentations and omissions are significant  
2 because a reasonable consumer would consider this information when making  
3 purchasing decisions. Plaintiff reasonably relied upon this misleading  
4 information and would have acted differently if she had been presented with  
5 accurate details. Similarly, class-wide reliance can be inferred because  
6 Defendant’s misrepresentations were material in that they concerned the price  
7 of the product.  
8

9  
10 169. Defendant’s conduct, as alleged above, was immoral, unethical,  
11 oppressive, unscrupulous, and substantially injurious to consumers.  
12

13 170. Defendant violated the “unfair” prong of the UCL by falsely  
14 representing that that its products were on sale, that the sale was limited in  
15 time, that the products had a regular reference price higher than the sale price,  
16 and that the customers were receiving discounts.  
17

18 171. Defendant violated established public policy by violating the  
19 CLA, the FAL, and the FTCA.  
20

21 172. Defendant’s misrepresentations and omissions resulted in it  
22 receiving more money from Plaintiff and the members of the California  
23 Subclass than it rightfully deserved. This money is subject to restitution. As  
24 a direct consequence of Defendant’s unfair, unlawful, and deceptive  
25 practices, Plaintiff and the members of the California Subclass suffered  
26  
27  
28

1 financial losses.

2 173. Plaintiff and the members of the California Subclass were injured  
3  
4 as a direct and proximate result of Defendant’s conduct because they would  
5 not have purchased the products if they had known the truth, and/or they  
6 overpaid for the products because the products were not worth the “regular”  
7  
8 reference price represented by Defendant.

9 174. The harm to Plaintiff and the members of the California Subclass  
10 greatly outweighs the public utility of Defendant’s conduct. False statements  
11  
12 in connection with the sale of consumer products harms consumers and  
13 injures competition. There is no public utility to misrepresenting the price of  
14  
15 a consumer product. This injury was not outweighed by any countervailing  
16  
benefits to consumers or competition.

17 175. Plaintiff and the members of the California Subclass could not  
18  
19 have reasonably avoided the injury caused by Defendant.

20 176. Without an injunction, Defendant will continue to harm Plaintiff,  
21  
22 the members of the California Subclass, and prospective consumers at large.  
23  
24 Defendant’s misrepresentations and omissions are ongoing, and even if it  
25  
26 were to stop temporarily, there is a risk of it repeating these deceptive  
27  
28 practices.

177. Plaintiff, on behalf of himself and all members of the California

1 Subclass, seeks public injunctive relief under the UCL to safeguard the  
2 general public from Defendant’s deceptive discount advertising and  
3 misleading omissions.  
4

5 178. Defendant’s actions have caused substantial harm to Plaintiff, the  
6 California Subclass, and the public. These practices are ongoing and are likely  
7 to continue unless stopped.  
8

9 179. Therefore, Plaintiff seeks a permanent injunction to prevent  
10 Defendant from engaging in such unlawful, unfair, and fraudulent business  
11 practices. Additionally, Plaintiff seeks restitution for the California Subclass  
12 in an amount to be determined at trial, as well as attorney fees and costs under  
13 Cal. Code Civ. Proc. § 1021.5. Further Plaintiff, on behalf of the members of  
14 the California Subclass, requests that he be awarded all relief as may be  
15 available by law, pursuant to Cal. Bus. Prof. Code § 17203.  
16  
17  
18  
19

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff respectfully requests that the Court enter  
22 judgment against Defendant as follows:  
23

24 A. Certifying this action as a class action under Rule 23(b)(2) and  
25 (b)(3) of the Federal Rules of Civil Procedure and naming Plaintiff as a  
26 representative of the Classes and Plaintiff’s undersigned attorneys as Class  
27  
28



1 Counsel to represent the Classes;

2 B. For an Order declaring that Defendant’ conduct violated the laws  
3  
4 referenced herein;

5 C. For an Order finding in favor of Plaintiff and the Classes on all  
6  
7 counts asserted herein;

8 D. For an Order awarding actual, statutory, treble, and punitive  
9  
10 damages as applicable;

11 E. For an Order awarding pre-judgment and post-judgment interest  
12  
13 on all amounts awarded;

14 F. For injunctive relief as pleaded or as the Court may deem proper;

15 G. For disgorgement and restitution to Plaintiff and the members of  
16  
17 the Classes of all monies received or collected from Plaintiff and the members  
18  
19 of the Classes and all other forms of equitable relief;

20 H. For an Order awarding reasonable attorneys’ fees and expenses  
21  
22 and costs of suit; and

23 I. For such other and further relief as the Court may deem proper.

**DEMAND FOR JURY TRIAL**

24 Plaintiff hereby demands trial by jury as to all triable issues.

25  
26  
27 Dated: December 5, 2024      Respectfully submitted,

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By: /s/ Kyle McLean  
Kyle McLean (SBN 330580))  
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*Attorneys for Plaintiff and the Proposed Class*

*\*Pro hac vice forthcoming*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CAMERON PEREZ, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff San Diego County, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Kyle McLean, Siri & Glimstad, LLP 700 Flower Street, Suite 1000, Los Angeles, CA 90017; Tel: 212-532-1091

DEFENDANTS

BUILD-A-BEAR WORKSHOP, INC

County of Residence of First Listed Defendant St. Louis Co., MO (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

24CV2268 BEN DEB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, HABES CORPUS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332. Brief description of cause: Fraud, Neglect Misrepresentation, Breach of Contract, Etc

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5000000. CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/5/2024 SIGNATURE OF ATTORNEY OF RECORD /s/ Kyle McLean

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

1 Kyle McLean (SBN 330580)  
2 Lisa R. Considine (*pro hac vice forthcoming*)  
3 David J. Disabato (*pro hac vice forthcoming*)  
4 Leslie L. Pescia (*pro hac vice forthcoming*)  
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11 Email: [ddisabato@sirillp.com](mailto:ddisabato@sirillp.com)  
12 Email: [lpescia@sirillp.com](mailto:lpescia@sirillp.com)

9 **UNITED STATES DISTRICT COURT**

10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 CAMERON PEREZ, individually and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 BUILD-A-BEAR WORKSHOP, INC.,

16 Defendant.

Case No. **'24CV2268 BEN DEB**

**AFFIDAVIT OF KYLE D. MCLEAN  
REGARDING VENUE**

17 **AFFIDAVIT OF KYLE D. MCLEAN**

18 I, Kyle D. McLean, hereby state and declare as follows:

19 1. I am an attorney-at-law licensed and in good standing in the State of California. I am an  
20 attorney with the law firm of Siri & Glimstad LLP, counsel for Plaintiff Cameron Perez and the  
21 proposed Class in this matter. As such, I have personal knowledge of the facts set forth herein.

22 2. This Affidavit is being submitted pursuant to the Consumer Legal Remedies Act and is  
23 based on my personal knowledge and my review of Defendants' public business records and business  
24 activities.  
25  
26  
27

1 3. Venue is proper in the United States District Court for the Southern District of California  
2 because a substantial part of the events giving rise to this action occurred in this District. Plaintiff  
3 viewed the website, made the purchase, and received the purchase in La Mesa, California.

4 4. I declare under penalty of perjury that the foregoing is true and correct to the best of my  
5 knowledge, information, and belief.

6  
7 Dated: December 5, 2024

8  
9 /s/Kyle D. McLean  
10 Kyle D. McLean (SBN 330580)

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## Order Summary

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**Order Placed:** June 11, 2024

**Estimated Delivery:** Wed Jun 19 2024 - Thu Jun 20 2024

**Order Status:** Complete

**Order Number:** W6834403

### Shipping Details

---

Cameron Perez  
7445 Seneca Pl  
La Mesa, CA 91942  
USA  
6199757058  
Method: SMP  
Tracking Number: [74892700987760091359](#)

### Billing Details

---

Cameron Perez  
7445 Seneca Pl  
La Mesa, CA 91942  
USA  
6199757058  
Mastercard  
Cameron Perez  
Amount: 22.60

### Payment Total

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Order Value	\$13.50
Shipping	\$7.95
Sales Tax	\$1.15
<b>Order Total</b>	<b>\$22.60</b>

### Product

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### Los Angeles Kings® Uniform 3 pc.

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Qty: 1

\$13.50

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Yes, please add me to the Build-A-Bear email list to find out about special promotions, events and more!

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**Events**



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