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10 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

11

12 TUSHAR CHOPRA and BRIAN DELSHAD,
individually and on behalf of all others
13 similarly situated,

Civil Action No. 5:25-cv-2808

14 Plaintiffs,
v.

**CLASS ACTION COMPLAINT
FOR DAMAGES**

15 EIGHT SLEEP, INC., and DOES 1–10,

16 Defendant.

DEMAND FOR JURY TRIAL

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19 Plaintiffs Tushar Chopra and Brian Delshad, individually and on behalf of all others
20 similarly situated, bring this Class Action Complaint against Defendant Eight Sleep, Inc.
21 (“Defendant” or “Eight Sleep”) and make the following allegations based upon information and
22 belief, except as to allegations specifically pertaining to Plaintiffs, which are based on personal
23 knowledge.

24 **NATURE OF THE ACTION**

25 1. This is a case concerning deceptive representations and omissions made by
26 Defendant through its misleading and unlawful pricing, sales, and discounting practices on its
27 websites, which directly violate a California statute and deceive the reasonable consumer.

28

1 2. Defendant Eight Sleep sells and markets mattresses, mattress covers, and other
2 bedding products online through the Eight Sleep website, <https://www.eightsleep.com/>.

3 3. Specifically, Eight Sleep markets itself as a luxury brand that sells luxury mattresses
4 and mattress covers meant to regulate the temperature of individuals sleeping on its products.
5 However, unlike a true luxury brand, Eight Sleep lists all of its products as having continuous
6 discounts ranging between \$50 – \$200 off. Moreover, these discounts are actually false discounts
7 intended to induce customers into purchasing their products, as the products are never actually sold
8 at the higher strikethrough reference prices listed next to the “sale” price.

9 4. The products at issue are all goods that have been offered at any time on Eight Sleep’s
10 website, at a sale or discounted price from a supposedly higher reference price (the “Products”).

11 5. Defendant’s website lists various items on sale or discount, and picture a stricken
12 supposedly former or prevailing market price next to the “sale” price. However, the former or
13 prevailing market price listed next to the sales price is not actually the former or prevailing market
14 price at which the product was sold in the previous three months. Instead, it is a false or inflated
15 price used to trick consumers into believing they are receiving a discount on their purchase. It is
16 false because the item has not been listed for sale or sold on the website in the previous three months
17 at the listed former price.

18 6. Section 17500 of California’s False Advertising Law prohibits businesses from
19 making statements they know or should know to be untrue or misleading. Cal. Bus. & Prof. Code §
20 17500. This includes statements falsely suggesting that a product is on sale, when it actually is not.

21 7. Section 17501 of California’s False Advertising Law provides that “[n]o price shall
22 be advertised as a former price ... unless the alleged former price was the prevailing market price
23 ... within three months next immediately preceding” the advertisement. Cal. Bus. & Prof. Code §
24 17501. Therefore, the statute specifically prohibits this type of fake discount, where the advertised
25 former price is not the prevailing price during the specified timeframe.

26 8. Upon investigation, all or nearly all of the reference prices on the website are false
27 and misleading. They are not former or prevailing market prices at which the products were offered
28 on the websites during the previous three (3) months.

JURISDICTION AND VENUE

1
2 17. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
3 1332(d)(2) because this is a class action in which (1) there are at least 100 members, (2) the matter
4 in controversy exceeds \$5,000,000 exclusive of interest and costs, and (3) Plaintiffs and members
5 of the putative Class are citizens of a state that is different from the states in which Defendant is a
6 citizen.

7 18. This Court has personal jurisdiction over Defendant because Defendant has contacts
8 with California that are so continuous and systematic that it is essentially at home in this state.
9 Defendant sold Eight Sleep products to consumers in California, including Plaintiffs. Defendant
10 regularly conducts and solicits business in California, provides products to persons in the State of
11 California, maintains an interactive commercial website, offers to and does ship products to
12 California, allows customers in California to order products, and derives substantial revenue from
13 customers in California.

14 19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial
15 part of the events or omissions giving rise to Plaintiffs’ and the Class Members’ claims occurred in
16 this District, and Defendant is subject to the Court’s personal jurisdiction.

17 **BACKGROUND FACTS**

18 20. Defendant’s main product is the Pod. The Pod consists of a mattress cover, a base
19 that fits between the mattress and bed frame, and a hub that holds the water for cooling and heating
20 the Pod.

21 21. The Pod allows users to adjust the temperature of their bed get “the perfect
22 temperature all night.”¹ When users purchase the Pod, they are also signed up for a subscription that
23 allows them to use Eight Sleep’s app in order to take advantage of the autopilot feature which makes
24 smart temperature adjustments to the Pod while the user sleeps.

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28 ¹<https://www.eightsleep.com/?srsltid=AfmBOorqisegIZmjC23jmcn8MYHevuQt6n9BT5kMtiq-P8EF2ugMA78P>

1 but because these type of strikethrough discounts can induce customers into purchasing under the
2 belief that they are receiving a “deal.”

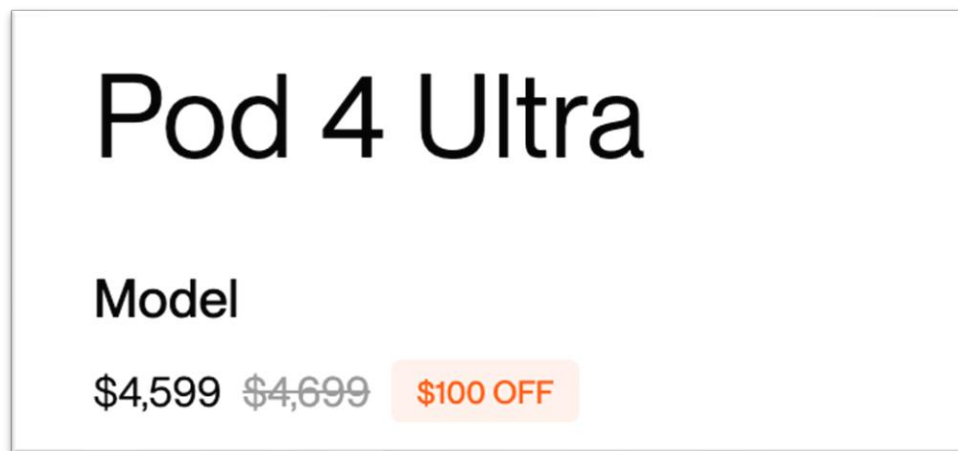
3 27. However, as further described below, Eight Sleep is not offering customers a real
4 discount, but instead lists false reference prices in order to induce customers to purchase their
5 products.

6 28. Defendant, through its website, has sold hundreds of thousands of units of
7 merchandise to customers in California and nationwide.

8 **I. Eight Sleep’s Fake Discount Scheme**

9 29. Defendant creates the false impression that its Products’ regular or former prices are
10 higher than they truly are.

11 30. On any given day, most, if not all, products on Defendant’s website are represented
12 as being discounted from a higher reference price. On individual listing pages and category listing
13 pages, the supposed mark-downs are represented to consumers by (1) prominently displaying a
14 “crossed-out” or strikethrough reference price next to a sale price, (2) stating “\$ ____ off” in bright
15 red or orange text adjacent to the higher reference price, and (3) depicting the sale price in bold text
16 adjacent to the reference price. An example screenshots is provided below:



25 31. The above image is just one example from Defendant’s website that shows how it
26 consistently lists its false discounts on the website.

27 32. The below sections describe further the types of deceptive sales schemes instituted
28 by Defendant on its website.

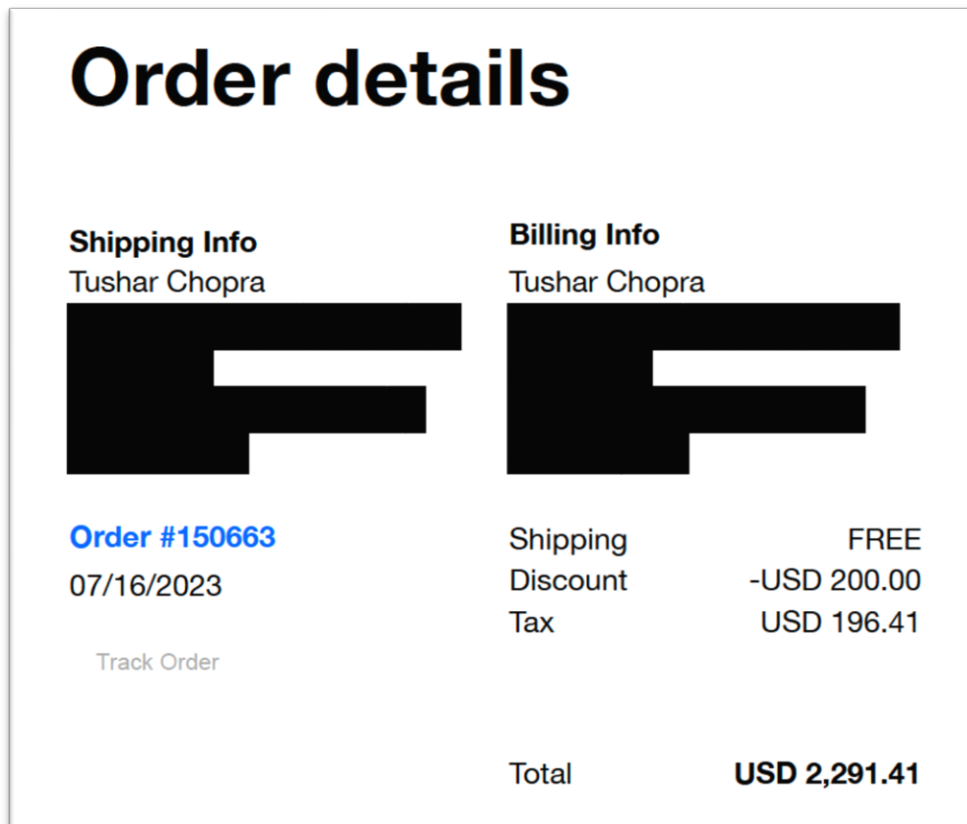
1 33. These pricing and advertising practices are deceptive and pressure consumers into
2 purchasing products from Defendant at an inflated price. Defendant intends to mislead consumers
3 into believing that they are getting a bargain by buying products from its website on sale and at a
4 substantial and deep discount. For most if not all products, Defendant does not offer or sell the
5 products on the website at the reference price for the three months immediately preceding the listing
6 of the sale. Therefore, the reference price is artificially inflated and the advertised discounts are
7 deceiving.

8 ***A. Plaintiffs Purchased Products that Were Falsely Advertised as Having Discounts***

9 **1. Plaintiff Chopra**

10 34. On July 16, 2023, Plaintiff Tushar Chopra purchased a Queen Size Pod 3 Cover with
11 PerfectFit for \$2,095.00 (before tax). He made this purchase while living in San Jose, California.

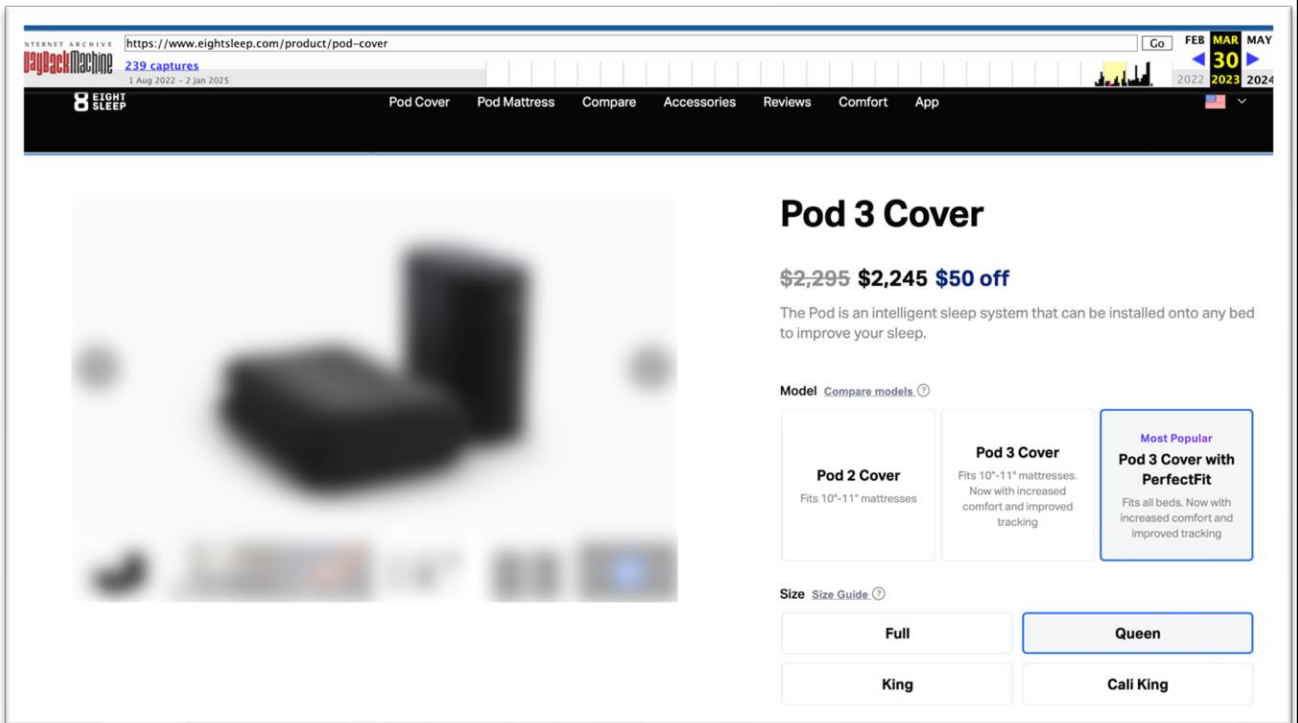
12 35. At the time of purchase, Eight Sleep advertised that Plaintiff Chopra received a \$200
13 discount and that the regular or former price of the product was \$2,295.00. Plaintiff Chopra's receipt
14 showing the purchase appears below:



1 36. At the time of purchase, Defendant represented on its website that this product was
2 on sale at a discount, with a regular or former price of \$2,295.00 listed as a strikethrough reference
3 price next to the Product. However, this reference price was false.

4 37. As evidenced by the images below, Defendant did not list or sell this product for the
5 \$2,295.00 strikethrough reference price for at least the three months prior to Plaintiff Chopra's
6 purchase:

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8 March 30, 2023



1 May 7, 2023

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Internet Archive Wayback Machine <https://www.eightsleep.com/product/pod-cover> 239 captures 1 Aug 2022 - 2 Jan 2023

Go APR MAY JUN 07 2022 2023 2024

8 EIGHT SLEEP Pod Cover Pod Mattress Compare Accessories Reviews Comfort App

Pod 3 Cover

~~\$2,295~~ **\$2,245** \$50 off

The Pod is an intelligent sleep system that can be installed onto any bed to improve your sleep.

Model [Compare models](#)

Pod 2 Cover
Fits 10"-11" mattresses

Pod 3 Cover
Fits 10"-11" mattresses.
Now with increased comfort and improved tracking

Most Popular
Pod 3 Cover with PerfectFit
Fits all beds. Now with increased comfort and improved tracking

Size [Size Guide](#)

Full Queen King Cali King

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15 May 21, 2023

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Internet Archive Wayback Machine <https://www.eightsleep.com/product/pod-cover/> 239 captures 01 Aug 2022 - 02 Jan 2023

Go APR MAY JUN 21 2022 2023 2024

8 EIGHT SLEEP Pod Cover Pod Mattress Compare Accessories Reviews Comfort App

Pod 3 Cover

~~\$2,295~~ **\$2,195** \$100 off Limited time offer

The Pod is an intelligent sleep system that can be installed onto any bed to improve your sleep.

Model [Compare models](#)

Pod 2 Cover
Fits 10"-11" mattresses

Pod 3 Cover
Fits 10"-11" mattresses.
Now with increased comfort and improved tracking

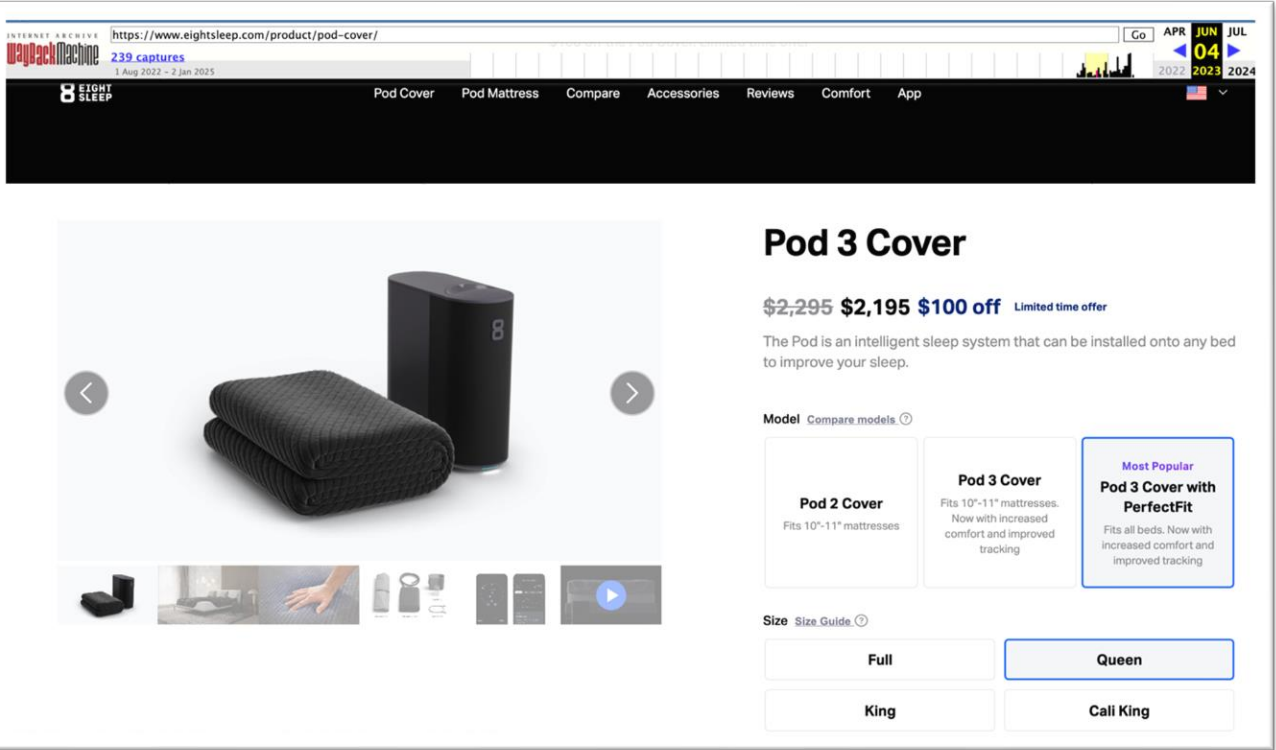
Most Popular
Pod 3 Cover with PerfectFit
Fits all beds. Now with increased comfort and improved tracking

Size [Size Guide](#)

Full Queen King Cali King

1 June 4, 2023

2 <https://www.eightsleep.com/product/pod-cover/> Go APR JUN JUL
 3 Wayback Machine 239 captures 1 Aug 2022 - 2 Jan 2025 2022 2023 2024
 4 EIGHT SLEEP Pod Cover Pod Mattress Compare Accessories Reviews Comfort App



5 **Pod 3 Cover**

6 ~~\$2,295~~ **\$2,195** **\$100 off** Limited time offer

7 The Pod is an intelligent sleep system that can be installed onto any bed to improve your sleep.

8 Model Compare models

9 **Pod 2 Cover** Fits 10"-11" mattresses

10 **Pod 3 Cover** Fits 10"-11" mattresses. Now with increased comfort and improved tracking

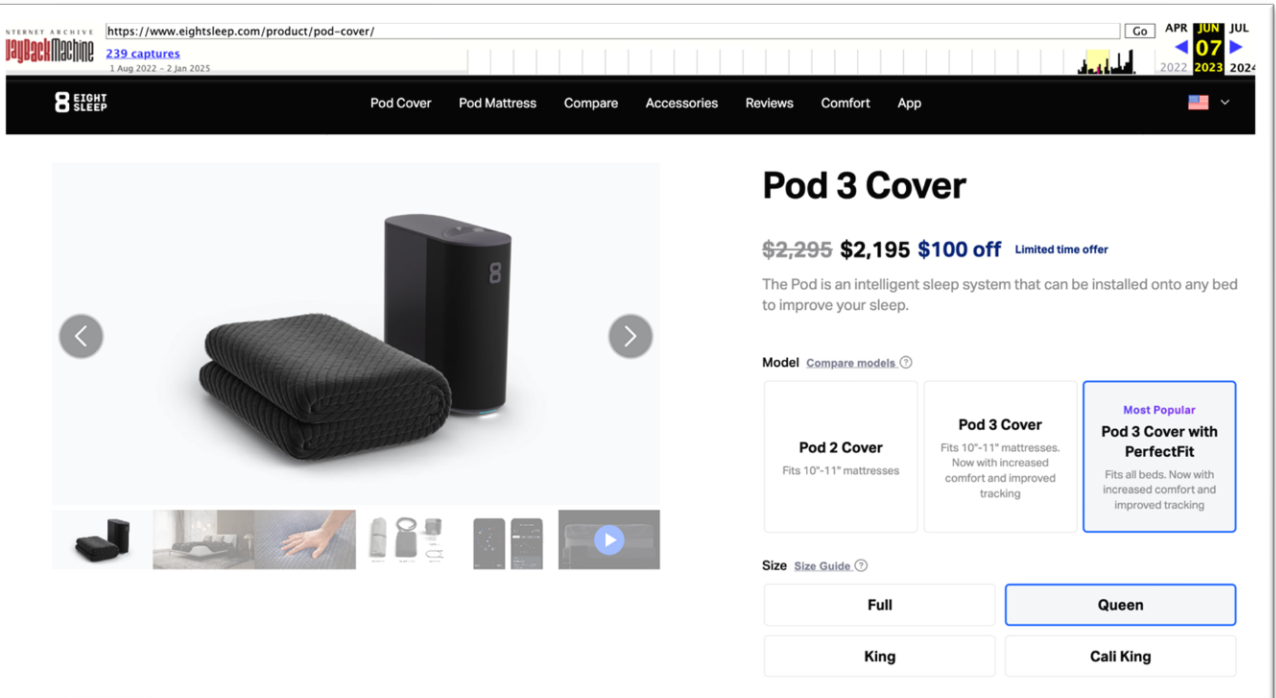
11 **Most Popular Pod 3 Cover with PerfectFit** Fits all beds. Now with increased comfort and improved tracking

12 Size Size Guide

13 Full Queen King Cali King

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15 June 7, 2023

16 <https://www.eightsleep.com/product/pod-cover/> Go APR JUN JUL
 17 Wayback Machine 239 captures 1 Aug 2022 - 2 Jan 2025 2022 2023 2024
 18 EIGHT SLEEP Pod Cover Pod Mattress Compare Accessories Reviews Comfort App



19 **Pod 3 Cover**

20 ~~\$2,295~~ **\$2,195** **\$100 off** Limited time offer

21 The Pod is an intelligent sleep system that can be installed onto any bed to improve your sleep.

22 Model Compare models

23 **Pod 2 Cover** Fits 10"-11" mattresses

24 **Pod 3 Cover** Fits 10"-11" mattresses. Now with increased comfort and improved tracking

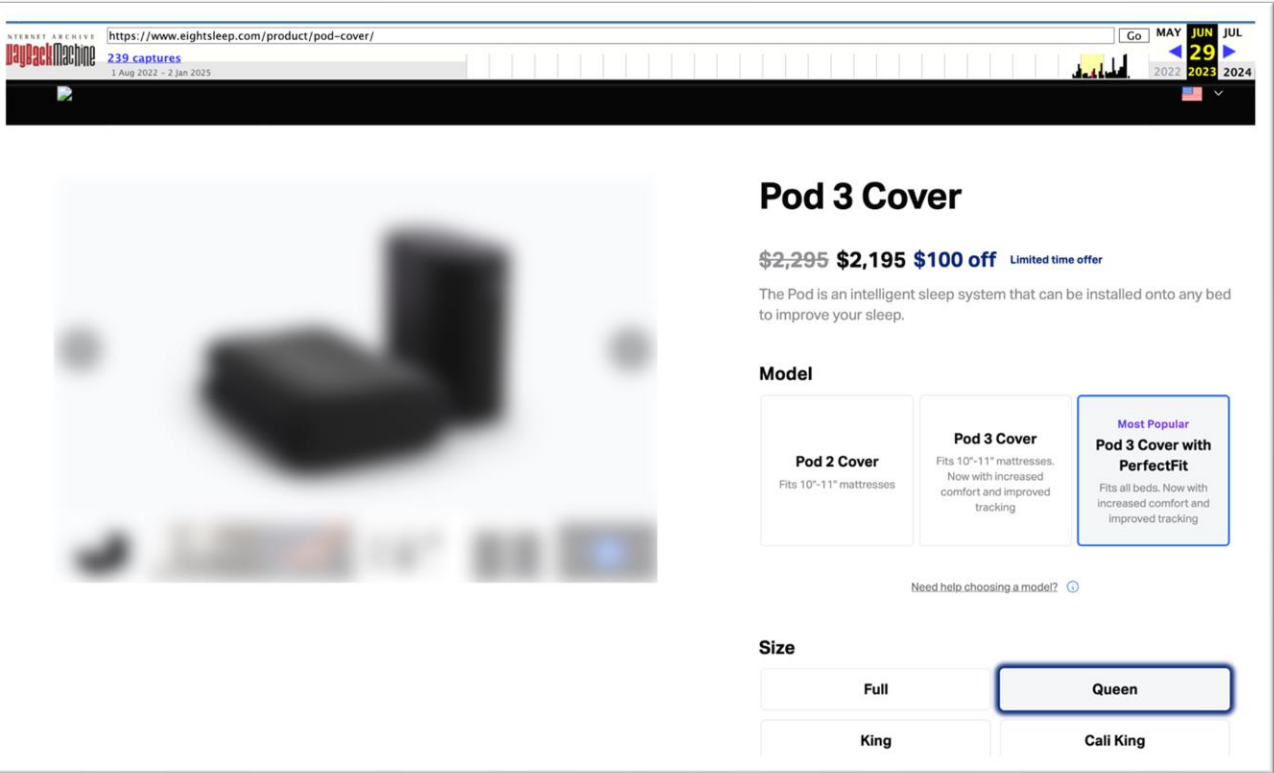
25 **Most Popular Pod 3 Cover with PerfectFit** Fits all beds. Now with increased comfort and improved tracking

26 Size Size Guide

27 Full Queen King Cali King

1 June 29, 2023

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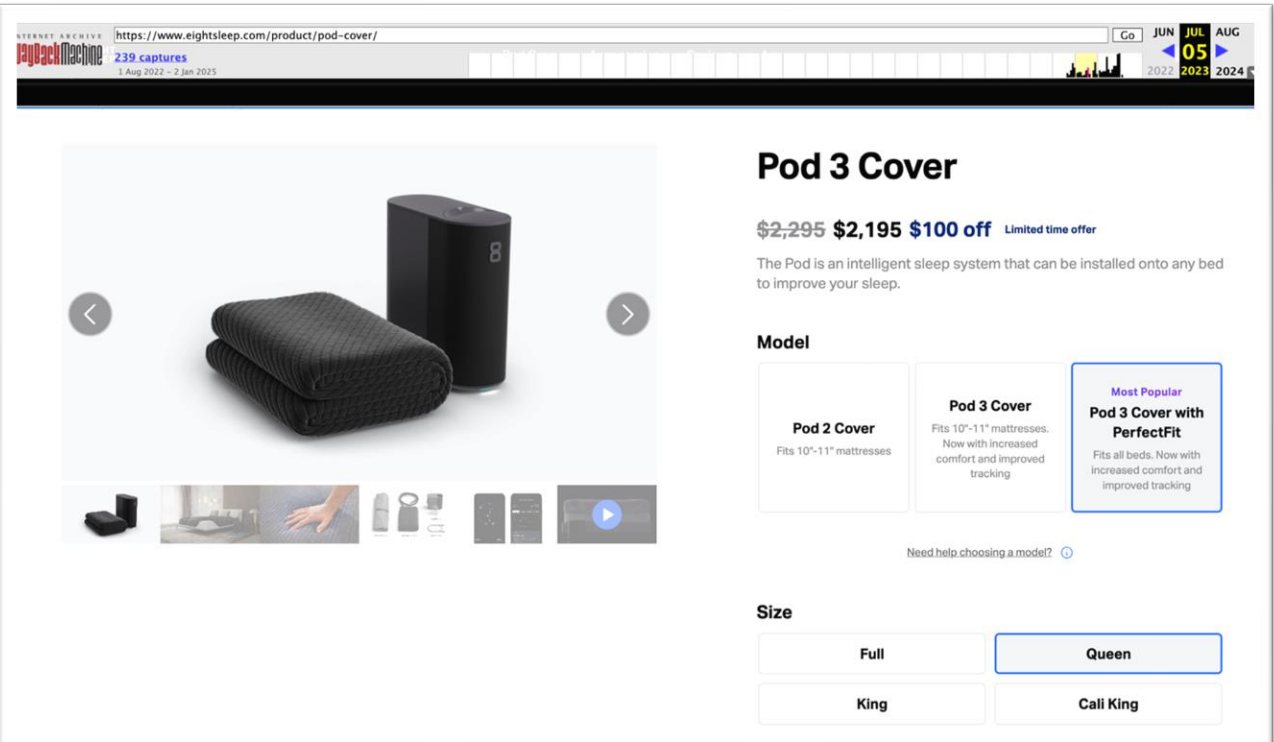
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15 July 5, 2023

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1 38. As evidenced by Defendant's own website, the Queen Size Pod 3 Cover with
2 PerfectFit was not listed or sold at the strikethrough reference price of \$2,295.00 within the three
3 months (and likely longer) prior to Plaintiff Chopra's purchase.

4 39. In fact, the same reference price was listed next to the product from at least March
5 2023 to the time Plaintiff Chopra purchased the product in July.

6 40. Plaintiff Chopra relied on Defendant's representations on the website that the
7 Products were being offered at a discount and that previously they were listed and sold on the
8 website at the stated reference price within the three months immediately preceding Plaintiff
9 Chopra's purchase.

10 41. The above-listed Product Plaintiff Chopra purchased was not substantially marked
11 down or discounted, and any discount he was receiving had been grossly exaggerated

12 42. For at least the 90-day period prior to Plaintiff Chopra's purchase, and even months
13 and years more, Defendant did not list or sell any of the Products for sale on its website at their
14 reference prices.

15 43. Plaintiff Chopra would not have purchased the Product if he had known the Product
16 was not discounted as advertised, and that he was not receiving the advertised discount.

17 44. Upon information and belief, Defendant enacts the same false discount scheme with
18 many, if not all, of the Products listed on its website

19 **2. Plaintiff Delshad**

20 45. On November 25, 2021, Plaintiff Brian Delshad purchased a King Size Pod Pro
21 Cover directly from Eight Sleep's website for \$1645.00. He made this purchase while living in Santa
22 Barbara, California.

23 46. On November 25, 2021, Defendant represented on its website that this product was
24 for sale at a discount, with a regular or former price of \$1895.00, listed as a strikethrough reference
25 price next to the Product, and advertising a \$250 discount on the product. However, this reference
26 price was false.

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1 47. As evidenced by the images below, Defendant did not list or sell this product for the
2 \$1895.00 strikethrough reference price for the three (3) months prior to Plaintiff Delshad's purchase,
3 and in fact listed the Product at a false discount from at least December 2020 to February 2022:
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5 December 2, 2020

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Internet Archive Wayback Machine <https://www.eightsleep.com/product/pod-pro-cover/> 72 captures 1 Nov 2020 - 4 Jun 2024

NOV DEC 02 2020 JAN 2021 About this capture

Cyber Monday Sale Extended: Save \$200.

The Pod Pro Cover

Love your current mattress but having temperature issues? Upgrade your sleep by adding the Pod's patented thermoregulation technology to your current mattress. Plus, enjoy the best in seamless sleep and health tracking.

Zips on to any 10" to 11" tall mattress.

Select bed size \$200 off

King ~~\$1,895~~ \$1,695

Select Cover type

The Pod Pro Cover
10"-11" Mattress

New
The Pod Pro Cover with PerfectFit
Fits 10"-16" Mattresses

The Pod Pro Cover

Fits seamlessly onto your current mattress
Add the Cover to any 10"-11" mattress, and tighten to fit snugly.

Sleep as low as 55°F

1 May 10, 2021

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INTERNET ARCHIVE WayBackMachine 72 captures 1 Nov 2020 - 4 Jun 2024

https://www.eightsleep.com/product/pod-pro-cover

Go MAR MAY JUN 10 2020 2021 2022 About this capture

Love your current mattress but having temperature issues? Upgrade your sleep by adding the Pod's patented thermoregulation technology to your current mattress. Plus, enjoy the best in seamless sleep and health tracking.

Zips on to any 10" to 11" tall mattress.

Select bed size

Queen ~~\$1,695~~ \$1,645

Full ~~\$1,595~~ \$1,545

Queen ~~\$1,695~~ \$1,645

King ~~\$1,895~~ \$1,845

Cali King ~~\$1,895~~ \$1,845

Select Cover type

Need help?

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16 September 28, 2021

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INTERNET ARCHIVE WayBackMachine 72 captures 1 Nov 2020 - 4 Jun 2024

https://www.eightsleep.com/product/pod-pro-cover/

Go AUG SEP NOV 28 2020 2021 2022 About this capture

Pods Accessories App Technology EIGHT SLEEP Comfort Reviews Financing GET THE POD

End of Summer: \$50 off Pod Pro Cover

Pod Pro Cover

Love your current mattress but having temperature issues? Upgrade your sleep by adding the Pod's patented thermoregulation technology to your current mattress. Plus, enjoy the best in seamless sleep and health tracking.

Zips on to any 10" to 11" tall mattress.

Select Bed size

King ~~\$1,895~~ \$1,845

Select Cover type

Pod Pro Cover 10"-11" Mattress

New Pod Pro Cover with PerfectFit Fits 10"-16" Mattresses

Need help?

1 November 27, 2021

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16 December 25, 2021

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1 January 10, 2022

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Internet Archive Wayback Machine <https://www.eightsleep.com/product/pod-pro-cover/> Go DEC JAN FEB 10 2021 2022 2023 About this capture

Pods Accessories App Technology EIGHT SLEEP Comfort Reviews Financing GET THE POD

Pod Pro Cover

Love your current mattress but having temperature issues? Upgrade your sleep by adding the Pod's patented thermoregulation technology to your current mattress. Plus, enjoy the best in seamless sleep and health tracking.

Zips on to any 10" to 11" tall mattress.

Select size \$50 OFF

King \$1,895 ~~\$1,845~~

Select Cover type

Pod Pro Cover

10"-11" Mattress

New

Pod Pro Cover with PerfectFit

Fits 10"-16" Mattresses

Need help?

You're saving \$50

Pod Pro Cover

Dual-Zone Cooling & Heating

With dual-zone temperature control, set each side of the Cover to anywhere between 55°F-110°F. Schedule on and off times from the Eight Sleep app.

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16 February 20, 2022

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Internet Archive Wayback Machine <https://www.eightsleep.com/product/pod-pro-cover/> Go JAN FEB APR 20 2021 2022 2023 About this capture

Pods Accessories App Technology EIGHT SLEEP Comfort Reviews Financing GET THE POD

Pod Pro Cover

Love your current mattress but having temperature issues? Upgrade your sleep by adding the Pod's patented thermoregulation technology to your current mattress. Plus, enjoy the best in seamless sleep and health tracking.

Zips on to any 10" to 11" tall mattress.

Select size \$100 OFF

King \$1,895 ~~\$1,795~~

Select Cover type

Pod Pro Cover

Fits 10"-11" Mattress

New

Pod Pro Cover with PerfectFit

Fits 10"-16" Mattresses

Need help?

What's included?

Dual-Zone Cooling & Heating

Set each side of the bed between 55°F - 110°F. Schedule personalized temperatures

1 48. As evidenced by Defendant’s own website, the King Size Pod Pro Cover was not
2 listed or sold at the strikethrough reference price of \$1895 within the three months (and likely
3 longer) prior to Plaintiff Delshad’s purchase.

4 49. In fact, the product was still being listed at a discount on February 20, 2022, three
5 months after Plaintiff Delshad’s purchase, with the same reference price of \$1895.

6 50. Plaintiff Delshad relied on Defendant’s representations on the website that the
7 Products were being offered at a discount and that previously they were listed and sold on the
8 website at the stated reference price within the three months immediately preceding Plaintiff
9 Delshad’s purchase.

10 51. However, as shown above, Defendant did not list or sell the Products at the reference
11 price for at least the previous three (3) months (and likely much longer) prior to Plaintiff Delshad’s
12 purchase. In fact, Defendant instituted a similar discount during the previous months, using the same
13 false reference prices. Even in the months after Plaintiff Delshad’s purchases, the Products have
14 continued to be listed at a discount, referencing the same regular or former price.

15 52. The above-listed Product Plaintiff Delshad purchased was not substantially marked
16 down or discounted, and any discount he was receiving had been grossly exaggerated

17 53. For at least the 90-day period prior to Plaintiff Delshad’s purchase, and even months
18 and years more, Defendant did not list or sell any of the Products for sale on its website at the
19 reference prices.

20 54. Plaintiff Delshad would not have purchased the Product if he had known the Product
21 was not discounted as advertised, and that he was not receiving the advertised discount.

22 55. Upon information and belief, Defendant enacts the same false discount scheme with
23 many, if not all, of the Products listed on its website.

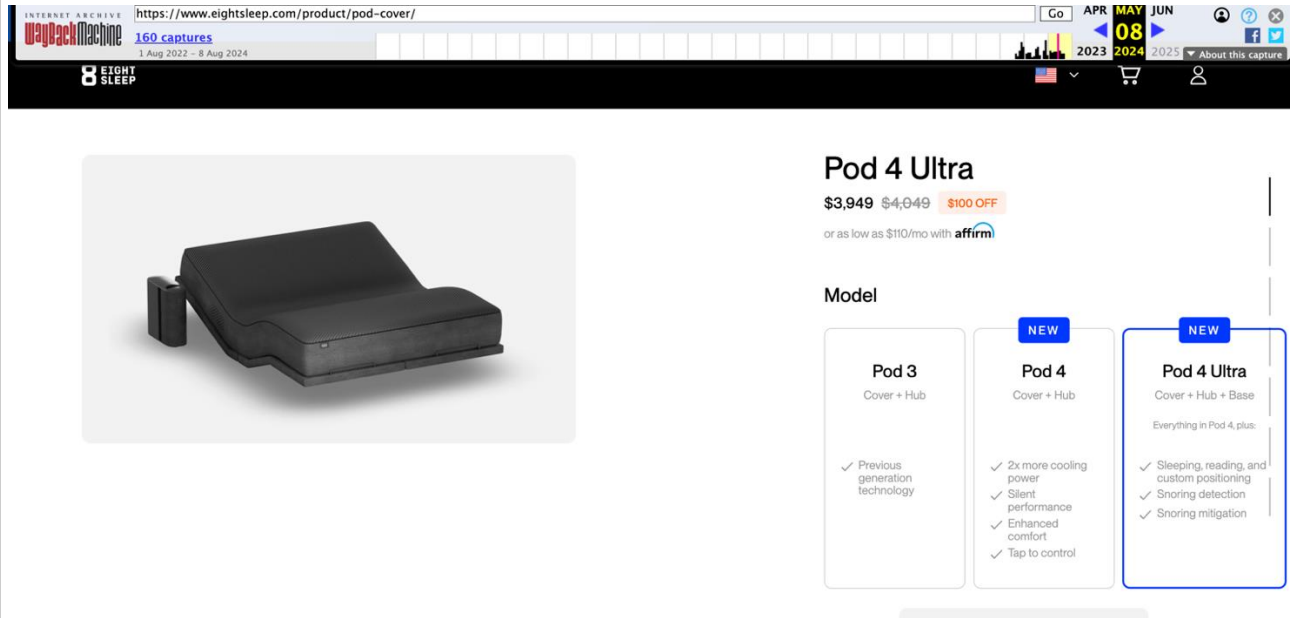
24 ***B. Eight Sleep Lists New Products at a Discount***

25 56. As part of its discount scheme, Eight Sleep even lists new products at a discount,
26 with a former reference price listed next to the product.

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1 57. For example, Eight Sleep introduced its newest product—the Pod 4—in May 2024,
2 and Eight Sleep immediately listed this product at a discount with a “former” strikethrough price
3 listed beside the discount:

4
5 May 8, 2024



16 58. Upon information and belief, the Pod 4 was launched on or around May 8, 2024, yet
17 it was immediately listed at as being for sale with a discount of “\$100 OFF” and a false strikethrough
18 reference price of \$4,049. However, the Pod 4 Ultra could not have been sold at the former price
19 shown next to the product because this was the first day it was listed.

20 59. More than three months later, on August 13, 2024, the Pod 4 Ultra was still being
21 listed at the same discount with the same strikethrough reference price:

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24 [Image on Next Page]

1 August 13, 2024

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Pod 4 Ultra
\$3,949 ~~\$4,049~~ \$100 OFF
or as low as \$110/mo with [affirm](#)
HSA/FSA-eligible with [Truemed](#). [Learn how](#)

Model

<p>Pod 3 Cover + Hub</p> <ul style="list-style-type: none"> ✓ Previous generation technology 	<p>NEW</p> <p>Pod 4 Cover + Hub</p> <ul style="list-style-type: none"> ✓ 2x more cooling power ✓ Silent performance ✓ Enhanced comfort ✓ Tap to control 	<p>NEW</p> <p>Pod 4 Ultra Cover + Hub + Base</p> <p>Everything in Pod 4, plus:</p> <ul style="list-style-type: none"> ✓ Sleeping, reading, and custom positioning ✓ Snoring detection ✓ Snoring mitigation
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GET UP TO \$150 OFF

12 60. Based on Defendant's numerous advertisements, reasonable consumers would
13 reasonably believe that the reference prices Defendant advertises are Defendant's former prices (that
14 is, the price at which the goods were actually offered for sale and sold at before the limited time
15 offer went into effect). In other words, reasonable consumers would reasonably believe that the
16 reference prices Defendant advertises represent the amount that consumers formerly had to pay for
17 Defendant's goods, before the limited-time sale began.

18 61. Reasonable consumers would also believe that the reference prices Defendant
19 advertises represent the true comparison price for the Products, and are the prevailing price for those
20 Products, and that they are receiving reductions from those regular prices in the amounts advertised.
21 In truth, however, Defendant persistently offers sales at lower prices and only gives the false
22 appearance of discounts off the purportedly regular prices it advertises. As a result, Defendant's
23 price and purported discount advertising is false. The regular prices Defendant advertises are not
24 actually Defendant's regular or former prices, or the prevailing prices for the Products Defendant
25 sells, and do not represent the true comparison price for the Products, because Defendant's Products
26 are consistently available for less than that, and customers did not have to formerly pay that amount
27 to get those items. The purported discounts Defendant advertises are not the true discount the
28 customer is receiving, and are often not a discount at all.

1 **C. The Reference Prices Are Not the Prevailing Market Price of the Products, Including**
2 **During the Rolling 90-day Period Prior to the Offering and/or Purchase**

3 62. Upon information and belief, Defendant is the sole manufacturer and seller of the
4 Products.

5 63. Defendant is a direct-to-consumer brand that sells its Products online. Indeed,
6 Defendant’s mantra on its website is “[l]uxury bedsheets, comforters, & blankets delivered straight
7 to your door.”⁵ As the primary seller of the Products, Defendant sets the prevailing market price—
8 most sales are made at Defendant’s prices, because Defendant is the one making the sales.

9 64. In short, because the Products are most commonly sold by Defendant on its website,
10 they are most commonly sold for the discounted prices that are always available from Defendant
11 (across all Defendant’s sales channels).

12 65. Upon information and belief, many, if not all, of the Eight Sleep products that are
13 sold anywhere are sold by Defendant on its website. To the extent the Products are sold through a
14 third-party seller, the third-party seller’s prices for the Product are not the prevailing market price.

15 **II. Research Shows That Reference Price Advertising Influences Consumer Behavior and**
16 **Perceptions of Value**

17 66. The effectiveness of Defendant’s deceitful pricing scheme is backed by longstanding
18 research.

19 67. “By creating an impression of savings, the presence of a higher reference price
20 enhances subjects’ perceived value and willingness to buy the product.”⁶ Thus, “empirical studies
21 indicate that, as discount size increases, consumers’ perceptions of value and their willingness to
22 buy the product increase, while their intention to search for a lower price decreases.”⁷ For this
23 reason, the Ninth Circuit in *Hinojos* held that a plaintiff making a claim of deceptive pricing (similar
24 to the claim at issue here) had standing to pursue his claim against the Defendant retailer. In doing

25 _____
26 ⁵ *Supra* note 1.

27 ⁶ Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative or Deceptive?*,
11 J. Pub. Pol’y & Mktg. 52, 55 (Spring 1992).

28 ⁷ *Id.* at 56.

1 so, the Court observed that “[m]isinformation about a product’s ‘normal’ price is . . . significant to
2 many consumers in the same way as a false product label would be.” *Hinojos v. Kohl’s Corp.*, 718
3 F.3d 1098, 1106 (9th Cir. 2013).

4 68. “[D]ecades of research support the conclusion that advertised reference prices do
5 indeed enhance consumers’ perceptions of the value of the deal.”⁸ According to academic studies,
6 “[c]onsumers are influenced by comparison prices even when the stated reference prices are
7 implausibly high.”⁹

8 69. Further, consumers are more likely to buy a product if they believe that the product
9 is on sale and that they are getting a product with a higher regular price and/or market value at a
10 substantial discount.

11 70. Consumers that are presented with discounts are substantially more likely to make
12 the purchase. “Nearly two-thirds of consumers surveyed admitted that a promotion or a coupon often
13 closes the deal, if they are wavering or are undecided on making a purchase.”¹⁰ And, “two-thirds of
14 consumers have made a purchase they weren’t originally planning to make solely based on finding
15 a coupon or discount,” while “80% [of consumers] said they feel encouraged to make a first-time
16 purchase with a brand that is new to them if they found an offer or discount.”¹¹

17 71. Another academic journal explains that “[r]eference price ads strongly influence
18 consumer perceptions of value . . . Consumers often make purchases not based on price but because

19
20 ⁸ Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Believe It or Not*, J. of
21 Consumer Affairs, Vol. 36, No. 2, at 287 (Winter 2002).

22 ⁹ *Id.*

23 ¹⁰ Khalid Saleh, *How Discounts Affect Online Consumer Buying Behavior*, Invesp, June 16, 2024,
24 <https://www.invespcro.com/blog/how-discounts-affect-online-consumer-buying-behavior/>
(last visited September 11, 2024).

25 ¹¹ RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases Online,
26 Especially Among Millennial Buyers PR NEWswire (April 25, 2018), <https://www.prnewswire.com/news-releases/retailmenot-survey-deals-and-promotional-offers-drive-incremental-purchases-online-especially-among-millennial-buyers-300635775.html#:~:text=In%2DLanguage%20News-,RetailMeNot%20Survey%3A%20Deals%20and%20Promotional%20Offers%20Drive%20Incremental%20Purchases%20Online,finding%20a%20coupon%20or%20discount>
27 <https://www.prnewswire.com/news-releases/retailmenot-survey-deals-and-promotional-offers-drive-incremental-purchases-online-especially-among-millennial-buyers-300635775.html#:~:text=In%2DLanguage%20News-,RetailMeNot%20Survey%3A%20Deals%20and%20Promotional%20Offers%20Drive%20Incremental%20Purchases%20Online,finding%20a%20coupon%20or%20discount>
28 (last visited September 11, 2024).

1 a retailer assures them that a deal is a good bargain. This occurs when ... the retailer highlights the
2 relative savings compared with the prices of competitors ... [T]hese bargain assurances (Bas)
3 change consumers' purchasing behavior and may deceive consumers."¹²

4 72. "[R]esearch has shown that retailer-supplied reference prices clearly enhance buyers'
5 perceptions of value" and "have a significant impact on consumer purchasing decisions."¹³

6 73. "[R]eference prices are important cues consumers use when making the decision
7 concerning how much they are willing to pay for the product."¹⁴ This study also concluded that
8 "consumers are likely to be misled into a willingness to pay a higher price for a product simply
9 because the product has a higher reference price."¹⁵

10 74. Accordingly, research confirms that deceptive advertising through false reference
11 pricing is intended to, and does, influence consumer behavior by artificially inflating consumer
12 perceptions of an item's value and causing consumers to spend money they otherwise would not
13 have, purchase items they otherwise would not have, and/or purchase products from a specific
14 retailer.

15 ***A. Consumers Suffered Harm***

16 75. Based on Defendant's advertisements, reasonable consumers would expect that the
17 listed regular prices are the regular prices at which Defendant usually sells its Products.

18 76. Reasonable consumers would also expect that, if they purchase during the sale, they
19 will receive an item whose regular or former price is the advertised regular or former price and that
20 they will receive the advertised discount from the regular or former purchase price
21
22

23 ¹² Joan Lindsey-Mullikin & Ross D. Petty, *Marketing Tactics Discouraging Price Search: Deception*
24 *and Competition*, 64 J. of Bus. Research 67 (January 2011).

25 ¹³ Praveen K. Kopalle & Joan Lindsey-Mullikin, *The Impact of External Reference Price On*
Consumer Price Expectations, 79 J. of Retailing 225 (2003).

26 ¹⁴ Jerry B. Gotlieb & Cyndy Thomas Fitzgerald, *An Investigation Into The Effects of Advertised*
27 *References Prices On the Price Consumers Are Willing To Pay For the Product*, 6 J. of App'd Bus.
Res. 1 (1990).

28 ¹⁵ *Id.*

1 77. Plaintiffs and consumers paid a “price premium” for the Products. If the reference
2 prices were omitted from the product listings, the Plaintiffs would not have purchased the Products.

3 78. Also, as further described above, Plaintiffs and consumers are more likely to buy the
4 Products if they believe that the product is on sale and that they are getting Products with a higher
5 regular or former price at a substantial discount.

6 79. Thus, Defendant’s advertisements harm consumers by inducing them to make
7 purchases based on false information. Not only do Defendant’s Products have a market value lower
8 than the falsely promised regular price; the value of the products is also lower than the “sale” price.
9 By using false reference pricing, Defendant’s advertisements artificially increase consumer demand
10 for Defendant’s Products. This puts upward pressure on the prices that Defendant can charge for its
11 Products. As a result, Defendant can charge a price premium for its Products that it would not be
12 able to charge absent the misrepresentations described above, and consumers received a product
13 worth less than the price paid.

14 **III. Defendant’s Deceptive Pricing Practices Violate Federal and California State Law**

15 80. The Federal Trade Commission Act (“FTCA”) prohibits “unfair or deceptive acts or
16 practices in or affecting commerce.” 15 U.S.C. § 45(a)(1). Under 16 C.F.R. § 233.1, which is titled
17 Former Price Comparisons, the FTC prohibits such misleading price comparisons as the ones
18 employed by Defendant:

19 (a) One of the most commonly used forms of bargain advertising is to offer a
20 reduction from the advertiser’s own former price for an article. If the *former*
21 *price* is the actual, bona fide price at which the article was offered to the public
22 *on a regular basis for a reasonably substantial period of time*, it provides a
23 legitimate basis for the advertising of a price comparison. Where the former
24 price is genuine, the bargain being advertised is a true one. If, on the other hand,
25 the former price being advertised is not bona fide but fictitious – for example,
26 where an *artificial, inflated price was established for the purpose of enabling*
27 *the subsequent offer of a large reduction* – the “bargain” being advertised *is a*
28 *false one*; the purchaser is not receiving the unusual value he expects.

(b) A former price is not necessarily fictitious merely because no sales at the
26 advertised price were made. The advertiser should be especially careful,
27 however, in such a case, that the price is one at which the product was openly
28 and actively offered for sale, for a reasonably substantial period of time, in the
recent, regular course of her business, honestly and in good faith – and, of

1 course, not for the purpose of establishing a fictitious higher price on which a
2 deceptive comparison might be based.

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

12 (d) Other illustrations of fictitious price comparisons could be given. An advertiser
13 might use a price at which he ***never offered the article at all***; he might feature a
14 price which was ***not used in the regular course of business***, or which was ***not***
15 ***used in the recent past*** but at some remote period in the past, without making
16 disclosure of that fact; he might use a price that was not openly offered to the
17 public, or that was ***not maintained for a reasonable length of time***, but was
18 immediately reduce.

19 16 C.F.R. § 233.1 (emphasis added).

20 81. The FTCA expressly prohibits the advertising of fictitious former prices, like the
21 scheme employed by Defendant, regardless of whether the product advertisements and
22 representations use the words “regular,” “original,” or “former” price:

23 (e) If the former price is set forth in the advertisement, whether accompanied or not
24 by descriptive terminology such as “Regularly,” “Usually,” “Formerly,” etc., the
25 advertiser should make certain that the former price is not a fictitious one. If the
26 former price, or the amount or percentage of reduction, is not stated in the
27 advertisement, as when the ad merely states, “Sale,” the advertiser must take
28 care that the amount of reduction is not so insignificant as to be meaningless. It
should be sufficiently 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.

16 C.F.R. § 233.1.

82. Defendant’s pricing scheme directly violates the FTCA.

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

5 84. Section 17501 of California’s False Advertising Law provides that “[n]o price shall
6 be advertised as a former price ... unless the alleged former price was the prevailing market price
7 ... within three months next immediately preceding” the advertisement. Cal. Bus. & Prof. Code §
8 17501.

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

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

15 87. Here, as described in detail above, Defendant makes untrue and misleading
16 statements about its prices. Defendant advertises regular prices that are not its regular prices, or its
17 former prices, and were not the prevailing market price in the three months immediately preceding
18 the advertisement. In addition, Defendant advertised goods or services with the intent not to sell
19 them as advertised, for example, by advertising goods having certain former prices without the intent
20 to sell goods having those former prices. Defendant made false and misleading statements of fact
21 concerning the reason for, existence of, and amounts of price reductions, including the existence of
22 steep discounts, and the amounts of price reductions resulting from those discounts. And Defendant
23 engaged in unlawful and deceptive business practices.

24 **CLASS ALLEGATIONS**

25 88. Plaintiffs bring this action individually and on behalf of all others similarly situated.
26 The proposed class is defined as:

27
28

1 **California Class:**

2 All persons residing in the State of California who, during the applicable limitations
3 period, purchased one or more items from Defendant, at a represented discount from
4 a higher reference price.

5 89. Excluded from the Class is Defendant, its subsidiaries and affiliates, officers,
6 directors, the members of their immediate families, and any entity in which any Defendant has a
7 controlling interest, to include the legal representatives, heirs, successors, or assigns of any such
8 excluded party. Also excluded are the judicial officer(s) to whom this action is assigned, and the
9 members of their immediate families.

10 90. Plaintiffs reserve the right to modify or amend the definition of the proposed Class
11 if necessary, before this Court determines whether certification is appropriate.

12 91. This case is properly brought as a class action under Fed. R. Civ. P. 23(b)(2) and
13 (b)(3) and all requirements are met for the reasons set forth in the following paragraphs.

14 92. *Numerosity.* The members of the Class are so numerous that separate joinder of each
15 member is impracticable. Upon information and belief, and subject to discovery, the Class consist
16 of many thousands of members, the identity of whom are within the exclusive knowledge of
17 Defendant and can be ascertained only by resorting to Defendant’s records, discovery, and other
18 third-party sources.

19 93. *Commonality.* There are numerous questions of law and fact common to the Class
20 relating to Defendant’s business practices challenged herein, and those common questions
21 predominate over any questions affecting only individual Class members. The common questions
22 include, but are not limited to:

- 23 ○ Whether Defendant’s labeling, advertising, and marketing of the Products is false
24 and misleading;
- 25 ○ Whether Defendant advertised false reference prices on Products offered on its
26 website;
- 27 ○ Whether Defendant advertised price discounts from the false reference prices on
28 the Products offered on the websites;

- 1 ○ Whether the Products listed on Defendant’s websites were offered at their
- 2 reference price for a reasonably substantial period of time during the three
- 3 months prior to being offered at prices that were discounted from their reference
- 4 prices;
- 5 ○ Whether the Products listed on Defendant’s websites were offered at their
- 6 reference price within the three months preceding purchases by Plaintiffs and
- 7 class members;
- 8 ○ Whether Defendant’s misrepresentations were material to reasonable consumers;
- 9 ○ Whether Defendant engaged in unlawful or unfair conduct prohibited by the
- 10 California UCL;
- 11 ○ Whether Defendant engaged in conduct prohibited by the California FAL;
- 12 ○ Whether Defendant violated the CLRA’s prohibition on unfair methods of
- 13 competition and/or unfair and deceptive practices;
- 14 ○ Whether Defendant violated the FTCA;
- 15 ○ Whether Defendant harmed the Plaintiffs and members of the Class;
- 16 ○ the proper measure of damages; and
- 17 ○ the declaratory and injunctive relief to which the Class is entitled.

18 94. *Typicality.* Plaintiffs’ claims are typical of the claims of the other Class members in
19 that they arise out of the same wrongful business practices engaged in by Defendant, as described
20 herein.

21 95. *Adequacy of Representation.* Plaintiffs are adequate representatives of the Class
22 because Plaintiffs have sustained damage as a result of Defendant’s uniform conduct. In addition:

- 23 ○ Plaintiffs are committed to the vigorous prosecution of this action individually
- 24 and on behalf of and all others similarly situated and have retained competent
- 25 counsel experienced in the prosecution of class actions and, in particular, class
- 26 actions on behalf of consumers against financial institutions;
- 27 ○ There is no hostility of interest between Plaintiffs and the unnamed Class
- 28 members;

1 101. The UCL defines unfair competition to include any “unlawful, unfair or fraudulent
2 business act or practice.” Cal. Bus. & Prof. Code § 17200.

3 102. Defendant violated the UCL by engaging in “unlawful, unfair, and fraudulent
4 business acts or practices” and engaging in “unfair, deceptive, untrue or misleading advertising,”
5 including advertising false and deceptive reference prices on its Products. Cal. Bus. & Prof. Code §
6 17200.

7 **a. Unlawful Prong**

8 103. As a result of engaging in the conduct alleged in this Complaint, Defendant has
9 violated the UCL’s proscription against engaging in “unlawful” conduct by virtue of their violations
10 of the following laws:

11 (1) **California Bus. & Prof. Code § 17501**: As further detailed in this
12 Complaint, Defendant violated California’s False Advertising Law, Cal. Bus. & Prof.
13 Code §§ 17500 and 17501.

14 (2) **The Federal Trade Commission Act**: As detailed in this Complaint,
15 Defendant violated 16 C.F.R. §§ 233.1 and 233.5.

16 (3) **Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1770(a)**: As
17 alleged below, Defendant’s conduct, individually and collectively, violates section
18 1770(a)(5), (7), (9), and (13) of the CLRA. Therefore, Defendant has also violated the
19 UCL’s “unlawful” provision.

20 104. Plaintiffs reserve the right to allege other violations of law, which constitute other
21 unlawful business acts or practices. Such conduct is ongoing and continues to this date. Unless
22 restrained and enjoined, Defendant will continue to engage in the unlawful conduct described herein.

23 105. Defendant’s conduct caused and continues to cause substantial injury to Plaintiffs
24 and the Class. As described herein, Defendant made false and deceptive advertisements and
25 representations regarding the reference prices on the Products it claimed were on sale. But for
26 Defendant’s unlawful and unfair conduct, Plaintiffs and Class members would not have purchased
27 the Products.

28

1 106. Plaintiffs have suffered injury in fact and have lost money as a result of Defendant's
2 conduct.

3 107. Accordingly, Plaintiffs and Class Members seek restitution from Defendant of all
4 money obtained from Plaintiffs and the Class as a result of Defendant's unlawful acts.

5 **b. Unfair Prong**

6 108. As a result of engaging in the conduct alleged herein, Defendant has violated the
7 UCL's proscription against "unfair" business practices.

8 109. Under the UCL, a business act or practice is "unfair" if the Defendant's conduct is
9 substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive,
10 and unscrupulous, as the benefits for committing such acts or practices are outweighed by the gravity
11 of the harm to the alleged victims.

12 110. Defendant's unfair conduct alleged in the Complaint is illegal, deceptive, unethical,
13 and unscrupulous. Under federal and state law, making false and deceptive claims about products
14 being marketed and sold to consumers violates the UCL.

15 111. Defendant's deceptive marketing gave consumers the false impression that their
16 products were regularly listed or sold on the websites for a substantially higher price in the recent
17 past than they were and, thus, led to the false impression that Defendant's products were being sold
18 at a discount to a regular price.

19 112. Furthermore these acts and practices offend public policy by violating the CLRA and
20 the California False Advertising Law ("FAL"), Cal. Bus. & Prof. Code 17500, *et seq.*

21 113. Defendant's conduct was and continues to be of no benefit to purchasers of the
22 Products, as it is misleading, unfair, unlawful, and is injurious to consumers.

23 114. Therefore, Defendant's conduct was and continues to be "unfair."

24 115. Defendant's violations of the UCL continue to this day. Unless restrained and
25 enjoined, Defendant will continue to engage in the unfair conduct described herein, and Plaintiffs
26 would buy again from Eight Sleep websites if they knew that the pricing misrepresentations were
27 halted and if they had the opportunity to evaluate the actual prevailing price and actual discount
28 prices of the Products.

1 116. Defendant’s violations of the UCL continue to this day. Unless restrained and
2 enjoined, Defendant will continue to engage in the unfair conduct described herein.

3 117. Defendant’s conduct caused and continues to cause substantial injury to Plaintiffs,
4 as well as the Class members.

5 118. The harm to Plaintiffs and members of the Class outweighs the utility of Defendant’s
6 practices. There were reasonably available alternatives to further Defendant’s legitimate business
7 interests, other than the unfair conduct described herein.

8 119. Accordingly, Plaintiffs and the Class seek restitution from Defendant of all money
9 obtained from Plaintiffs and the Class members as a result of Defendant’s unfair competition.

10 ***c. Fraudulent Prong***

11 120. As a result of engaging in the conduct alleged herein, Defendant has violated the
12 UCL’s proscription against “fraudulent” business practices.

13 121. Under the UCL, a business act or practice is “fraudulent” if it actually deceives or is
14 likely to deceive members of the consuming public. Defendant affirmatively misrepresented the
15 reference prices of products which, in turn, misled and deceived consumers into believing that they
16 were buying products at substantially discounted prices. Defendant’s deceptive marketing gave
17 consumers the false impression that its products were regularly listed or sold on the website for a
18 substantially higher price in the previous three months. Because Defendant misled Plaintiffs and
19 members of the Class, Defendant’s conduct was “fraudulent.”

20 122. Defendant’s advertisements concerning the reference price of Products on its
21 websites were fraudulent business acts in violation of the UCL. These acts were reasonably likely
22 to deceive consumers, and in fact did deceive Plaintiffs and induce them into purchasing
23 Defendant’s Products.

24 123. Defendant knew its Products were not actually sold at the higher reference price for
25 a three month period of time preceding Plaintiffs’ and class members purchases.

26 124. Defendant had a duty to disclose the truth about its pricing deception, including that
27 the reference prices advertised on its website were not, in fact, prices at which Defendant’s items
28

1 were listed or sold on the website in the previous three months, but in truth, the products never (or
2 rarely) were offered or sold at the reference prices.

3 125. Defendant made these statements with the intention that Plaintiffs would see them
4 and rely on them to purchase their Products, and, in fact, Plaintiffs did rely on Defendant's
5 fraudulent misrepresentations on Defendant's websites when purchasing the Products.

6 126. If not for Defendant's fraudulent acts and practices, Plaintiffs would not have
7 purchased the Products.

8 127. As a result, Plaintiffs and Class Members suffered substantial injury and lost money
9 due to Defendant's conduct.

10 128. There were reasonably available alternatives to further Defendant's legitimate
11 business interests, other than the conduct described herein. As a result of Defendant's fraudulent
12 business acts and practices, Defendant has and continues to fraudulently obtain money from
13 Plaintiffs and Class Members.

14 129. Plaintiffs requests that this Court cause Defendant to restore this unlawfully, unfairly,
15 and fraudulently obtained money to them, and members of the Class, to disgorge the profits
16 Defendant made on these transactions, and to enjoin Defendant from violating the UCL or violating
17 it in the same fashion in the future.

18 **SECOND CAUSE OF ACTION**
19 **VIOLATION OF CALIFORNIA'S FALE ADVERTISING LAW ("FAL")**
20 **Cal. Bus. & Prof. Code §§ 17500, *et seq***
21 **(On behalf of Plaintiffs and the California Class)**

22 130. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
23 paragraphs of this Complaint.

24 131. This Claim is brought on behalf of the California class, which is referred to in this
25 section as the "Class."

26 132. Defendant violated Cal. Bus. & Prof. Code §§ 17500 and 17501.

27 133. The California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500,
28 *et seq.*, by states, in part, that:

1 It is unlawful for any person, firm, corporation or association, or any employee
2 thereof with intent directly or indirectly to dispose of real or personal property or
3 to perform services, professional or otherwise, or anything of any nature
4 whatsoever or to induce the public to enter into any obligation relating thereto, to
5 make or disseminate or cause to be made or disseminated before the public in this
6 state, or to make or disseminate or cause to be made or disseminated from this state
7 before the public in any state, in any newspaper or other publication, or any
8 advertising device, or by public outcry or proclamation, or in any other manner or
9 means whatever, including over the Internet, any statement, concerning that real or
10 personal property or those services, professional or otherwise, or concerning any
11 circumstance or matter of fact connected with the proposed performance or
12 disposition thereof, **which is untrue or misleading, and which is known, or**
13 **which by the exercise of reasonable care should be known, to be untrue or**
14 **misleading...**

15 Cal. Bus. & Prof. Code § 17500. (emphasis added).

16 134. The FAL also provides that:

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

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

26 Cal. Bus. & Prof. Code § 17501. (emphasis added).

27 135. As used in the FAL:

28 (a) The term “prevailing market price” refers to the “retail price” if the offer is at
retail.”

(b) The term “advertised thing” refers to the exact same product offered—*not* an
equivalent or similar product. *People v. Superior Ct. (J.C. Penney Corp.)*, 24 Cal
App. 5th 376, 412 (2019) (“if the advertisement specifies a precise item—say, by
reference to name, brand, or other distinctive features ... the market and therefore
the market price is potentially determined on the basis of sales of *that item only.*”)
(emphasis added).

1 (c) The term “ ‘former price’ ... includes but is not limited to the following words
2 and phrases when used in connection with advertised prices: ‘formerly—,’
3 ‘regularly—,’ ‘usually—,’ ‘originally—,’ ‘reduced from ___,’ was ___ now __,’
4 ‘ ___ % off.’” 4 Cal. Code Regs., § 1301 (emphasis added).

5 (d) The “three-month period is properly construed as a ‘rolling’ period, that is, one
6 whose beginning and end changes each day, thus requiring a daily recalculation
7 of the prevailing market price during the three-month period.” *People v. Superior*
8 *Ct. (J.C. Penney Corp.)*, 24 Cal App. 5th 376, 416 n.26 (2019) (emphasis added).

9 136. As alleged more fully above, Defendant advertises former prices along with
10 discounts on its websites. Defendant does this, for example, by crossing out a higher price (e.g.
11 \$150) and displaying it next to a lower, discounted price. Reasonable consumers would understand
12 prices denoted as regular prices from which time-limited discounts are calculated to denote “former”
13 prices, i.e., the prices that Defendant charges before the discount went into effect.

14 137. The reference prices advertised as former or regular prices on Defendant’s websites
15 are not former or regular prices under the FAL. Defendant rarely, if ever, offered Products on the
16 websites at the reference prices within three months immediately preceding the publication of the
17 reference prices. Additionally, the reference prices shown were not the prevailing market prices for
18 the Products in the three months immediately preceding the publication.

19 138. Defendant’s misrepresentations were intended to induce reliance, and Plaintiffs saw,
20 read, and reasonably relied on the false reference prices when purchasing Defendant’s Products.
21 Defendant’s misrepresentations were a substantial factor in the Plaintiffs’ purchase decisions.

22 139. Plaintiffs relied on Defendant’s false advertisements with regard to the Products, at
23 the time of purchase.

24 140. As a result of Defendant’s violation of the FAL, Plaintiffs and Class Members
25 suffered substantial injury and lost money.

26 141. Pursuant to Cal. Bus. & Prof. Code § 17535, this Court has the power to award such
27 equitable relief, including but not limited to an order declaring the reference prices listed on
28 Defendant’s Products’ to be unlawful, an order enjoining Defendant from engaging in any such

1 further unlawful conduct, and an order directing Defendant to refund to Plaintiffs and Class
2 Members all monies wrongfully collected as a result of its false advertisements.

3 **THIRD CAUSE OF ACTION**
4 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT (“CLRA”)**
5 **(Cal. Civ. Code §§ 1750, *et seq.*)**
6 **(On behalf of Plaintiffs and the California Class)**

7 142. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
8 paragraphs of this Complaint.

9 143. Plaintiffs and members of the Class are “consumers,” as that term is defined by Civil
10 Code § 1761(d), because they purchased Products for personal, family, or household purposes.

11 144. Plaintiffs and Class members have engaged in a “transaction” with Defendant, as that
12 term is defined by Civil Code § 1761(e).

13 145. The conduct alleged in this Complaint constitutes unfair methods of competition and
14 unfair and deceptive acts and practices for purposes of the CLRA, and was undertaken by Defendant
15 in transactions intended to result in, and which resulted in, the sale of goods or services to
16 consumers.

17 146. As described more fully above, Defendant made and disseminated untrue and
18 misleading statements of fact in its advertisements to class members. Defendant did this by using
19 fake reference prices, i.e., reference prices that are not the prevailing market price, and/or were not
20 the prevailing market price within the three months preceding the publication of the discount, and
21 advertising fake discounts.

22 147. As a result of Defendant’s conduct, Plaintiffs and Class members purchased
23 Defendant’s Products for their use.

24 148. By engaging in the conduct described herein, Defendant has violated the following
25 subdivision of California Code § 1770(a) by:

26 (5) Representing that goods or services have sponsorship, approval,
27 characteristics, ingredients, uses, benefits, or quantities which they do not have
28 ...

(7) Representing that goods or services are of a particular standard, quality, or
grade, or that goods are of a particular style or model, if they are of another.

1 (9) Advertising goods or services with intent not to sell them as advertised.
2

3 (13) Making false or misleading statements of fact concerning reasons for,
4 existence of, or amounts of price reductions.

5 149. Regarding section 1770(a)(13), Defendant made false or misleading statements of
6 fact concerning the “existence of” and the “amounts of price reductions” because (a) no true price
7 reductions existed in that Defendant’s Products were rarely, if ever, offered for sale and/or sold on
8 the websites at the higher reference prices, let alone on a regular basis within the three months
9 immediately preceding the publication of the reference prices, (b) the reference prices Defendant
10 advertised in connection with its Products are not prevailing market prices because, on information
11 and belief, the Products were not sold elsewhere at the reference prices on a regular basis within the
12 three months immediately preceding the publication of the reference prices, and (c) Defendant
13 falsely represents the Products as on sale for a limited time when in truth it appears they are
14 perpetually sold at the advertised “sale” prices.

15 150. With regards to sections 1770(a)(5), (7), and (9), Defendant advertised and
16 represented Products on the websites with the “intent not to sell” them as advertised and
17 misrepresenting product characteristics and standards because, as explained herein, the false
18 reference prices advertised in connection with products offered on the website misled and continue
19 to mislead customers into believing the Products were previously offered for sale and/or sold on the
20 websites at the higher reference prices during the three months preceding the advertisement.

21 151. Defendant intended for Plaintiffs and the Class to rely on its aforementioned unfair
22 and deceptive acts and practices, including the misrepresentations and omissions alleged above.

23 152. Defendant’s violations of the CLRA proximately caused injury in fact to Plaintiffs
24 and the Class.

25 153. Plaintiffs reasonably relied on Defendant’s representations. Absent Defendant’s
26 misrepresentations, Plaintiffs would not have purchased the items he purchased from Defendant.
27 Plaintiffs’ reliance was a substantial factor in causing him harm.
28

1 154. Pursuant to Cal. Civ. Code § 1782(d), Plaintiff, individually and on behalf of the
2 Class, seek a Court order enjoining the above-described wrongful acts and practices of Defendant
3 and for restitution and disgorgement.

4 155. On October 4, 2024, pursuant to Cal. Civ. Code § 1782(a), Defendant was sent in
5 writing by certified mail, notice of the violations of Section 1770 of the CLRA, which notification
6 demanded that Defendant rectify the problems associated with the actions detailed above and give
7 notice to all affected consumers of its intent to so act.

8 156. Defendant failed to rectify or agree to rectify the problems associated with the actions
9 detailed above or give notice to all consumers within 30 days of receipt of the CLRA notice.
10 Accordingly, Plaintiffs seek damages, as permitted and appropriate.

11 **REQUEST FOR RELIEF**

12 WHEREFORE, Plaintiffs and members of the Class, respectfully request that the Court:

- 13 a. Certify this case as a class action, designating Plaintiffs as class representatives and
14 designating the undersigned as Class Counsel;
- 15 b. Declaring that Defendant’s conduct violates the statutes set forth above;
- 16 c. Award Plaintiffs and the Class actual damages in an amount according to proof;
- 17 d. Award Plaintiffs and the Class restitution in an amount to be proven at trial;
- 18 e. Award Plaintiffs and the Class pre-judgment interest in the amount permitted by law;
- 19 f. Award Plaintiffs and their attorneys fees and costs as permitted by law;
- 20 g. Declare Defendant’s practices outlined herein to be unlawful;
- 21 h. Grant equitable and/or injunctive relief, including to enjoin Defendant from engaging
22 in the practices outlined herein;
- 23 i. Grant Plaintiffs and the Class a trial by jury;
- 24 j. Grant leave to amend these pleadings to conform to evidence produced at trial; and
- 25 k. Grant such other relief as the Court deems just and proper, including all forms of
26 relief provided for under the UCL, CLRA, and FAL.

27 **JURY DEMAND**

28 Plaintiffs, by counsel, demand a trial by jury.

1 Dated: March 25, 2025

Respectfully submitted,

2 /s/ Charles R. Toomajian III

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28 * *Pro Hac Vice* application to be submitted

Counsel for Plaintiffs and the Proposed Class