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

13 DIONTE BRADLEY, individually
 14 and on behalf of all others similarly
 15 situated,

16 Plaintiff,

17 v.
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19 LUXOTTICA OF AMERICA, INC.
 20 D/B/A SUNGLASS HUT,

21 Defendant.
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Civil Action No.:'24CV2401 L AHG

COMPLAINT – CLASS ACTION

1. FRAUD
2. NEGLIGENT MISREPRESENTATION
3. BREACH OF CONTRACT
4. UNJUST ENRICHMENT
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 Dionte Bradley (“Plaintiff”), individually and on behalf of all others similarly situated, brings this action against Defendant Luxottica of America, Inc. d/b/a Sunglass Hut (“Sunglass Hut” 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.¹ 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. Sunglass Hut has engaged in just such a deceptive pricing scheme.
22 Sunglass Hut advertises perpetual or near perpetual discounts on many of its
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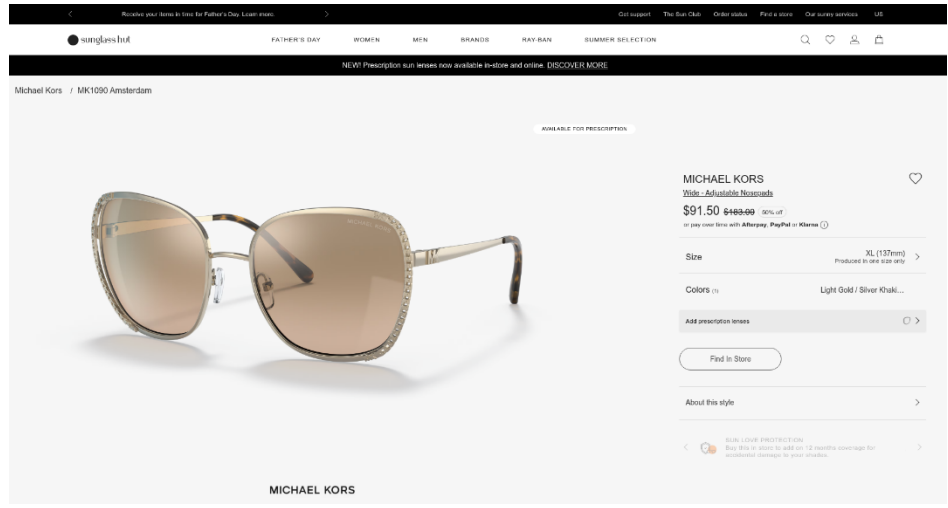
25 ¹ Patrick Coffee, Thought You Saved \$60 on that Vacuum Cleaner? Think
26 Again, Wall St. J. (Aug. 24, 2023), available at:
27 [https://www.wsj.com/articles/thought-you-saved-60-on-that-vacuum-
cleaner-think-again-c89ce344](https://www.wsj.com/articles/thought-you-saved-60-on-that-vacuum-cleaner-think-again-c89ce344) (Last accessed December 9, 2024).

1 products, supposedly offering discounts of up to 50% off Sunglass Hut’s self-
2 created, fictitious reference prices. Sunglass Hut 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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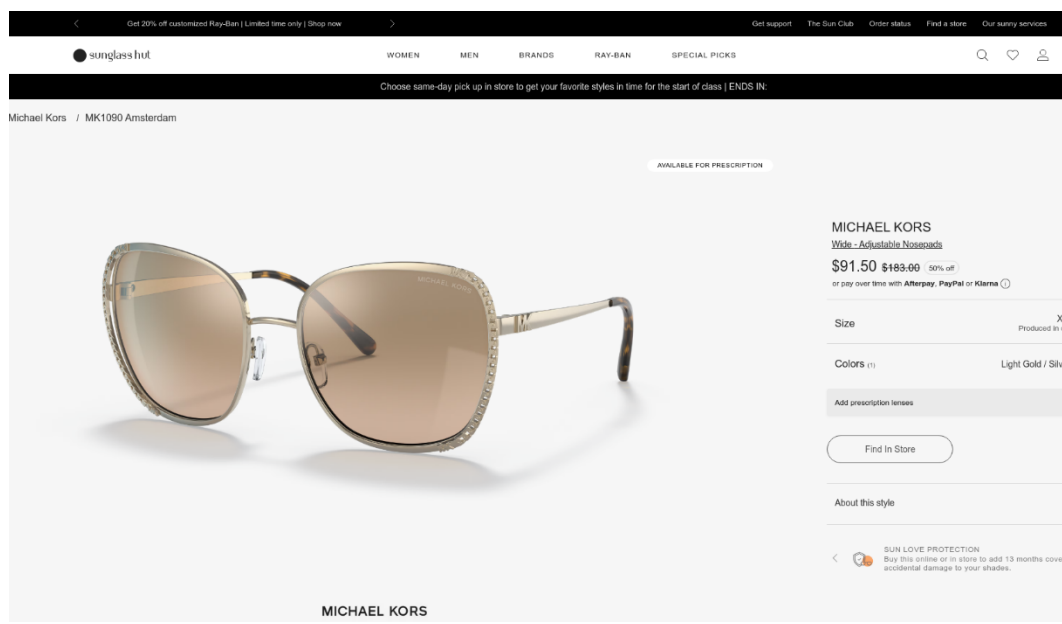
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8 4. Sunglass Hut’s reference prices are false because Sunglass Hut rarely,
9 if ever, offers the products for the reference price. Instead, the inflated
10 reference prices allow Sunglass Hut to continually advertise “sale” events and
11 product discounts in order to induce consumers into purchasing products. In
12 reality, the “sale” price is the price at which Sunglass Hut regularly sells the
13 product, but the consumer has been tricked into thinking he found a great
14 discount.
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17 5. To illustrate, below is a June 9, 2024 screengrab from Sunglass Hut’s
18 website for MK1090 Amsterdam “on sale” for \$91.50 from an original price
19 of \$183.
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6. Below is a screengrab of the same product, taken from Sunglass Hut’s website approximately three months later, on September 8, 2024, which still reveals the inflated reference price of \$183 and false discount price of \$91.50.



7. Sunglass Hut’s practice of falsely inflating reference prices in order to give the illusion of higher value, bigger discounts, and a false sense of time pressure, constitutes false advertising, and is an unfair and deceptive practice

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

18 9. Plaintiff Dionte Bradley is an individual citizen of the State of
19 California and a natural adult person who resides in San Diego County,
20 California.
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22 10. Defendant Luxottica of America, Inc. d/b/a Sunglass Hut is a
23 Delaware corporation with its headquarters located at 4000 Luxottica Place
24 in Mason, Ohio. Luxottica of America, Inc. operates more than 1,400
25 Sunglass Hut retail locations in the United States.
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JURISDICTION AND VENUE

11. The Court has subject matter jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). The amount in controversy exceeds \$5 million, exclusive of interest and costs. Upon information and belief, the number of class members is over 100, many of whom have different citizenship from Defendant. Thus, minimal diversity exists under 28 U.S.C. § 1332(d)(2)(A).

12. This Court has personal jurisdiction over Defendant because it can be found in and operates in this District, and generally conducts substantial business in the State of California. Defendant has sufficient minimum contacts in California, and/or otherwise intentionally avails itself to the California market through the operation of its e-commerce website within the State of California, knowingly and intentionally shipping goods into the State of California for decades, and a substantial part of the unlawful business practices which give rise to this action occurred in this District.

13. This Court may exercise personal jurisdiction over Defendant to the fullest extent allowed under the Federal Due Process Clause. Defendant has certain minimum contacts with the State of California. Defendant has and continues to purposefully perform some acts or consummate some

1 transactions in the State of California, and Plaintiff’s claims arise from, or are
2 connected with, Defendant’s transactions. The assumption of jurisdiction by
3 this Court does not offend traditional notions of fair play and substantial
4 justice, consideration being given to the quality, nature, and extent of the
5 activity in the State of California, the relative convenience of the parties, the
6 benefits and protection of laws of the State of California afforded the
7 respective parties, and the basic equities of the situation.

10 14. Defendant operates a website, www.sunglasshut.com, by which
11 it advertises and sells its goods in California. The website is regularly viewed
12 by and used to purchase products by consumers in California.

14 15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)
15 because a substantial part of the events giving rise to this action occurred in
16 this District. For example, Plaintiff was in San Diego County, California
17 when he saw the false discount representations on Sunglass Hut’s website and
18 placed the order on Sunglass Hut’s website after relying on the deceptive
19 advertised price displayed. Sunglass Hut shipped the goods Plaintiff
20 purchased to Plaintiff’s home in Lemon Grove, California.

23 **FACTUAL BACKGROUND**

24 **I. FALSE REFERENCE PRICING SCHEMES**

25 16. Consumers’ reactions to sales and to false sales are well studied
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1 in academic literature. Research shows that reference prices, such as those
2 used by Defendant, materially impact consumers’ behavior. A reference price
3 affects a consumer’s perception of the value of the transaction, the consumer’s
4 willingness to make the purchase, and the amount of money the consumer is
5 willing to pay for the product.²
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8 17. This deceptive practice involves three elements, most easily
9 shown through an example using a retailer that wants to sell a blue shirt with
10 a market value of \$35. First, the retailer advertises an inflated “reference
11 price” or the “strike through price” for that shirt, which the retailer wants the
12 consumer to believe is that shirt’s normal price. For this example, that price
13 is \$50. The problem is that the retailer has not actually sold the shirt for \$50,
14 nor could it do so because the market will not bear such an inflated price when
15 other similar blue shirts are sold for less. Instead that \$50 price is fictitious,
16 created by the retailer in order to show the consumer the second element in
17 the fraud: a supposed “discount” off that fictitious reference price. In this
18 example, that amounts to a 30% discount. Then, in the third element, the
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24 ² 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 retailer presents the consumer with the “new” discounted price of \$35 for the
2 blue shirt, which the retailer wanted to sell the shirt for all along. As part of
3 this scheme, the retailer wants the consumer to believe that the shirt is worth
4 \$50 and that the consumer is getting a deal by actually paying \$15 less, which
5 induces the consumer to make a purchase under the false belief that he is
6 getting a bargain on a more valuable shirt (30% off a \$50 product in this
7 example) and creates a false sense of urgency that the purported “discount”
8 or “sale” will end and the consumer will have to pay the “reference price” for
9 the shirt. Using this deception, retailers can even falsely induce consumers to
10 pay prices above the market price, for example \$40 for the blue shirt, because
11 the consumer still believes he is getting a deal, i.e., a 20% markdown.
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16 18. Accurate reference prices play an important role in consumers’
17 ability to compare products because they allow consumers to make informed
18 decisions by comparing one retailer’s prices to another. This is especially true
19 where the consumer is comparing similar, though not identical, products such
20 as two white T-shirts. In such circumstances, reference prices increase a
21 consumer’s interest in the product by increasing the consumer’s estimate of
22 savings offered by one retailer.³ “[A] higher plausible reference price . . .
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27 ³ Blair, Edward A. and E. Laird Landon, Jr. (1981), "The Effects of Reference
28 Prices in Retail Advertisements," *Journal of Marketing*, 45 (Spring), 61-69.

1 consistently makes the offer appear to be a better value than if no reference
2 price appears.”⁴ Therefore, when a retailer advertises its products with
3 inflated reference prices, consumers are harmed because they are denied the
4 ability to accurately compare prices across the market, and they imbue the
5 advertised product with a false sense of value that they would not have
6 developed if the inflated reference price had not been listed.
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9 19. Unsurprisingly, research shows that consumers prefer to get a
10 bargain. Indeed, “shoppers sometimes expend more time and energy to get a
11 discount than seems reasonable given the financial gain involved,” and “often
12 derive more satisfaction from finding a sale price than might be expected on
13 the basis of the amount of money they actually save.”⁵ The fear of losing such
14 a discount, because of the false impression given the retailer that the discount
15 or sale price will not last forever, often induces the consumer to purchase
16 quickly, without performing comparison shopping.
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20 20. Studies also show that consumers are driven by internal and
21 external reference prices.⁶ Internal reference prices are a consumer’s price
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23 ⁴ Urbany, The Effect of Plausible and Exaggerated Reference Prices on
24 Consumer Perceptions and Price Search, *supra* n. 1 at 106.

25 ⁵ Darke, Peter and Darren Dahl. “Fairness and Discounts: The Subjective
26 Value of a Bargain.” *Journal of Consumer Psychology* 13, No. 3 (2003): 328–
338, at 328.

27 ⁶ Mayhew, Glenn E. and Russell S. Winer. “An Empirical Analysis of Internal
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1 expectations based on past experiences, stored in their memory. External
2 reference prices are prices encountered during the shopping experience, such
3 as suggested retail prices or sale tags.⁷ Research suggests that consumers
4 adjust their internal value expectations (i.e., internal reference prices) to align
5 with external reference prices they encounter.⁸ In addition, for infrequently
6 purchased items, or unique items, consumers may lack an actual internal
7 reference price simply because they have not priced the product previously,
8 and in such situations, consumers rely more heavily on the external reference
9 prices.
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13 21. Retailers, including Defendant, understand that consumers are
14 vulnerable to perceived bargains. Thus, Sunglass Hut has a substantial
15 financial interest in exploiting consumers' well-known behavioral tendencies
16 by inducing consumers into believing they are receiving a bargain—even
17 when they are not. The phenomena of people disproportionately relying on an
18 initial piece of information when making a decision, known as “anchoring,”⁹
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22 _____
23 and External Reference Prices using Scanner Data.” *Journal of Consumer*
24 *Research* 19, No. 1 (1992): 62-70, at 68.

25 ⁷ *Id.* at 62.

26 ⁸ Grewal, Dhruv, Kent B. Monroe, and Ramayya Krishnan. “The Effects of
27 Price-Comparison Advertising on Buyers’ Perceptions of Acquisition Value,
28 Transaction Value, and Behavioral Intentions.” *The Journal of Marketing* 62
(1998): 46-59, at 48.

⁹ *See* Program on Negotiation, Anchoring Effect, HARV. L. SCH.,

1 is especially relevant in this context. Especially when shopping online,
2 consumers often encounter reference prices as the first, if not the only, insight
3 into a product's value besides the sale price itself. Thus, consumers use the
4 reference price as a baseline upon which to calculate a product's true value.
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6 22. Deceptive and misleading pricing such as that employed by
7 Defendant causes consumers to pay more than they otherwise would have
8 paid for products. It also misleadingly resets consumers' true value
9 expectations by falsely representing the value of products in order to trick
10 consumers into paying more than the products are actually worth.
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12 23. In addition to harming consumers, employing false reference
13 pricing disrupts the integrity and fairness that underlies retail markets. When
14 unethical retailers use misleading reference prices, they gain an unfair
15 advantage over honest competitors offering similar products. In the forgoing
16 example, if the dishonest retailer is selling a blue shirt that is purportedly
17 valued at \$50 for just \$35, and the honest retailer is selling a similar \$35 blue
18 shirt for \$35, the online consumer, who cannot otherwise evaluate the true
19 value of the shirt, is more likely to buy the supposedly more valuable \$50
20 shirt, rather than the supposedly less valuable \$35 shirt. If such unlawful
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22 <http://www.pon.harvard.edu/tag/anchoring-effect> (“[T]he anchoring effect,
23 [is] the tendency for the first offer to “anchor” the bargaining that follows in
24 its direction, even if the offer recipient thinks the offer is out of line.”).
25

1 advertising practices remain unchecked, businesses that adhere to honest
2 practices will continue to be unfairly disadvantaged.

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4 24. Defendant knew or should have known that the use of false
5 reference prices was misleading consumers to believe that they were
6 receiving a “sale” when, in fact, they were not. Moreover, Sunglass Hut
7 intended for reasonable consumers to understand the “sale” prices to be new
8 prices that Sunglass Hut had reduced from its “regular” or “former” prices.
9 Defendant intentionally failed to disclose to Plaintiff and members of the
10 Classes the truth about its reference prices, i.e. that the prices were fabricated,
11 and Defendant never offered the items at the reference prices during the
12 relevant period. Defendant intentionally sought to convey to consumers that
13 they were receiving a true markdown.
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17 25. Defendant intentionally enacted a broad pricing scheme designed
18 to mislead customers into believing that the reference prices were the prices
19 at which the advertised product was formerly listed and the prevailing market
20 rate of the advertised product.
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22 **II. FALSE REFERENCE PRICING VIOLATES BOTH**
23 **FEDERAL LAW AND STATE LAW**

24 26. It is well-established that false reference pricing violates federal
25 and state law. Even so, retailers, including Defendant, continue to use the
26 tactic because they know they will be able to increase sales and profits by
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1 tricking consumers into making purchase decisions based on the falsely
2 inflated reference prices. Though the information available to consumers
3 varies between different types of products, consumers frequently lack full
4 information about products and, as a result, often use information from
5 retailers to make purchase decisions.
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8 27. California law prohibits false reference pricing practices like
9 those used by Defendant. *See* Cal. Bus. & Prof. Code § 17501 (expressly
10 prohibiting false former pricing schemes); *see also* Cal. Civ. Code §
11 1770(a)(9) (prohibiting a business from “[a]dvertising goods or services with
12 intent not to sell them as advertised”), and Cal. Civ. Code § 1770(a)(13)
13 (prohibiting a business from “[m]aking false or misleading statements of fact
14 concerning reasons for, existence of, or amounts of price reductions”).
15

16
17 28. The Ninth Circuit Court of Appeals recognizes the harm that can
18 come from advertising false and deceptive reference prices. In *Hinojos v.*
19 *Kohl’s Corp.*, 718 F.3d 1098 (9th Cir. 2013), the court found that “[m]ost
20 consumers have, at some point, purchased merchandise that was marketed as
21 being ‘on sale’ because the proffered discount seemed too good to pass up.
22 Retailers, well aware of consumers’ susceptibility to a bargain, therefore have
23 an incentive to lie to their customers by falsely claiming that their products
24 have previously sold at a far higher ‘original’ price in order to induce
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1 customers to purchase merchandise at a purportedly marked- down ‘sale’
2 price. Because such practices are misleading—and effective—the California
3 legislature has prohibited them.” *Id.* at 1101.

4
5 29. The FTC also recognizes the fraudulent nature of fictitious and
6 artificial sale pricing. The FTC’s rules have long included “Part 233—Guides
7 Against Deceptive Pricing” which states in relevant part:
8

9 One of the most commonly used forms of bargain
10 advertising is to offer a reduction from the
11 advertiser’s own former price for an article. If the
12 former price is the actual, bona fide price at which
13 the article was offered to the public on a regular
14 basis for a reasonably substantial period of time, it
15 provides a legitimate basis for the advertising of a
16 price comparison. Where the former price is
17 genuine, the bargain being advertised is a true one.
18 If, on the other hand, the former price being
19 advertised is not bona fide but fictitious
20 -- for example, where an artificial, inflated price
21 was established for the purpose of enabling the
22 subsequent offer of a large reduction -- the
23 “bargain” being advertised is a false one; the
24 purchaser is not receiving the unusual value he
25 expects. In such cases, the “reduced price” is, in
26 reality, probably just the seller’s regular price. 16
27 C.F.R § 233.1(a).
28

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

24 An advertiser might use a price at which he never
25 offered the article at all; he might feature a price
26 which was not used in the regular course of
27 business, or which was not used in the recent past
28 but at some remote period in the past, without
making disclosure of that fact; he might use a price

1 that was not openly offered to the public, or that was
2 not maintained for a reasonable length of time, but
3 was immediately reduced. 16 C.F.R § 233.1(d).

4 **III. DEFENDANT USED FALSE REFERENCE PRICING TO**
5 **DECEIVE ITS CUSTOMERS**

6 30. Using deceptive pricing tactics, Defendant lures consumers by
7 advertising its products at seemingly discounted “sale” prices compared to
8 significantly marked-up reference prices. These fictitious reference prices are
9 never actually charged, making the “discounts” misleading.
10

11 31. Defendant’s advertised discounts are fictitious because the
12 reference prices do not represent a bona fide price at which Defendant
13 previously sold, or offered to sell, the products on a regular basis, for a
14 commercially reasonable period of time, as required by the FTC. In addition,
15 the advertised reference prices were not the prevailing market retail price
16 within the three months (90 days) immediately preceding the publication of
17 the advertised former reference price, as required by California law.
18

19 32. As a direct result of Defendant’s actions, all consumers who
20 purchased products that were advertised with false reference prices and/or
21 misleading discounts on Defendant’s website have been deceived and have
22 been undeniably harmed, in that they would not have purchased these
23 products but for the misleading pricing. They have suffered an economic
24 injury by being misled into paying more than the products were actually
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1 worth.

2 33. Defendant’s false pricing scheme has directly harmed all
3 customers who were tricked into buying discounted products on its website.
4 By creating a false perception of significant savings, Sunglass Hut
5 fraudulently inflated demand for its products. This has shifted the demand
6 curve, allowing Sunglass Hut to charge higher prices and generate more sales
7 than would have been possible had it used honest pricing practices.
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10 34. Consumers, like Plaintiff, were deceived by Defendant’s
11 misleading discounts. They did not receive the substantial savings that were
12 advertised, nor were the products actually worth the inflated reference prices.
13 Moreover, consumers would not have purchased the products at the purported
14 “sale” price but for the misleading reference price.
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17 35. The misleading nature of Defendant’s reference prices and
18 discounts was cleverly disguised and could not be detected by a reasonable
19 consumer exercising due diligence, particularly because the deception was
20 hidden over an extended period of time. The only way for a consumer to
21 detect Defendant’ deception would be if the consumer meticulously followed
22 the price of the product every day for months, especially for retailers like
23 Defendant, who often sells custom items (i.e., items under its own brand).
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26 36. Defendant continues to engage in these deceptive practices on its
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1 website by advertising false reference prices and misleading discounts. There
 2 is no indication that it will voluntarily cease these tactics. Even if it were to
 3 stop temporarily, there is a high risk that it would resume these deceptive
 4 practices in the future.

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

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

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

Product Name	Reference Price	Days Sold at Reference Price	Days “On Sale”
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1	FE40017I	\$500	0	98
2	CL40197U	\$420	0	98
3				
4	FE40038U	\$480	0	98
5				
6	FE40022U	\$700	0	98
7	Curvy LW40096I	\$310	0	98
8				
9	CL4005IN	\$460	0	98
10	CL40242I	\$440	0	98
11				
12	CL40240I	\$440	0	98
13	Fendigrahy	\$460	0	98
14	FE40030I	\$290	0	98
15				
16	Bold 3 Dots CL4240IS	\$1050	0	98
17	OO4054 Caveat	\$190	0	98
18				
19	RB3492	\$206	0	98
20	TY7138	\$213	0	98
21				
22	HC7114L1148	\$173	0	98
23				
24	MK1072 Porto	\$140	0	98

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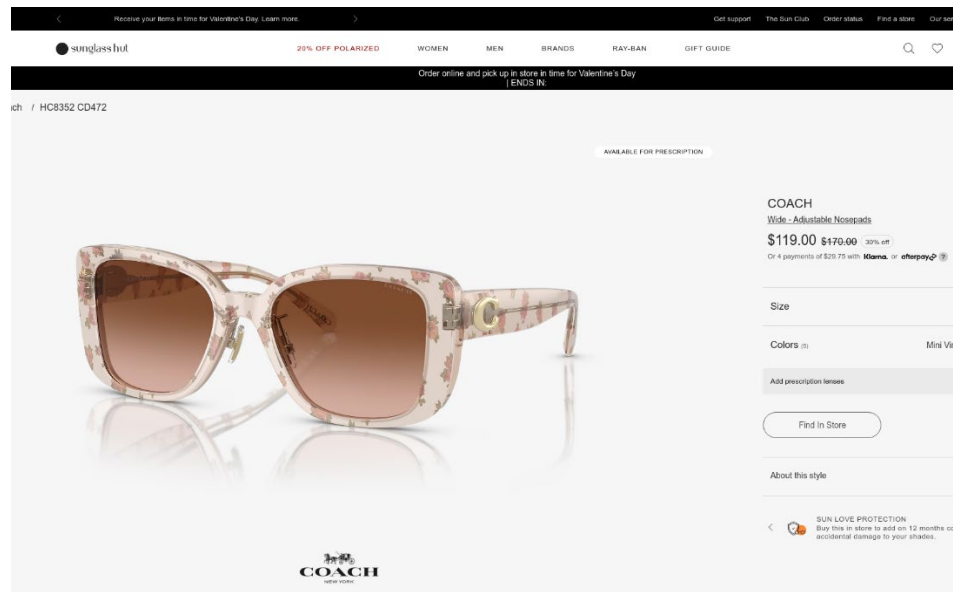
26 40. The reference chart above contains merely a fraction of those

27 products listed as “discounted” on Sunglass Hut’s website when, in fact, they

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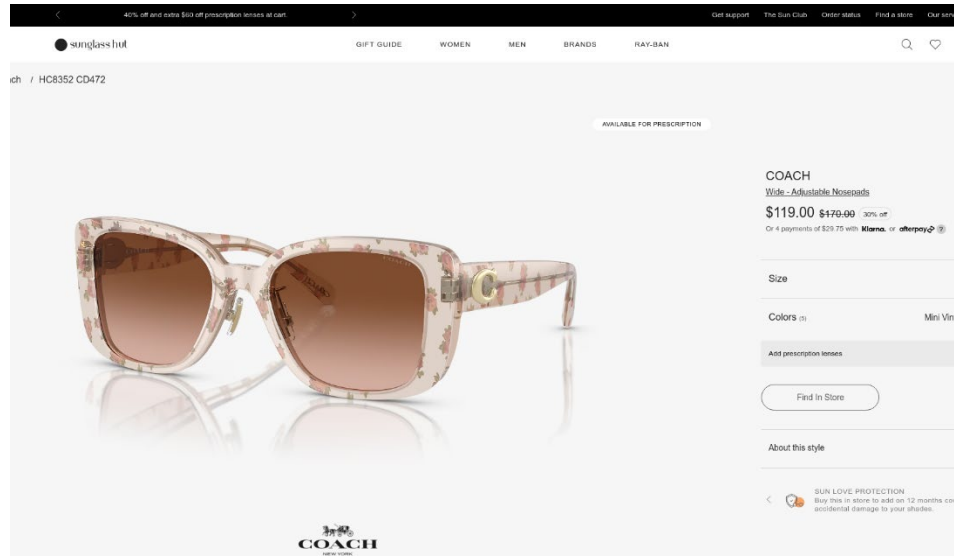
1 were not listed any time for the referenced price in the preceding 90 days.

2 41. The below screen shot is an example of how Sunglass Hut
3 presents its deceptive pricing to consumers. It shows the HC8352 CD472
4 listed at a discount price of \$119, which reflects approximately 30% savings
5 off of the “reference” price of \$170. This screenshot is from February 14,
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7
8 2024.

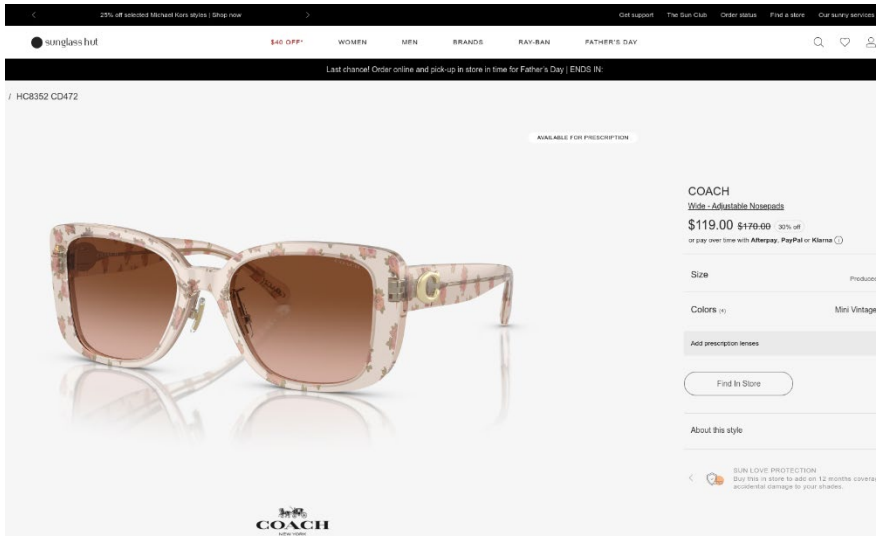


19 42. Approximately two months later, on April 14, 2024, the HC8352
20 CD472 was still listed at a supposedly discounted price of \$119, reflecting
21 approximately 30% savings off of the “reference” price of \$170.
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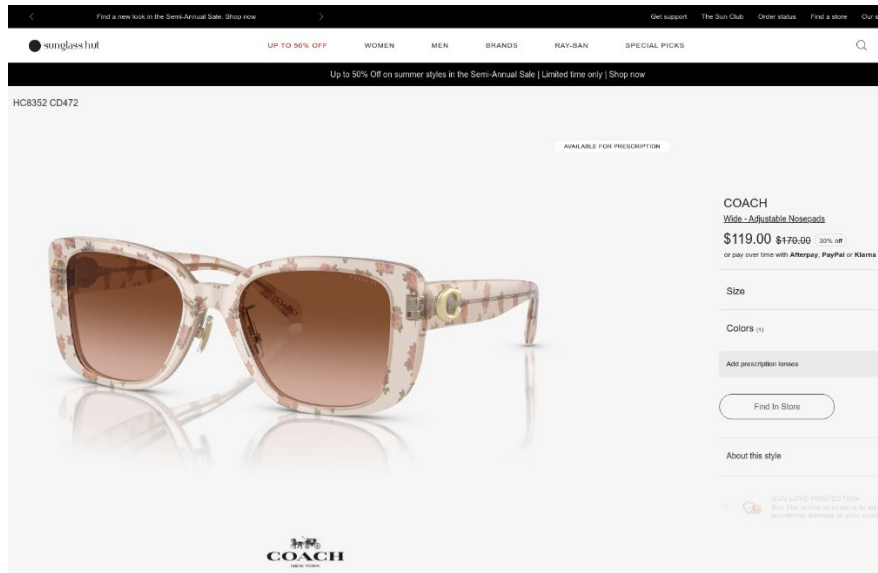


43. Approximately two months later, on June 16, 2024, the HC8352 CD472 was still listed at a supposedly discounted price of \$119, reflecting approximately 30% savings off of the claimed “reference” price of \$170.



44. And just over two more months later, on August 25, 2024, the HC8352 CD472 was still listed at a supposedly discounted price of \$119, reflecting approximately 30% savings off the claimed “reference” price of –

1 still - \$170.

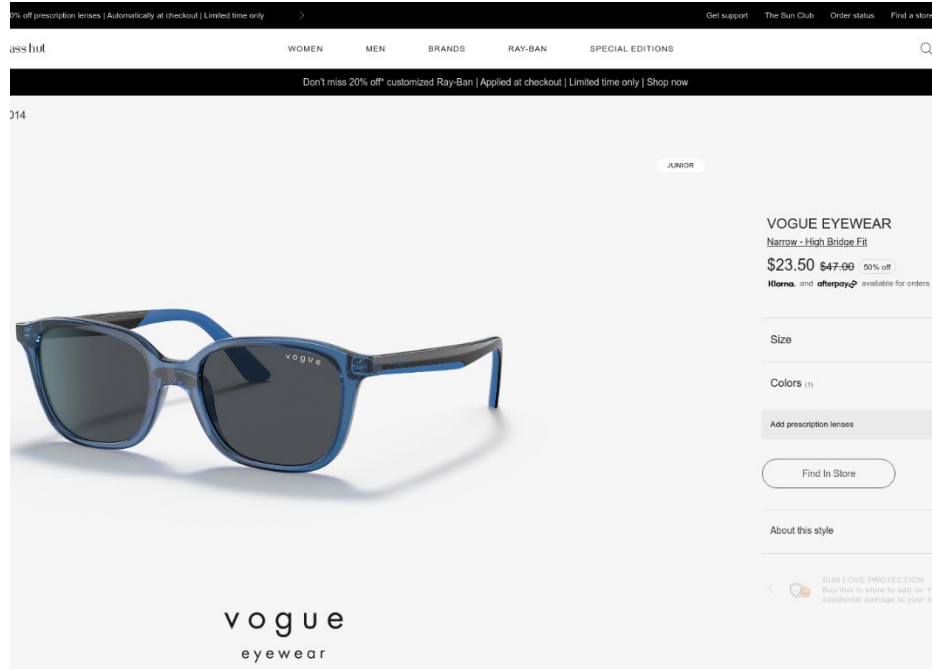


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12 45. For a significant and uninterrupted period of time over several
13 months, Sunglass Hut ran what appeared to be sales on many of its products.
14 These supposed discounts were often substantial, reaching up to 50%. Even
15 though the exact discount amount might fluctuate slightly, the products were
16 advertised as on “sale;” however, all or nearly all the advertised sale products
17 are never actually offered for purchase or sold at the reference price.
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20 **IV. PLAINTIFF FELL VICTIM TO DEFENDANT’S**
21 **DECEPTIVE PRACTICES**

22 46. Plaintiff is, and at all relevant times has been, a resident and
23 citizen of the State of California. On or around June 10, 2024, while browsing
24 Defendant’ website, Plaintiff saw an advertisement boasting significant
25 “savings” on various products.
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1 47. Defendant’s website presented an original marked-through price,
2 which was the reference price, to the right of the lower “sale price.” The below
3 image represents what Plaintiff saw when purchasing the product:
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16 48. After seeing the reference price of \$47, Plaintiff specifically
17 chose to purchase the product because Plaintiff believed he was receiving a
18 significant discount on the product he had chosen. Because he was interested
19 in the product and felt that the discounted price would likely not last, and that
20 he was getting a significant bargain on the product, Plaintiff chose to
21 immediately move forward with purchasing it. As a reasonable consumer, he
22 trusted that the products had a value commensurate with the reference price.
23 Thus, the advertised “sale” appeared to be a genuine discount.
24
25

26
27 49. Relying on the advertised savings, Plaintiff added the products
28

1 to his cart and completed the purchase. A copy of the receipt is attached hereto
2 as **Exhibit A**.

3
4 50. Unbeknownst to Plaintiff, Sunglass Hut rarely, if ever, offered
5 its products at the advertised “regular” reference prices, and did not do so for
6 the product Plaintiff purchased at any time in the 90 days prior to that
7 purchase. Simply put, Defendant intentionally deceived Plaintiff. The actual
8 value of the product purchased did not match the inflated reference price
9 Plaintiff was led to believe was the true value of the glasses. Thus, the
10 advertised “sale” wasn't a deal, or even a sale, at all.
11
12

13 51. Defendant’s inflated reference prices and misleading discounts
14 were significant and material misrepresentations that directly influenced
15 Plaintiff’s purchase. Plaintiff relied on this false information in good faith.
16 Had Plaintiff known the truth, he would not have bought the product for the
17 price that he did.
18
19

20 52. Defendant’s misrepresentations were material because a
21 reasonable consumer relies on such information when making purchasing
22 decisions.
23

24 53. As a direct consequence of Defendant’ actions, Plaintiff was
25 financially harmed. He would not have purchased the product at the same
26 price absent Defendant’ misrepresentation. The advertised discounts were
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28

1 illusory, and the products were not worth the reference price listed by
2 Defendant, as Plaintiff was led to believe.

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

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

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11
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13 56. The deceptive practices described herein are not limited to the
14 specific product Plaintiff purchased or categorical group of products. The
15 misleading advertising and sales tactics employed by Sunglass Hut are
16 systematic and widespread across its entire website, impacting customers
17 nationwide.

18
19
20 **V. CLASS DEFINITION AND ALLEGATIONS**

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

24
25 58. Plaintiff proposes the following Class definitions, subject to
26 amendment as appropriate:
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Nationwide Class (the “Nationwide Class” or “Class”)

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.

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

1 action. The members of the Classes are so numerous that the joinder of all
2 members is impracticable. Upon information and belief, the proposed Classes
3 contain well over 100 members, and likely thousands of individual purchasers
4 who have been damaged by Defendant’s conduct as alleged herein, the
5 identity of whom is within the knowledge of Defendant and can be easily
6 determined through Defendant’s records.
7
8

9 **63. Commonality:** This action involves questions of law and fact
10 common to the Classes. The common legal and factual questions include, but
11 are not limited to, the following:
12

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

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- g. Whether Plaintiff and the members of the Classes have suffered injury and have lost money or property as a result of such false or misleading discounts and reference prices;
- 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 herself 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

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

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20 67. Plaintiff seeks monetary damages, including compensatory
21 damages on behalf of the Classes, and other equitable relief on grounds
22 generally applicable to the Classes as a whole and to the public. Unless a Class
23 is certified, Sunglass Hut will be allowed to profit from its unfair and unlawful
24 practices, while Plaintiff and the members of the Classes will have suffered
25 damages. Unless a Class-wide injunction is issued, Sunglass Hut will likely
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1 continue to benefit from the violations alleged, and the members of the
2 Classes and the general public will likely continue to be victimized.

3
4 68. Sunglass Hut has acted and refused to act on grounds generally
5 applicable to the Classes, making final injunctive relief appropriate with
6 respect to the Classes as a whole.

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

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

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

2 72. As a result, any and all applicable statutes of limitations
3
4 otherwise applicable to the allegations herein have been tolled.

5 **CAUSES OF ACTION**

6 **COUNT I**
7 **FRAUD – INTENTIONAL MISREPRESENTATION AND**
8 **OMISSION**
9 **(On behalf of Plaintiff and the Class)**

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

12 74. Defendant made false and misleading statements of fact and
13 material omissions concerning the existence reference prices and the amounts
14 of price reductions. These representations were false because the false
15 reference prices advertised in connection with products offered on the website
16 misled, and continue to mislead, consumers into believing the products were
17 previously sold on the website at the higher reference prices, when in fact they
18 were not. Defendant knew that these representations were false at the time
19 that it made them and/or acted recklessly in making the misrepresentations.
20
21
22

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

2 76. Defendant knew that the items Plaintiff and the members of the
3 Class purchased had rarely, if ever, been offered or sold on the website at the
4 higher reference price in the recent past.
5

6 77. Defendant’s representations were made with the intent that
7 Plaintiff and the members of the Class would rely on the false representations
8 and spend money they otherwise would not have spent, purchase items they
9 otherwise would not have purchased, and/or spend more money for an item
10 than they otherwise would have absent the deceptive pricing scheme.
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13 78. Defendant employed this scheme in order to incentivize
14 consumers with the sole intent of maximizing profits to the detriment of those
15 same consumers.
16

17 79. Defendant intended that Plaintiff, and all members of the Class,
18 rely on its false representations. Plaintiff and all members of the Class
19 reasonably relied on Defendant’s representations. Absent Defendant’s
20 misrepresentations, Plaintiff and the members of the Class would not have
21 purchased the items from Defendant, or, at the very least, they would not have
22 paid as much for the items as they ultimately did. Plaintiff’s and the Class
23 members’ reliance was a substantial factor in causing their harm.
24
25

26 80. Had the true reference price not been omitted, Plaintiff and the
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1 members of the Class reasonably would have behaved differently. Among
2 other things, they would not have purchased the items they purchased from
3 Defendant or, at the very least, would not have paid as much for the items as
4 they ultimately did.
5

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

13 82. Plaintiff and the members of the Class are also entitled to
14 punitive or exemplary damages. Defendant, through senior executives and
15 officers, undertook the illegal acts intentionally or with conscious disregard
16 of the rights of Plaintiff and the Class, and did so with fraud, malice, and/or
17 oppression.
18
19

20 83. Based on the allegations above, Defendant's actions were
21 fraudulent because Defendant intended to and did deceive and injure Plaintiff
22 and the members of the Class. Based on the allegations above, Defendant's
23 conduct was made with malice because Defendant acted with the intent to
24 cause and did cause injury to Plaintiff and all members of the Class, and
25 because Defendant willfully and knowingly disregarded the rights of Plaintiff
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28

1 and all members of the Class.

2
3 **COUNT II**
4 **NEGLIGENT MISREPRESENTATION**
5 **(On behalf of Plaintiff and the Class)**

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

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

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

24 87. Defendant knew its sales were falsely advertised with a false
25 reference price. Defendant also knew or should have known that the reference
26 prices were not the prevailing market prices or true value of the products.
27
28

1 Defendant further knew that the items Plaintiff and the Class purchased had
2 rarely, if ever, been offered or sold on the website at the false reference price.
3

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

6 89. Defendant's representations were made with the intent that
7 Plaintiff and the members of the Class rely on the false representations and
8 spend money they otherwise would not have spent, purchase items they
9 otherwise would not have purchased, and/or spend more money for an item
10 than they otherwise would have absent the deceptive pricing scheme.
11

12 90. Class-wide reliance can be inferred because Defendant's
13 misrepresentations were material, i.e. a reasonable consumer would consider
14 them important in deciding whether to buy Defendant's products.
15

16 91. Defendant's misrepresentations were a substantial factor and
17 proximate cause in causing damage and losses to Plaintiff and the members
18 of the Class.
19

20 92. Defendant engaged in this fraud to the Plaintiff and the Class
21 members' detriment to increase Defendant's own sales and profits.
22

23 93. Plaintiff and the members of the Class reasonably relied on
24 Defendant's representations. Absent Defendant's misrepresentations,
25 Plaintiff and the members of the Class would not have purchased the items
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1 they purchased from Defendant, or, at the very least, they would not have paid
2 as much for the items as they ultimately did. Plaintiff and the Class members'
3 reliance was a substantial factor in causing them harm.
4

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

11 95. As a direct and proximate result of the above, Plaintiff and the
12 members of the Class have suffered damages because they would not have
13 purchased Defendant's products if they had known that the representations
14 were false, and/or they overpaid for the products because the products were
15 sold at a price premium due to the misrepresentations.
16
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18
19 **COUNT III**
20 **BREACH OF CONTRACT**
21 **(On behalf of Plaintiff and the Class)**

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

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

26 98. The terms of Defendant's offer provided that Defendant would
27
28

1 sell Plaintiff and the members of the Class products that have a market value
2 equal to the reference prices displayed. The terms also required that
3 Defendant provide Plaintiff and the members of the Class with the discount
4 listed on Defendant’s website.
5

6 99. The specific discount was a material term of each contract.
7

8 100. The terms of the offer also provided that Plaintiff and the
9 members of the Class would pay Defendant for the products purchased.
10

11 101. Plaintiff and the members of the Class accepted Defendant’s
12 offer and paid Defendant for the products they ordered, thereby satisfying all
13 conditions of their contracts.
14

15 102. Defendant breached the contracts with Plaintiff and the members
16 of the Class by failing to provide products that had a market value equal to
17 the reference price displayed on its website, and by failing to provide the
18 promised discount.
19

20 103. As a direct and proximate result of Defendant’s breaches,
21 Plaintiff and the members of the Class were deprived of the benefit of their
22 bargained-for exchange, and have suffered damages in an amount to be
23 established at trial.
24

25 **COUNT IV**
26 **UNJUST ENRICHMENT**
27 **(On behalf of Plaintiff and the members of the Class)**
28

1 104. Plaintiff repeats and realleges each and every allegation
2 contained in paragraphs 1–103 as if fully set forth herein.
3

4 105. Plaintiff brings this claim in the alternative to the contract-based
5 claims, including her breach of contract claim.
6

7 106. Plaintiff brings this claim individually and on behalf of the
8 members of the Class against Defendant.

9 107. Plaintiff and the members of the Class conferred a benefit on
10 Defendant, which Defendant knew about, when it initiated its false pricing
11 scheme.
12

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

2 109. This deceptive practice undermines fair competition and allows
3 Defendant to profit unfairly. Defendant has accepted and retained these
4 benefits as a result of its sales of merchandise offered at a false discounted
5 price, making Defendant's retention of them unjust.
6

7
8 110. By its wrongful acts and omission described herein, including
9 engaging in deceitful and misleading advertising practices by using false
10 discounts to lure in consumers to purchase products they would not have
11 otherwise purchased or for amounts they would not have otherwise paid,
12 Defendant was unjustly enriched at the expense of Plaintiff and the members
13 of the Class.
14

15
16 111. Plaintiff's and the Class members' detriment, and Defendant's
17 enrichment, were related to and flowed from the wrongful conduct alleged in
18 this Complaint.
19

20 112. Defendant has profited from its unlawful, unfair, misleading, and
21 deceptive practices at the expense of Plaintiff and the members of the Class.
22 It would be inequitable for Defendant to retain the profits, benefits, and other
23 compensation obtained from its wrongful conduct described herein.
24

25 113. Plaintiff and the members of the Class have been damaged as a
26 direct and proximate result of Defendant's unjust enrichment.
27
28

1 114. Plaintiff and the members of the Class are entitled to recover
2 from Defendant all amounts wrongfully collected and improperly retained by
3 Defendant.
4

5 115. As a direct and proximate result of Defendant’s wrongful
6 conduct and unjust enrichment, Plaintiff and the members of the Class are
7 entitled to restitution of, disgorgement of, and/or imposition of a constructive
8 trust upon all profits, benefits, and other compensation obtained by Defendant
9 for its inequitable and unlawful conduct.
10

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

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

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

21 118. Plaintiff and all members of the California Subclass are
22 “persons” and “consumers” as defined in Cal. Civ. Code § 1761(d).
23

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

25 120. The products purchased by Plaintiff and the members of the
26 California Subclass from Defendant are “goods” as defined by Cal. Civ. Code
27

1 § 1761(a).

2 121. Plaintiff’s and the California Subclass members’ purchases from
3 Defendant constitute “transactions,” as defined by Cal. Civ. Code § 1761(e).

4 122. The CLRA prohibits “unfair methods of competition and unfair
5 or deceptive acts or practices undertaken by any person in a transaction
6 intended to result or which results in the sale or lease of goods or services to
7 any consumer.” Cal. Civ. Code § 1770.
8

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

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

- 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

1 misleading statements of fact concerning reasons for,
2 existence of, or amounts of price reductions.

3 125. Defendant has violated Section 1770(a)(5) by representing that
4 products offered for sale on its website have characteristics or benefits that
5 they do not have. Specifically, Defendant represents that the value of their
6 products is greater than it actually is by advertising inflated reference prices
7 and false discounts.
8

9
10 126. Defendant has violated Section 1770(a)(9) by advertising its
11 products as being offered at a discount, when in fact Defendant do not intend
12 to sell the products at a discount.
13

14 127. Defendant has violated Section 1770(a)(13) by misrepresenting
15 the regular reference price of products on the Sunglass Hut’s website and by
16 advertising false discounts and savings.
17

18 128. Defendant’s practice of misrepresenting, actively concealing,
19 and/or failing to disclose the true prices of the products listed on its website
20 violated and continues to violate the CLRA.
21

22 129. Defendant’s misrepresentations were likely to deceive, and did
23 deceive, Plaintiff and reasonable consumers. Defendant knew, or should have
24 known, that these statements were inaccurate and misleading.
25

26 130. Defendant’s misrepresentations were intended to induce
27 reliance, and Plaintiff reasonably relied on them when making her purchase.
28

1 Defendant's misrepresentations were a substantial factor in Plaintiff's
2 purchase decision.

3
4 131. Defendant's deceptive practices significantly impacted Plaintiff
5 and the members of the California Subclass. The misleading information
6 presented was material, meaning a reasonable person would consider it
7 heavily when deciding to buy products. This false information directly caused
8 financial harm. Plaintiff and the members of California Subclass ended up
9 purchasing goods they otherwise would not have purchased or spending more
10 than the products' true value.
11

12
13 132. Class-wide reliance can be inferred because Defendant's
14 misrepresentations were material, in that a reasonable consumer would
15 consider them important when deciding whether to buy a product and how
16 much to pay for a product.
17

18
19 133. Defendant's misrepresentations were a substantial factor and
20 proximate cause in causing damages and losses to Plaintiff and the members
21 of the California Subclass.
22

23
24 134. Plaintiff and the members of the California Subclass were injured
25 as a direct and proximate result of Defendant's conduct because they would
26 not have purchased the products if they had known the truth, and/or they
27 overpaid for the products because the products were sold at a price premium
28

1 due to the misrepresentation.

2 135. Accordingly, pursuant to Cal. Civ. Code § 1780(a)(2), Plaintiff,
3
4 on behalf of herself and all other members of the California Subclass, seeks
5 injunctive relief.

6 136. The practices outlined above have caused significant harm to
7
8 Plaintiff, the California Subclass, and the public at large. Plaintiff and the
9 California Subclass members' injuries were proximately caused by
10 Defendant's unlawful and deceptive business practices. These unlawful and
11 unfair practices are ongoing and will likely continue unless stopped.
12 Therefore, Plaintiff seeks a permanent injunction to prevent Defendant from
13 engaging in such deceptive tactics. Additionally, Plaintiff seeks compensation
14 for attorney fees and costs incurred. Finally, under the CLRA, Plaintiff seeks
15 a public injunction to protect the general public from Defendant' misleading
16 advertising and omissions.
17
18

19
20 137. Pursuant to Cal. Civ. Code § 1782(a), on August 1, 2024,
21 Plaintiff's counsel served Defendant with notice of its CLRA violations by
22 certified mail, return receipt requested. Defendant acknowledged receipt of
23 the CLRA demand notice on August 5, 2024.
24

25 138. Defendant has failed to provide appropriate relief for their CLRA
26 violations within 30 days of its receipt of Plaintiff's demand notice.
27
28

1 Accordingly, pursuant to §§ 1780 and 1782(b) of the CLRA, Plaintiff is
2 entitled to recover actual damages, punitive damages, attorneys’ fees and
3 costs, and any other relief the Court deems proper.
4

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

9 139. Plaintiff repeats and realleges each and every allegation
10 contained in paragraphs 1–138 as if fully set forth herein.
11

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

14 141. Defendant has violated Section 17501 of the California Business
15 and Professions Code.
16

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

3
4 143. Defendant engaged in deceptive advertising practices within
5 California and nationwide. These practices involved promoting its products
6 through online platforms that contained untrue or misleading statements about
7 the advertised goods. Notably, Defendant knew, or should have known with
8 reasonable diligence, the information they disseminated was inaccurate.
9

10 144. As alleged more fully above, Defendant advertises reference
11 prices on its website along with discounts.
12

13 145. The reference prices advertised by Defendant were not the
14 prevailing market prices for the products within three months preceding
15 publication of the advertisement.
16

17 146. Defendant’s reference price advertisements do not state clearly,
18 exactly, and conspicuously when, if ever, the former reference prices
19 prevailed. Indeed, the advertisements do not indicate whether or when the
20 purported former reference prices were offered at all.
21

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

2 148. Class-wide reliance can be inferred because Defendant's
3
4 misrepresentations were material.

5 149. Defendant's misrepresentations were a substantial factor and
6 proximate cause in damages to Plaintiff and the members of the California
7
8 Subclass.

9 150. Plaintiff and the members of the California Subclass were injured
10 as a direct and proximate result of Defendant' conduct because they would
11
12 not have purchased the products if they had known the truth, and/or they
13 overpaid for the products because the products were sold at a price premium
14
15 due to the misrepresentation.

16 **COUNT VII**
17 **Violation of California's False Advertising Law, Bus & Prof. Code**
18 **§§17500 *et seq.***
19 **(On behalf of Plaintiff and the California Subclass)**

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

22 152. Plaintiff brings this claim individually and on behalf of the
23 California Subclass.

24 153. Defendant has violated Section 17500 of the California Business
25
26 and Professions Code.

27 154. As alleged more fully above, Defendant has made and
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1 disseminated false and misleading statements of facts in advertisements to
2 Plaintiff and the California Subclass members by advertising false reference
3 prices and false discounts regarding its products.
4

5 155. Defendant's representations were likely to deceive, and did
6 deceive, Plaintiff and reasonable consumers. Defendant knew, or should have
7 known, that these statements were inaccurate and misleading.
8

9 156. Defendant's misrepresentations were intended to induce
10 reliance, and Plaintiff reasonably relied on the statements when purchasing
11 the products. Defendant's misrepresentations were a substantial factor in
12 Plaintiff's purchase decision.
13

14 157. Class-wide reliance can be inferred because Defendant's
15 misrepresentations were material in that they concerned the price of the
16 product.
17

18 158. Defendant's misrepresentations were a substantial factor and
19 proximate cause in damages to Plaintiff and the members of the California
20 Subclass.
21

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

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COUNT VIII
VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW
(“UCL”)
Bus. Prof. Code §§ 17200, et seq.
(On behalf of Plaintiff and the California Subclass)

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

161. Plaintiff brings this claim individually and on behalf of herself and all members of the California Subclass.

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

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

1 UCL.

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

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

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

1 167. Plaintiff and the members of the California Subclass relied upon
2 Defendant’s misrepresentations and omissions, as set forth above.

3
4 168. Defendant’s misrepresentations and omissions are significant
5 because a reasonable consumer would consider this information when making
6 purchasing decisions. Plaintiff reasonably relied upon this misleading
7 information and would have acted differently if he had been presented with
8 accurate details. Similarly, class-wide reliance can be inferred because
9 Defendant’s misrepresentations were material in that they concerned the price
10 of the product.
11
12

13 169. Defendant’s conduct, as alleged above, was immoral, unethical,
14 oppressive, unscrupulous, and substantially injurious to consumers.
15

16 170. Defendant violated the “unfair” prong of the UCL by falsely
17 representing that that its products were on sale, that the sale was limited in
18 time, that the products had a regular reference price higher than the sale price,
19 and that the customers were receiving discounts.
20

21 171. Defendant violated established public policy by violating the
22 CLA, the FAL, and the FTCA.
23

24 172. Defendant’s misrepresentations and omissions resulted in it
25 receiving more money from Plaintiff and the members of the California
26 Subclass than it rightfully deserved. This money is subject to restitution. As
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28

1 a direct consequence of Defendant’s unfair, unlawful, and deceptive
2 practices, Plaintiff and the members of the California Subclass suffered
3 financial losses.
4

5 173. Plaintiff and the members of the California Subclass were injured
6 as a direct and proximate result of Defendant’s conduct because they would
7 not have purchased the products if they had known the truth, and/or they
8 overpaid for the products because the products were not worth the “regular”
9 reference price represented by Defendant.
10

11 174. The harm to Plaintiff and the members of the California Subclass
12 greatly outweighs the public utility of Defendant’s conduct. False statements
13 in connection with the sale of consumer products harms consumers and
14 injures competition. There is no public utility to misrepresenting the price of
15 a consumer product. This injury was not outweighed by any countervailing
16 benefits to consumers or competition.
17

18 175. Plaintiff and the members of the California Subclass could not
19 have reasonably avoided the injury caused by Defendant.
20

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

2 177. Plaintiff, on behalf of herself and all members of the California
3 Subclass, seeks public injunctive relief under the UCL to safeguard the
4 general public from Defendant’s deceptive discount advertising and
5 misleading omissions.
6

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8 178. Defendant’s actions have caused substantial harm to Plaintiff, the
9 California Subclass, and the public. These practices are ongoing and are likely
10 to continue unless stopped.
11

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

20
21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff respectfully requests that the Court enter
23 judgment against Defendant as follows:
24

25 A. Certifying this action as a class action under Rule 23(b)(2) and
26 (b)(3) of the Federal Rules of Civil Procedure and naming Plaintiff as a
27

1 representative of the Classes and Plaintiff’s undersigned attorneys as Class
2 Counsel to represent the Classes;

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

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

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

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

15
16 F. For injunctive relief as pleaded or as the Court may deem proper;

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

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

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

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DEMAND FOR JURY TRIAL

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

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Dated: December 19, 2024 Respectfully submitted,

By: /s/ Kyle McLean
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**Pro hac vice forthcoming*