

1 Omer Salik (SBN 223056)  
Carter Arnett PLLC  
2 111 Pier Ave., Suite 101  
3 Hermosa Beach, California 90254  
Tel: (214) 550-8188  
4 Fax: (214) 550-8185  
osalik@carterarnett.com  
5  
6 Attorneys for Plaintiffs  
Gerardo Prieto and Athena Lonich

7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

GERARDO PRIETO, an individual,  
and ATHENA LONICH, an individual,  
on behalf of themselves and all others  
similarly situated

Plaintiffs,

vs.

SLEEP NUMBER CORPORATION,

Defendant.

Case No.: 2:25-cv-352

**CLASS ACTION COMPLAINT  
FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR:**

- (1) VIOLATION OF UNFAIR  
COMPETITION LAW (CAL.  
BUS. & PROF. CODE §§1700  
*et seq.***
- (2) VIOLATION OF FALSE  
ADVERTISING LAW (CAL.  
BUS. & PROF. CODE §§17500  
*et seq.***
- (3) VIOLATION OF CONSUMER  
LEGAL REMEDIES ACT  
(CAL. CIV. CODE §§1750 *et  
seq.***
- (4) FRAUD**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Gerardo Prieto and Plaintiff Athena Lonich (collectively, “Plaintiffs”),  
2 on behalf of themselves and all others similarly situated, hereby allege the following  
3 at all times relevant to this complaint:

4 **I. INTRODUCTION**

5 1. This action is brought against Defendant Sleep Number Corporation  
6 (“Sleep Number” or “Defendant”) for its false and deceptive pricing practices in  
7 connection with its sale of beds in its stores and on its website  
8 <https://www.sleepnumber.com/> (“Website”). For many of its beds, Defendant  
9 advertises fake and inflated comparison reference prices to deceive customers into a  
10 false belief that the sale price is a deeply discounted bargain price. For example,  
11 anyone visiting Defendant’s store or Website on a given day who buys a Sleep  
12 Number i8 smart bed “on sale” for \$2,999 based on a crossed-out reference price of  
13 \$3,999 is being misled, because that bed has rarely, if ever, been sold in the recent  
14 past in Defendant’s stores, on the Website or through other retailers for \$3,999. In  
15 other words, Defendant’s advertised “sales” for many of its beds are not really sales  
16 at all. It is a misrepresentation that Defendant repeats. Specifically, prior to October  
17 2024, Defendant used false reference prices in connection with its advertisements of  
18 Defendant’s c4, p6, p6, i8, i10 and m7 beds (collectively, “Subject Beds”).

19 2. The reference prices in Defendant’s stores and on its Website for the  
20 Subject Beds are fake. They are not original, regular, retail, or former prices. They  
21 are inflated prices posted to lure unsuspecting customers into jumping at a fictitious  
22 “bargain” and intended to mislead customers into believing that the value of the bed  
23 they are buying is higher than reality. That is, Defendant engages in this deceptive  
24 advertising and pricing scheme to give customers the false impression that they are  
25 getting a deal or bargain when in reality they are being swindled by fake sales and  
26 promotions. As a result, customers are deceived into spending money they otherwise  
27 would not have spent, purchasing items they otherwise would not have purchased,  
28 and/or spending more money for an item than they otherwise would have absent the

1 deceptive marketing.

2 3. By this action, Plaintiffs seek to recover restitution and damages on  
3 behalf of all persons who have fallen victim to Defendant’s sham sales by purchasing  
4 products from Defendant from January 2021 to October 2024 (“Relevant Time”).

5 **II. PARTIES**

6 4. Plaintiff Gerardo Prieto is a citizen of the State of California and  
7 resident of the County of Los Angeles.

8 5. Plaintiff Athena Lonich is a citizen of the State of California and  
9 resident of the County of Los Angeles.

10 6. Plaintiffs are married to each other.

11 7. On information and belief, Defendant Sleep Number Corporation is a  
12 Minnesota corporation with its principal place of business in Minneapolis,  
13 Minnesota. Defendant manufactures, markets, advertises and distributes the Subject  
14 Beds throughout the United States, including California.

15 8. On information and belief, Defendant has sixty-eight (68) retail stores in  
16 California, including several in this District.

17 9. On information and belief, Defendant sells the Subject Beds exclusively  
18 through its stores and Website and does not sell the Subject Beds through any other  
19 retailer.

20 **III. JURISDICTION AND VENUE**

21 10. This Court has subject matter jurisdiction over this action pursuant to the  
22 Class Action Fairness Act of 2005 and 28 U.S.C. § 1332 because the total matter in  
23 controversy exceeds \$5 Million and there are over 100 members of the proposed  
24 class. Further, at least one member of the proposed class is a citizen of California and  
25 Defendant is a citizen of New York.

26 11. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a  
27 substantial part of the events or omissions giving rise to the claim occurred in this  
28

1 judicial district.

2 12. Venue is also proper pursuant to 28 U.S.C. § 1391(b)(1), (c)(2), and  
3 (c)(3) because Defendant is subject to the Court’s personal jurisdiction in this judicial  
4 district.

5 13. Defendant conducts, and at all relevant times, has conducted business in  
6 California through its stores in California and through remote sales channels,  
7 including making sales at its stores and through its Websites and delivering products  
8 into California.

9 **IV. GENERAL ALLEGATIONS**

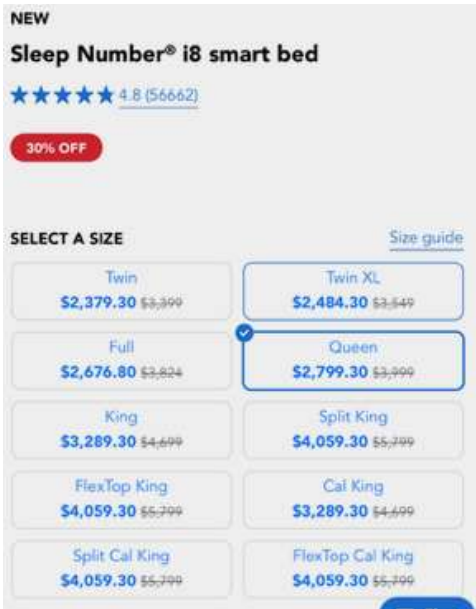
10 **a. Defendant’s False and Deceptive Pricing Scheme**

11 14. Defendant’s business model relies, in part, on deceiving customers with  
12 fake sales. On a typical day during the Relevant Time, Defendant prominently  
13 displayed in its stores and on its Website some form of a sale where the Subject Beds  
14 were purportedly marked down by either a percentage or dollar amount. All or nearly  
15 all the Subject Beds were represented as being marked down by the specified  
16 discount from a substantially higher reference price (hereafter, the “Reference  
17 Price”). The supposed markdowns were represented to the customer by prominently  
18 displaying a crossed-out Reference Price next to the sale price. Defendant employed  
19 these deceptive tactics to convey to customers that the product had previously sold in  
20 the recent past at the Reference Price and were being sold to the customer at a  
21 substantial discount.

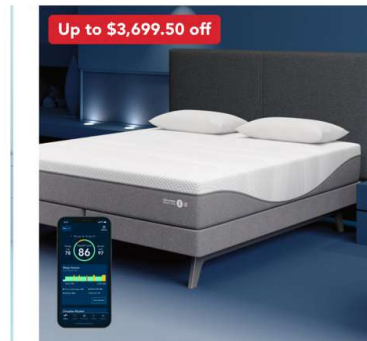
22 15. However, this Reference Price was almost always, if not always, a  
23 falsely inflated price because Defendant rarely, if ever, sold the Subject Beds at the  
24 Reference Price. The only purpose of the Reference Price was to mislead customers  
25 into believing that the displayed Reference Price was an original, regular, or retail  
26 price at which Defendant usually sold the item or previously sold the item in the  
27 recent past. As a result, Defendant falsely conveyed to customers that they were  
28 receiving a substantial markdown or discount, when in reality the alleged discount

1 was false and fraudulent.

2 16. Below are representative examples from the Website using False  
3 Reference Prices in 2023, which were also presented to customers in Defendant's  
4 stores:



Our most popular products



Innovation Series smart beds

★★★★★ 4.8 (106121)

\$2,379.30 - \$5,179.30

~~\$3,399.00 - \$7,399.00~~

16 17. Defendant's stores direct customers to the Website for additional  
17 information regarding the beds, pricing and sale promotions, for example, by  
18 displaying a QR code that takes people to the Website.

19 18. These pricing and advertising practices reflecting high-pressure fake  
20 sales are deceptive. They are intended to mislead customers into believing that they  
21 are getting a bargain by buying products from Defendant supposedly on sale and at a  
22 substantial and deep discount. The truth is that Defendant rarely, if ever, sold any of  
23 the Subject Beds at the Reference Price either through its Website or through its retail  
24 stores. The Reference Price is, therefore, an artificially inflated price. In turn, the  
25 advertised discounts are thus nothing more than phantom markdowns.

26 19. The Subject Beds are substantially similar products that Defendant  
27 markets in a substantially similar way using false Reference Prices. Each of the  
28

1 Subject Beds are “smart beds” that use sensors and other technology to gather and  
2 analyze data about users’ sleep patterns. Defendant advertises that each of these beds  
3 is designed to help users fall asleep faster and provide more restful sleep. Each of the  
4 Subject Beds offer temperature benefits, adjustable firmness and sense movements.  
5 Defendant sells and advertises each of the Subject Beds in its stores and on its  
6 Website as smart beds. Each of the Subject Beds offers adjustable firmness and  
7 advertises “pressure relief.” Each of the Subject Beds connects to a mobile  
8 application that provides a “SleepIQ score.” For each of the Subject Beds, Defendant  
9 marketed the beds its stores and on its Website using false Reference Prices and  
10 rarely, if ever, offered the beds at the inflated Reference Price.

11 **b. Plaintiffs’ Purchase of Falsely Advertised Item**

12 20. Plaintiffs fell victim to Defendant’s false advertising and deceptive  
13 pricing practices. On or about July 29, 2023, Plaintiffs visited a Sleep Number store  
14 in Palmdale, California to look for a bed. Plaintiffs saw that Defendant was running a  
15 sale promotion on Defendant’s i8 bed.

16 21. Below is an image from Defendant’s Website from July 29, 2023,  
17 captured by <http://wayback.archive.org> of the sale promotion Defendant was  
18 advertising at the time of Plaintiffs’ purchase for i-series beds:



24 Innovation Series smart beds  
25 Rating: 4.8 /5rating stars(101754) reviews  
\$2,349.00 - \$7,399.00  
Reg: \$3,549.00 - \$7,399.00

26 22. Plaintiffs browsed Defendant’s store and observed sale offers  
27 substantially similar to those shown above on the Website. They purchased an i8 bed,  
28

1 with Defendant showing a Reference Price and a discount, as follows:

2  
3

Items on Order						
Qty	SKU	Item Description	Shipping Method	Unit Price	Discount	Ext. Price
1	K2B	King i8 Sleep Number Smart Bed	Home Delivery	\$4,699.00	\$939.80	\$3,759.20
1	KTIB	King Integrated Base SCS		\$549.00	\$109.80	\$439.20
1	DISPOSAL	Disposal Service	Home Delivery	\$0.00	\$0.00	\$0.00
3	REFEE_CA	Recycle fee for CA	UPS Ground	\$10.50	\$0.00	\$31.50
1	HOMEDELIVERY	HOMEDELIVERY	Home Delivery	\$249.00	\$0.00	\$249.00
Subtotal						\$4,478.90
Sales Tax						\$455.67
Total						\$4,934.57

7  
8  
9  
Total Savings : \$1,049.80

10 23. In other words, Plaintiffs saw that the bed was supposedly on sale based  
11 on the advertised discounted offer and based on a markdown from a Reference Price.  
12 The Reference Price was displayed as a substantially higher price against which the  
13 sale price was compared. Specifically, the Reference Price for the i8 bed Plaintiffs  
14 purchased was \$4,599 with a purported sale price of \$3759.20, reflecting a purported  
15 discount of \$939. Further, Plaintiffs purchased a King Integrated Base advertised  
16 with a Reference Price of \$549 with a purported discount of \$109.

17 24. Plaintiffs thus purchased the bed and base from Defendant. Before doing  
18 so, Plaintiffs relied on the representation that the bed had in fact been offered for sale,  
19 or previously sold, in the recent past at the stated Reference Price. Plaintiffs relied on  
20 Defendant's representation that the bed they purchased was truly on sale and being  
21 sold at a substantial markdown and discount, and thereby fell victim to the deception  
22 intended by Defendant. Including shipping and sales tax, Plaintiffs paid \$4,934.57 for  
23 their order.

24 25. The truth, however, is that the bed Plaintiffs purchased was not  
25 substantially marked down or discounted, or at the very least, any discount they were  
26 receiving had been grossly exaggerated. That is because the bed Plaintiffs bought had  
27 not been offered for sale at Defendant's stores or on the Website (or anywhere else)  
28 for any reasonably substantial period of time (if ever) at the full Reference Price. In

1 fact, for at least the 90-day period prior to Plaintiffs’ purchase and for over a year  
2 thereafter, Defendant had not offered the i8 bed sold at the Reference Price.

3 26. Defendant knows that the Reference Prices are fake and artificially  
4 inflated and intentionally uses them in its deceptive pricing scheme at its stores and  
5 on its Website to increase sales by misleading Plaintiffs and members of the putative  
6 class to believe that they are buying products at a substantial discount. Defendant  
7 thereby induces customers to buy products they never would have bought—or at the  
8 very least, to pay more for merchandise than they otherwise would have – if  
9 Defendant was simply being truthful about the prevailing price of its Subject Beds.

10 27. Plaintiffs reasonably relied on the Reference Price in making their  
11 purchase as a representation of the product’s value and as a representation of the  
12 discount they were receiving. This information was material to their decision to  
13 purchase the bed and material to the price they were willing to pay for the bed.

14 28. Therefore, Plaintiffs would not have purchased the bed, or at the very  
15 least, would not have paid as much as they did, had Defendant been truthful.  
16 Plaintiffs were persuaded to make this purchase because of the fake sale based on  
17 Defendant’s fake Reference Price.

18 29. Plaintiffs would not have been willing to pay as much as they did for the  
19 bed they purchased had they received complete and truthful information relating to  
20 Defendant’s Reference Price. Plaintiffs are entitled to restitution and damages at least  
21 in the form of the difference between the price they actually paid and the price a  
22 reasonable consumer would have paid absent the false Reference Price.

23 30. Plaintiffs were further harmed because the price they paid for the bed  
24 was less than the value they received.

25 31. Plaintiffs were further harmed because they did not receive the expected  
26 discount or benefit-of-the-bargain advertised by Defendant. Defendant advertised that  
27 Plaintiffs were receiving a 20% discount from Defendant’s prevailing price for the i8  
28 bed. In reality, Plaintiffs did not receive a 20% discount from Defendant’s regular



1 price for the i8 bed, because Defendant inflated the Reference Price against which the  
2 20% discount was applied.

3 **c. Research Shows That the Use of Reference Price Advertising**  
4 **Schemes Similar to Defendant’s Influences Consumer Behavior and**  
5 **Affects Consumers’ Perception of a Product’s Value**

6 32. The effectiveness of Defendant’s deceitful pricing scheme is backed up  
7 by longstanding scholarly research. In the seminal article entitled *Comparative Price*  
8 *Advertising: Informative or Deceptive?* (cited in *Hinojos v. Kohl’s Corp.*, 718 F.3d  
9 1098, 1106 (9th Cir. 2013)), Professors Dhruv Grewal and Larry D. Compeau write  
10 that, “[b]y creating an impression of savings, the presence of a higher reference price  
11 enhances subjects’ perceived value and willingness to buy the product.” Dhruv  
12 Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative or*  
13 *Deceptive?*, 11 J. Pub. Pol’y & Mktg. 52, 55 (Spring 1992). Thus, “empirical studies  
14 indicate that, as discount size increases, consumers’ perceptions of value and their  
15 willingness to buy the product increase, while their intention to search for a lower  
16 price decreases.” *Id.* at 56. For this reason, the Ninth Circuit in *Hinojos* held that a  
17 plaintiff making a claim of deceptive pricing, as Plaintiffs claim here, had standing to  
18 pursue claims against the defendant retailer. In doing so, the Court observed that  
19 “[m]isinformation about a product’s ‘normal’ price is . . . significant to many  
20 consumers in the same way as a false product label would be.” *Hinojos*, 718 F.3d at  
21 1106.

22 33. Professors Compeau and Grewal reached similar conclusions in a 2002  
23 article: “decades of research support the conclusion that advertised reference prices  
24 do indeed enhance consumers’ perceptions of the value of the deal.” Dhruv Grewal &  
25 Larry D. Compeau, *Comparative Price Advertising: Believe It Or Not*, J. of  
26 Consumer Affairs, Vol. 36, No. 2, at 287 (Winter 2002). The professors also found  
27 that “[c]onsumers are influenced by comparison prices even when the stated  
28

1 reference prices are implausibly high.” *Id.*

2 34. In another scholarly publication, Professors Joan Lindsey-Mullikin and  
3 Ross D. Petty concluded that “[r]eference price ads strongly influence consumer  
4 perceptions of value...Consumers often make purchases not based on price but  
5 because a retailer assures them that a deal is a good bargain. This occurs when . . . the  
6 retailer highlights the relative savings compared with the prices of competitors . . .  
7 [T]hese bargain assurances (BAs) change consumers’ purchasing behavior and may  
8 deceive consumers.” Joan Lindsey-Mullikin & Ross D. Petty, *Marketing Tactics*  
9 *Discouraging Price Search: Deception and Competition*, 64 J. of Bus. Research 67  
10 (January 2011).

11 35. Similarly, according to Professors Praveen K. Kopalle and Joan  
12 Lindsey-Mullikin, “research has shown that retailer-supplied reference prices clearly  
13 enhance buyers’ perceptions of value” and “have a significant impact on consumer  
14 purchasing decisions.” Praveen K. Kopalle & Joan Lindsey-Mullikin, *The Impact of*  
15 *External Reference Price On Consumer Price Expectations*, 79 J. of Retailing 225  
16 (2003).

17 36. The results of a 1990 study by Professors Jerry B. Gotlieb and Cyndy  
18 Thomas Fitzgerald, came to the conclusion that “reference prices are important cues  
19 consumers use when making the decision concerning how much they are willing to  
20 pay for the product.” Jerry B. Gotlieb & Cyndy Thomas Fitzgerald, *An Investigation*  
21 *Into the Effects of Advertised Reference Prices On the Price Consumers Are Willing*  
22 *To Pay For the Product*, 6 J. of App’d Bus. Res. 1 (1990). This study also concluded  
23 that “consumers are likely to be misled into a willingness to pay a higher price for a  
24 product simply because the product has a higher reference price.” *Id.*

25 37. The clear inference to be drawn from this research and the Ninth  
26 Circuit’s opinion in *Hinojos* is that the deceptive advertising through the use of false  
27 reference pricing employed here by Defendant is intended to, and does in fact,  
28 influence customer behavior—as it did Plaintiffs’ purchasing decision here—by

1 artificially inflating customer perceptions of a given item’s value and causing  
2 customers to spend money they otherwise would not have, purchase items they  
3 otherwise would not have, and/or spend more money for a product than they  
4 otherwise would have absent the deceptive advertising.

5 **V. CLASS ACTION ALLEGATIONS**

6 38. Plaintiffs brings this action on behalf of themselves and all persons  
7 similarly situated pursuant to Rule 23(b)(2), 23(b)(3), and 23(c)(4) of the Federal  
8 Rules of Civil Procedure and seeks certification of the following class:

9 All persons in the State of California who purchased one or more  
10 Subject Beds during the Relevant Time at a stated discount from a  
11 higher reference price and who have not received a refund or credit for  
their purchase(s).

12 39. The above-described class of persons shall hereafter be referred to as the  
13 “Class.” Excluded from the Class are any and all past or present officers, directors, or  
14 employees of Defendant, any judges who preside over this action, and any partner or  
15 employee of Class Counsel.

16 40. Plaintiffs reserve the right to expand, limit, modify, or amend the class  
17 definitions stated above, including the addition of one or more subclasses, in  
18 connection with their motion for class certification, or at any other time, based upon,  
19 among other things, changing circumstances, or new facts obtained during discovery.

20 41. **Numerosity.** The Class is so numerous that joinder of all members in  
21 one action is impracticable. The exact number and identities of the members of the  
22 Class is unknown to Plaintiffs at this time and can only be ascertained through  
23 appropriate discovery, but on information and belief, Plaintiffs allege that there are  
24 thousands of members of the Class.

25 42. **Typicality.** Plaintiffs’ claims are typical of those of other members of  
26 the Class, all of whom have suffered similar harm due to Defendant’s course of  
27  
28

1 conduct as described herein.

2 43. **Adequacy of Representation.** Plaintiffs are an adequate representative  
3 of the Class and will fairly and adequately protect the interests of the Class. Plaintiffs  
4 have retained attorneys who are experienced in the handling of complex litigation and  
5 class actions, and Plaintiffs and their counsel intend to prosecute this action  
6 vigorously.

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

- 14 (a) Whether, during the Relevant Time, Defendant advertised false  
15 Reference Prices with respect to the Subject Beds.
- 16 (b) Whether, during the Relevant Time, Defendant advertised price  
17 discounts from false Reference Prices with respect to the Subject Beds.
- 18 (c) Whether the Subject Beds during the Relevant Time were offered at  
19 their Reference Prices for any reasonably substantial period of time  
20 prior to being offered at prices that were discounted from their  
21 Reference Prices.
- 22 (d) Does Defendant’s deceptive pricing scheme using false Reference  
23 Prices constitute an “unlawful,” “unfair,” or “fraudulent” business  
24 practice in violation of the California Unfair Competition Law, Cal.  
25 Bus & Prof. Code § 17200, et seq.?
- 26 (e) Does Defendant’s deceptive pricing scheme using false Reference  
27 Prices constitute “unfair, deceptive, untrue or misleading advertising”  
28

- 1 in violation of the California Unfair Competition Law, Cal. Bus & Prof.  
2 Code § 17200, *et seq.*?
- 3 (f) Does Defendant’s deceptive pricing scheme using false Reference  
4 Prices constitute false advertising in violation of the California False  
5 Advertising Law under Business & Professions Code section 17500, *et*  
6 *seq.*?
- 7 (g) Does Defendant’s deceptive pricing scheme using false Reference  
8 Prices constitute a violation of the California Legal Remedies Act  
9 California Civil Code §§1750, *et seq.*?
- 10 (h) Whether Defendant’s Reference Prices on the Subject Beds during the  
11 Relevant Time are false.
- 12 (i) Whether and when Defendant knew or learned that Reference Prices  
13 for the Subject Beds were false.
- 14 (j) What did Defendant hope to gain from using a false Reference Price  
15 scheme?
- 16 (k) What did Defendant gain from its false Reference Price scheme?
- 17 (l) Whether Defendant’s use of false Reference Prices for the Subject Beds  
18 during the Relevant Time was material.
- 19 (m) Whether Defendant had a duty to disclose to its customers that the  
20 Reference prices were fake “original” prices in furtherance of sham  
21 sales.
- 22 (n) To what extent did Defendant’s conduct cause, and continue to cause,  
23 harm to the Class?
- 24 (o) Whether the members of the Class are entitled to damages and/or  
25 restitution.
- 26 (p) What type of injunctive relief is appropriate and necessary to enjoin  
27 Defendant from continuing to engage in false or misleading  
28 advertising?

1 (q) Whether Defendant's conduct was undertaken with conscious disregard  
2 of the rights of the members of the Class and was done with fraud,  
3 oppression, and/or malice.

4 45. **Superiority.** A class action is superior to other available methods for  
5 the fair and efficient adjudication of this controversy because individual litigation of  
6 the claims of all members of the Class is impracticable. Requiring each individual  
7 class member to file an individual lawsuit would unreasonably consume the  
8 amounts that may be recovered. Even if every member of the Class could afford  
9 individual litigation, the adjudication of at least thousands of identical claims would  
10 be unduly burdensome to the courts. Individualized litigation would also present the  
11 potential for varying, inconsistent, or contradictory judgments and would magnify  
12 the delay and expense to all parties and to the court system resulting from multiple  
13 trials of the same factual issues. By contrast, the conduct of this action as a class  
14 action, with respect to some or all of the issues presented herein, presents no  
15 management difficulties, conserves the resources of the parties and of the court  
16 system, and protects the rights of the members of the Class. Plaintiffs anticipate no  
17 difficulty in the management of this action as a class action. The prosecution of  
18 separate actions by individual members of the Class may create a risk of  
19 adjudications with respect to them that would, as a practical matter, be dispositive of  
20 the interests of the other members of the Class who are not parties to such  
21 adjudications, or that would substantially impair or impede the ability of such non-  
22 party Class members to protect their interests.

23 46. **Ascertainability.** Upon information and belief, Defendant keeps  
24 extensive computerized records of their sales and customers through, among other  
25 things, databases storing customer orders, customer order histories, customer  
26 profiles, and general marketing programs. On information and belief, Defendant has  
27 one or more databases through which a significant majority of members of the Class  
28 may be identified and ascertained, and they maintain contact information, including

1 email addresses and home addresses (such as billing, mailing, and shipping  
2 addresses), through which notice of this action is capable of being disseminated in  
3 accordance with due process requirements.

4 **VI. CLAIMS FOR RELIEF**

5 **FIRST CLAIM FOR RELIEF**

6 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW (CAL. BUS.  
7 & PROF. CODE §17200, *et seq.*)**

8 **(By Plaintiffs Against Defendant on Behalf of the Class)**

9 47. Plaintiffs restate and re-allege the foregoing paragraphs as if fully set  
10 forth herein.

11 48. California Business and Professions Code section 17200 *et seq.*, also  
12 known as the California Unfair Competition Law (“UCL”), prohibits acts of “unfair  
13 competition,” including any “unlawful, unfair or fraudulent business act or practice”  
14 as well as “unfair, deceptive, untrue or misleading advertising.”

15 49. A cause of action may be brought under the “unlawful” prong of the  
16 UCL if a practice violates another law. Such an action borrows violations of other  
17 laws and treats these violations, when committed pursuant to business activity, as  
18 unlawful practices independently actionable under the UCL.

19 50. Here, by engaging in false advertising, as well as the false, deceptive,  
20 and misleading conduct alleged above, Defendant has engaged in unlawful business  
21 acts and practices in violation of the UCL, including violations of state and federal  
22 laws and regulations, such as 15 U.S.C. § 45(a)(1), 16 C.F.R. § 233.1, California  
23 Business & Professions Code sections 17500 and 17501, and California Civil Code  
24 sections 1770(a)(9) and 1770(a)(13).

25 51. The Federal Trade Commission Act (“FTCA”) prohibits “unfair or  
26 deceptive acts or practices in or affecting commerce[.]” 15 U.S.C. § 45(a)(1). Under  
27 FTC regulations, false former pricing schemes similar to the ones employed by  
28 Defendant, are deceptive practices that would violate the FTCA:

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

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

13 (c) The following is an example of a price comparison based on a fictitious  
14 former price. John Doe is a retailer of Brand X fountain pens, which cost him  
15 \$5 each. His usual markup is 50 percent over cost; that is, his regular retail  
16 price is \$7.50. In order subsequently to offer an unusual “bargain,” Doe  
17 begins offering Brand X at \$10 per pen. He realizes that he will be able to sell  
18 no, or very few, pens at this inflated price. But he doesn't care, for he  
19 maintains that price for only a few days. Then he “cuts” the price to its usual  
level—\$7.50—and advertises: “Terrific Bargain: X Pens, Were \$10, Now  
Only \$7.50!” This is obviously a false claim. The advertised “bargain” is not  
genuine.

20 (d) Other illustrations of fictitious price comparisons could be given. An  
21 advertiser might use a price at which he never offered the article at all; he  
22 might feature a price which was not used in the regular course of business, or  
23 which was not used in the recent past but at some remote period in the past,  
24 without making disclosure of that fact; he might use a price that was not  
openly offered to the public, or that was not maintained for a reasonable  
length of time, but was immediately reduced.

25 52. The FTCA also prohibits the pricing scheme employed by Defendant  
26 regardless of whether the product advertisement and representations use the words  
27 “regular,” “original,” or “former” price:  
28



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

9 53. Further, Defendant’s conduct as described herein also violates  
10 California false advertising laws. Specifically, California Business & Professions  
11 Code section 17500 provides, in relevant part, that it is unlawful for any corporation,  
12 with intent directly or indirectly to dispose of personal property, to make or  
13 disseminate in any “manner or means whatever, including over the Internet, any  
14 statement, concerning that . . . personal property . . . which is untrue or misleading,  
15 and which is known, or which by the exercise of reasonable care should be known,  
16 to be untrue or misleading[.]”

17 54. California law also expressly prohibits false former pricing schemes  
18 like the one employed by Defendant. California Business & Professions Code  
19 section 17501, entitled “Worth or value; statements as to former price,” states as  
20 follows:

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

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

1           55. Moreover, Defendant’s conduct also violates the California Consumer  
2 Legal Remedies Act (“CLRA”). *See* Cal. Civ. Code §§ 1750, et seq. More  
3 specifically, Defendant violated the CLRA provisions prohibiting businesses from  
4 “[m]aking false or misleading statements of fact concerning reasons for, existence  
5 of, or amounts of price reductions[.]” Cal. Civ. Code §1770(a)(13).

6           56. A business act or practice is “unfair” under the UCL if it offends an  
7 established public policy or is immoral, unethical, oppressive, unscrupulous or  
8 substantially injurious to consumers, and that unfairness is determined by weighing  
9 the reasons, justifications, and motives of the practice against the gravity of the  
10 harm to the alleged victims.

11           57. Here, Defendant’s actions constitute “unfair” business acts or practices  
12 because, as alleged above, Defendant engaged in a misleading and deceptive pricing  
13 scheme by advertising and representing false Reference Prices and thereby falsely  
14 advertising and representing markdowns or “discounts” that were false and inflated.  
15 Defendant’s deceptive marketing practice gave consumers the false impression that  
16 Defendant’s products were regularly sold on the market for a substantially higher  
17 price in the recent past than they actually were and thus led to the false impression  
18 that Defendant’s products were worth more than they actually were. Defendant’s  
19 acts and practices thus offended an established public policy, and they engaged in  
20 immoral, unethical, oppressive, and unscrupulous activities that are substantially  
21 injurious to consumers.

22           58. The harm to Plaintiffs and members of the Class outweighs the utility  
23 of Defendant’s practices. There were reasonably available alternatives to further  
24 Defendant’s legitimate business interests, other than the misleading and deceptive  
25 conduct described herein.

26           59. A business act or practice is “fraudulent” within the meaning of the  
27 UCL if members of the public are likely to be deceived.

28

1           60. Here, members of the public are likely to be deceived by Defendant's  
2 conduct as alleged above. Among other things, Defendant affirmatively  
3 misrepresented the Reference Prices of its Subject Beds, which thereby misled and  
4 deceived customers into believing that they were buying the Subject Beds from  
5 Defendant at substantially marked down and discounted prices. Defendant's  
6 deceptive marketing practice gave consumers the false impression that its products  
7 were regularly sold on the market for a substantially higher price in the recent past  
8 than they actually were and thus led to the false impression that Defendant's  
9 products were worth more than they actually were.

10           61. In addition, Defendant had a duty to disclose the truth about its pricing  
11 deception, including, among other things, that the Reference Prices advertised and  
12 published on its Website and displayed in its stores were not, in fact, prices at which  
13 the Subject Beds had sold for in the recent past for a reasonably substantial period of  
14 time, but that instead, in reality, Defendant's Subject Beds rarely (if ever) were  
15 offered at the advertised Reference Prices. Defendant, however, concealed this  
16 material information from customers and the general public. Members of the public,  
17 therefore, were also likely to be deceived by Defendant's failure to disclose material  
18 information.

19           62. Plaintiffs and each member of the Class suffered an injury in fact and  
20 lost money or property as a result of Defendant's unlawful, unfair, and/or fraudulent  
21 business practices, and as a result of Defendant's unfair, deceptive, untrue or  
22 misleading advertising.

23           63. Plaintiffs, on behalf of themselves and the members of the Class, seek  
24 restitution and disgorgement of all moneys received by Defendant through the  
25 conduct described above.

26           64. Plaintiffs, on behalf of themselves and the members of the Class, seeks  
27 a temporary, preliminary, and/or permanent injunction from this Court prohibiting  
28 Defendant from engaging in the patterns and practices described herein, including

1 but not limited to, putting a stop to its deceptive advertisements and false Reference  
2 Prices in connection with its sale of beds.

3 **SECOND CLAIM FOR RELIEF**

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

6 **(By Plaintiffs Against Defendant on Behalf of the Class)**

7 65. Plaintiffs restate the foregoing paragraphs as if fully set forth herein.

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

17 67. Similarly, another section of the FAL provides, in relevant part, that  
18 “no price shall be advertised as a former price of any advertised thing, unless the  
19 alleged former price was the prevailing market price . . . within three months next  
20 immediately preceding the publication of the advertisement or unless the date when  
21 the alleged former price did prevail is clearly, exactly, and conspicuously stated in  
22 the advertisement.” Cal Bus. & Prof. Code § 17501.

23 68. Here, Defendant routinely disseminated in its stores and on its Website  
24 false Reference Prices for the Subject Beds, including to Plaintiffs. Such statements  
25 of Defendant were untrue, or at the very least, were misleading. Among other  
26 things, Defendant rarely, if ever, offered the Subject Beds for sale at the Reference  
27 Prices displayed for each product. Further, Defendant rarely, if ever, offered the  
28

1 Subject Beds at the Reference Prices within the three months immediately preceding  
2 the publication of the Reference Prices.

3 69. Defendant thus misled customers, including Plaintiffs, into believing  
4 that the Reference Prices are or were genuine original, retail, or former prices and  
5 that the “sale” prices relative to the published Reference Prices, in fact, reflected  
6 real and substantial discounts. Defendant’s deceptive marketing practice gave  
7 consumers the false impression that its products were regularly sold for a  
8 substantially higher price in the recent past than they actually were and thus led to  
9 the false impression that Defendant’s products were worth more than they actually  
10 were.

11 70. Defendant engaged in this deceptive conduct with the intent to dispose  
12 of personal property—namely, with the intent to increase the sale of the Subject  
13 Beds.

14 71. Defendant knew, or by the exercise of reasonable care should have  
15 known, that its dissemination of Reference Prices for the Subject Beds was untrue  
16 and/or misleading. Among other things, Defendant represented the Reference Prices  
17 in connection with the Subject Beds even though it knew, or in the exercise of  
18 reasonable care should have known, that such products had rarely, if ever, sold at  
19 the crossed-out Reference Prices.

20 72. As a direct and proximate result of Defendant’s misleading and false  
21 advertisements, Plaintiffs and members of the Class have suffered injury in fact and  
22 have lost money. As such, Plaintiffs requests that this Court order Defendant to  
23 restore this money to Plaintiffs and all members of the Class, and to enjoin  
24 Defendant from continuing its false and misleading advertising practices in violation  
25 of California law in the future. Otherwise, Plaintiffs, members of the Class, and the  
26 broader general public will be irreparably harmed and/or denied an effective and  
27 complete remedy.

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**THIRD CLAIM FOR RELIEF**

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

**(By Plaintiffs Against Defendant on Behalf of the Class)**

73. Plaintiffs restate and re-allege the foregoing paragraphs as if fully set forth herein.

74. The Consumer Legal Remedies Act of 1970, Cal. Civ. Code sections 1750 *et seq.* (the “CLRA”) is a California consumer protection statute which allows plaintiffs to bring private civil actions for “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction . . . which results in the sale or lease of goods or services to any consumer.” Cal. Civ. Code § 1770(a). The purposes of the CLRA are “to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection.” Cal. Civ. Code §1760.

75. Plaintiffs and each member of the Class are “consumers” as defined by California Civil Code section 1761(d). Defendant’s sale of its Subject Beds to Plaintiffs and the Class were “transactions” within the meaning of California Civil Code section 1761(e). The products purchased by Plaintiffs and the Class are “goods” within the meaning of California Civil Code section 1761(a).

76. Defendant violated and continue to violate the CLRA by engaging in the following practices prohibited by California Civil Code section 1770(a) in transactions with Plaintiffs and the Class which were intended to result in, and did result in, the sale of Defendant’s branded products: “Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.” Cal. Civ. Code §1770(a)(13).

77. Defendant made false or misleading statements of fact concerning the “existence of” and the “amounts of price reductions” because, among other things, (a) no true price reductions existed—or at the very least, any amounts of price

1 reductions were exaggerated—in that Defendant’s merchandise was rarely, if ever,  
2 previously offered for sale and/or sold at the higher Reference Prices for a  
3 reasonably substantial period of time, (b) there is no other channel through which  
4 the products have previously been offered for sale and/or sold at the false Reference  
5 Price for a reasonably substantial period of time, and (c) the Reference Prices  
6 Defendant advertises in connection with its Subject Beds were never sold elsewhere  
7 for any other prices besides the falsely discounted sale prices at which customers  
8 bought items from Defendant.

9 78. Plaintiffs seek an injunction for Defendant’s violation of the CLRA to  
10 enjoin Defendant’s methods, acts, and practices of deceiving customers through its  
11 false and misleading pricing scheme outlined above.

12 79. Plaintiffs reserve the right to amend the complaint to seek damages  
13 under the CLRA after notice has been provided pursuant to California Civil Code  
14 section 1782(a).

15 **FOURTH CLAIM FOR RELIEF**

16 **FRAUD (INTENTIONAL MISREPRESENTATIONS)**

17 **(By Plaintiffs Against Defendant on Behalf of the Class)**

18 80. Plaintiffs restate and re-allege the foregoing paragraphs as if fully set  
19 forth herein.

20 81. Defendant consistently represented to all members of the Class during  
21 the Relevant Time that the Subject Beds were being offered at a discount from a  
22 Reference Price. Defendant made this representation by displaying on the product  
23 description page for each of these products a Reference Price substantially higher  
24 than the offered selling price, which is marked down or discounted from the  
25 Reference Price by a specified percentage discount or dollar amount.

26 82. Defendant’s Reference Price representations are false. Among other  
27 things, Defendant’s representations conveyed false information about the items  
28 Plaintiffs and the Class purchased, namely that the items they purchased had sold in

1 the recent past for a reasonably substantial period of time at the higher Reference  
2 Price displayed on Defendant's Website and/or in the prevailing market. The truth is  
3 that Defendant rarely, if ever, previously offered for sale and/or sold those products  
4 at the higher Reference Price for any reasonably substantial period of time.  
5 Moreover, the Reference Prices Defendant represented in connection with its  
6 products necessarily cannot be prevailing market prices because Defendant sells its  
7 branded products directly to consumers only at the prices advertised on its Website  
8 and in its stores and thus, the items were never sold elsewhere for any other price  
9 besides the falsely discounted sale price at which customers bought items from  
10 Defendant.

11 83. Defendant knew that its representations were false when it made them,  
12 or at the very least, it made the representations recklessly and without regard for  
13 their truth. In other words, Defendant knew that the Subject Beds Plaintiffs and the  
14 Class purchased had rarely, if ever, sold at the substantially higher Reference Price  
15 displayed on Defendant's Website and in Defendant's stores in the recent past  
16 and/or in the prevailing market.

17 84. Defendant's representations were made with the intent that Plaintiffs  
18 and the Class rely on the false representations and spend money they otherwise  
19 would not have spent, purchase items they otherwise would not have purchased,  
20 and/or spend more money for an item than they otherwise would have absent the  
21 deceptive marketing scheme.

22 85. Defendant engaged in this fraud to the Plaintiffs and the Class's  
23 detriment in order to increase Defendant's own sales and profits.

24 86. Plaintiffs and the Class reasonably relied on Defendant's  
25 representations.

26 87. Absent Defendant's misrepresentations, Plaintiffs and the Class would  
27 not have purchased the items they purchased from Defendant, or, at the very least,  
28



1 they would not have paid as much for the items as they ultimately did. Plaintiffs’  
2 and the Class’s reliance was a substantial factor in causing them harm.

3 88. As a direct and proximate result of the above, Plaintiffs and the Class  
4 have suffered damages in an amount to be proven at trial.

5 89. Defendant undertook the aforesaid illegal acts intentionally or with  
6 conscious disregard of the rights of Plaintiffs and the Class, and did so with fraud,  
7 malice, and/or oppression. Based on the allegations above, Defendant’s actions  
8 constituted fraud because Defendant intended to and did deceive and injure  
9 Plaintiffs and the Class. Based on the allegations above, Defendant’s actions  
10 constituted malice because Defendant acted with the intent to and did cause injury to  
11 Plaintiffs and the Class, and also because Defendant’s deceptive conduct was  
12 despicable and was done with a willful and knowing disregard of the rights of  
13 Plaintiffs and the Class. Based on the allegations above, Defendant’s actions  
14 constituted oppression because Defendant’s deceptive conduct was despicable and  
15 subjected Plaintiffs and the Class to cruel and unjust hardship in knowing disregard  
16 of their rights.

17 **FIFTH CLAIM FOR RELIEF**

18 **FRAUDULENT CONCEALMENT**

19 **(By Plaintiffs Against Defendant on Behalf of the Class)**

20 90. Plaintiffs restate and re-allege the foregoing paragraphs as if fully set  
21 forth herein.

22 91. Defendant uniformly disclosed incomplete facts to Plaintiffs and all  
23 members of the Class during the Class Period in connection with the Subject Beds.  
24 Namely, Defendant disclosed a Reference Price for the Subject Beds by displaying  
25 on the product description page for each item, as well as the on the thumbnail  
26 displays of each product when presented as a list, a Reference Price substantially  
27 higher than the offered selling price, which is marked down or discounted from the  
28 Reference Price by a specified percentage discount or dollar amount.

1           92. Defendant, however, intentionally failed to disclose other facts, making  
2 Defendant's disclosure deceptive. Specifically, Defendant failed to disclose that  
3 Defendant rarely, if ever, previously offered for sale and/or sold the Subject Beds at  
4 the higher Reference Price for any reasonably substantial period of time. As a result,  
5 Defendant deceived Plaintiffs and the Class into believing that they were purchasing  
6 items at a substantial markdown or discount when, in reality, the false Reference  
7 Price and discounting practice artificially inflated the true market value of the items  
8 they purchased.

9           93. As a separate basis for concealment, Defendant uniformly and  
10 intentionally concealed from Plaintiffs and all members of the Class that the items  
11 they purchased from Defendant had rarely, if ever, been sold by Defendant in the  
12 recent past at the substantially higher Reference Price displayed on Defendant's  
13 Website, stores and/or in the prevailing market. These were facts known only to  
14 Defendant that Plaintiffs and the Class could not have discovered.

15           94. Plaintiffs and the Class did not know of the concealed facts.

16           95. Defendant intended to deceive Plaintiffs and the Class by concealing  
17 the facts described above.

18           96. Had the omitted information been disclosed, Plaintiffs reasonably  
19 would have behaved differently. Among other things, Plaintiffs would not have  
20 purchased the items they purchased from Defendant, or, at the very least, they would  
21 not have paid as much for the items as they ultimately did.

22           97. The omitted information was material and thus, reliance is presumed on  
23 a classwide basis. The omitted information related to the price of the items sold and  
24 whether Plaintiffs were receiving a true and genuine substantial discount or whether,  
25 instead, Plaintiffs was being deceived into buying products through a pricing  
26 scheme utilizing fake, artificially inflated original, retail, or former prices, was  
27 material. A reasonable person would plainly attach importance to matters affecting  
28 pricing in determining his or her purchasing decision.

1 98. As a direct and proximate result of the above, Plaintiffs and the Class  
2 have been harmed and suffered damages in an amount to be proven at trial.

3 99. Defendant undertook the aforesaid illegal acts intentionally or with  
4 conscious disregard of the rights of Plaintiffs and the Class, and did so with fraud,  
5 malice, and/or oppression. Based on the allegations above, Defendant's actions  
6 constituted fraud because Defendant intended to and did deceive and injure  
7 Plaintiffs and the Class. Based on the allegations above, Defendant's actions  
8 constituted malice because Defendant acted with the intent to and did cause injury to  
9 Plaintiffs and the Class, and also because Defendant's deceptive conduct was  
10 despicable and was done with a willful and knowing disregard of the rights of  
11 Plaintiffs and the Class. Based on the allegations above, Defendant's actions  
12 constituted oppression because Defendant's deceptive conduct was despicable and  
13 subjected Plaintiffs and the Class to cruel and unjust hardship in knowing disregard  
14 of their rights.

15 **VII. PRAYER FOR RELIEF**

16 100. WHEREFORE, Plaintiffs pray for judgment against Defendant, and  
17 each of them, as follow:

18 **ON THE FIRST CLAIM FOR RELIEF FOR VIOLATION OF THE**  
19 **UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE §§17200**  
20 **et seq.)**

21 A. For an order certifying that the action be maintained as a class action  
22 under Rule 23(b)(2), 23(b)(3), and/or Rule 23(c)(4) of the Federal Rules of Civil  
23 Procedure, that Plaintiffs be designated the class representative, and that  
24 undersigned counsel be designated as class counsel.

25 B. For an injunction putting a stop to the deceptive and misleading  
26 conduct described herein and ordering Defendant to correct its deceptive and  
27 misleading advertising and pricing practices.

28

1 C. For an award of restitution and disgorgement of moneys paid that  
2 Defendant obtained as a result of its unlawful, unfair, and fraudulent business  
3 practices, and as a result of its unfair, deceptive, untrue, and misleading advertising,  
4 all as described above.

5 D. For an award of equitable and declaratory relief.

6 E. For pre and post judgment interest and costs of suit incurred herein.

7 F. For attorneys' fees incurred herein pursuant to California Code of Civil  
8 Procedure section 1021.5, or to the extent otherwise permitted by law.

9 G. For such other and further relief as the Court may deem just and proper.

10 **ON THE SECOND CLAIM FOR RELIEF FOR VIOLATIONS OF THE**  
11 **FALSE ADVERTISING LAW (CAL. BUS. & PROF. CODE §§17500 et seq.**

12 H. For an order certifying that the action be maintained as a class action  
13 under Rule 23(b)(2), 23(b)(3), and/or Rule 23(c)(4) of the Federal Rules of Civil  
14 Procedure, that Plaintiffs be designated the class representative, and that  
15 undersigned counsel be designated as class counsel.

16 I. For an injunction putting a stop to the deceptive and misleading  
17 conduct described herein and ordering Defendant to correct its deceptive and  
18 misleading advertising and pricing practices.

19 J. For an award of restitution and disgorgement of moneys paid that  
20 Defendant obtained as a result of its unlawful, unfair, and fraudulent business  
21 practices, and as a result of its unfair, deceptive, untrue, and misleading advertising,  
22 all as described above.

23 K. For an award of equitable and declaratory relief.

24 L. For pre and post judgment interest and costs of suit incurred herein.

25 M. For attorneys' fees incurred herein pursuant to California Code of Civil  
26 Procedure section 1021.5, or to the extent otherwise permitted by law.

27 N. For such other and further relief as the Court may deem just and proper.

28

1           **ON THE THIRD CLAIM FOR RELIEF FOR VIOLATIONS OF THE**  
2           **CONSUMER LEGAL REMEDIES ACT (CAL. CIV. CODE §§1750 *et seq.*)**

3           O.     For an order certifying that the action be maintained as a class action  
4 under Rule 23(b)(2), 23(b)(3), and/or Rule 23(c)(4) of the Federal Rules of Civil  
5 Procedure, that Plaintiffs be designated the class representative, and that  
6 undersigned counsel be designated as class counsel.

7           P.     For an injunction putting a stop to the deceptive and misleading  
8 conduct described herein and ordering Defendant to correct its deceptive and  
9 misleading advertising and pricing practices.

10          Q.     For an award of equitable and declaratory relief.

11          R.     For attorneys' fees incurred herein pursuant to California Civil Code  
12 section 1780, or to the extent otherwise permitted by law.

13          S.     For such other and further relief as the Court may deem just and proper.

14           **ON THE FOURTH CLAIM FOR RELIEF FOR FRAUD (AFFIRMATIVE**  
15           **MISREPRESENTATIONS)**

16          T.     For an order certifying that the action be maintained as a class action  
17 under Rule 23(b)(2), 23(b)(3), and/or Rule 23(c)(4) of the Federal Rules of Civil  
18 Procedure, that Plaintiffs be designated the class representative, and that  
19 undersigned counsel be designated as class counsel.

20          U.     For compensatory damages in an amount to be proven at trial.

21          V.     For punitive damages in an amount sufficient to punish Defendant and  
22 to deter it from engaging in wrongful conduct in the future.

23          W.     For pre and post judgment interest and costs of suit incurred herein.

24          X.     For attorneys' fees incurred herein pursuant to California Code of Civil  
25 Procedure section 1021.5, or to the extent otherwise permitted by law.

26          Y.     For such other and further relief as the Court may deem just and proper.

27           **ON THE FIFTH CLAIM FOR RELIEF FOR FRAUDULENT**  
28           **CONCEALMENT**

1 Z. For an order certifying that the action be maintained as a class action  
2 under Rule 23(b)(2), 23(b)(3), and/or Rule 23(c)(4) of the Federal Rules of Civil  
3 Procedure, that Plaintiffs be designated the class representative, and that  
4 undersigned counsel be designated as class counsel.

5 AA. For compensatory damages in an amount to be proven at trial.

6 BB. For punitive damages in an amount sufficient to punish Defendant and  
7 to deter it from engaging in wrongful conduct in the future.

8 CC. For pre and post judgment interest and costs of suit incurred herein.

9 DD. For attorneys' fees incurred herein pursuant to California Code of Civil  
10 Procedure section 1021.5, or to the extent otherwise permitted by law.

11 EE. For such other and further relief as the Court may deem just and proper.

12 **JURY DEMAND**

13 Plaintiffs, on behalf of themselves and all others similarly situated, hereby  
14 demand a trial by jury on all triable issues.

15

16 Dated: January 14, 2025 CARTER ARNETT PLLC

17

18

By: /s/ Omer Salik

19

Omer Salik

20

Attorneys for Plaintiffs  
Gerardo Prieto and Athena Lonich

21

22

23

24

25

26

27

28