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Assigned for All Purposes
Judge Peter Wilson
Dept. CX101

6 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
7 **FOR THE COUNTY OF ORANGE**

8 Christopher Butler, individually and on behalf
9 of all others similarly situated,
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11 Plaintiff,
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13 - against -
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15 E & E Co., Ltd.,
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17 Defendant

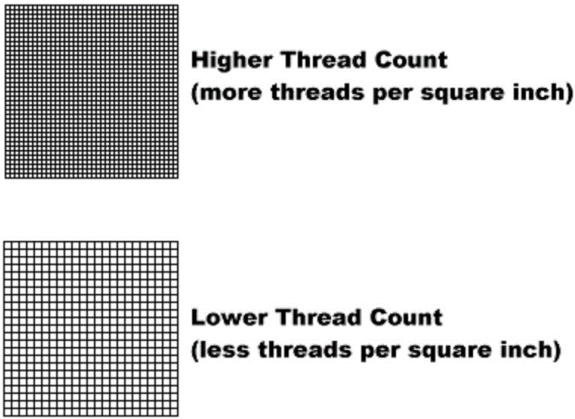
Case No. **30-2023-01342166-CU-MC-CXC**

Class Action Complaint

Jury Trial Demanded

14 Plaintiff alleges upon information and belief, except for allegations about Plaintiff, which
15 are based on personal knowledge:

- 16 1. E & E Co., Ltd. (“Defendant”) sells sheet sets represented with a thread count of
17 1000 under the Beautyrest brand (“Product”).
- 18 2. Consumers use the thread count of sheets as an indicator of fabric quality, as higher
19 thread counts provide greater comfort, durability, and longevity.¹



- 26 3. Fabrics with higher thread counts have more threads per square inch, and lower

28 ¹ ABC News, [Are Shoppers Short-Sheeted by Thread Count?](#), Nov. 2002.

1 thread counts have less threads per square inch.

2 4. Surveys confirm that consumers are willing to, and do pay, more for higher thread
3 count sheets than lower thread count sheets.

4 5. Sheet sets with higher thread counts are more expensive than those with lower thread
5 counts.

6 6. The global standards body, ASTM International, established ASTM Standard 3775,
7 to standardize the method for counting threads used in textiles.²

8 7. Determining the number of threads requires “Count[ing] individual warp ends
9 (vertical threads) and filling³ (horizontal threads) picks as single units.”⁴

10 8. When two yarns “are laid-in together and parallel,” each yarn is counted separately,
11 “regardless of whether it is comprised of single or plied components.”⁵

12 9. However, not all textile sellers use this method.

13 10. Industry groups such as the National Textiles Association (“NTA”) and the
14 American Textile Manufacturer’s Institute (“ATMI”) have been critical of how “extremely high
15 [thread] counts are achieved by counting yarns within a ply as individual yarns, thus dramatically
16 increasing the number of yarns in a square inch of fabric.”⁶

17 11. The Federal Trade Commission (“FTC”) afforded significant weight to the ASTM
18 standard and indicated it would review thread count claims which counted yarns within a ply as
19 individual yarns.⁷

20 12. It agreed with industry members that “[C]onsumers could be deceived or misled by
21 the practice of stating an inflated thread count, achieved by multiplying the actual count by the
22 number of plies within the yarn.”

23 13. This practice was harmful to purchasers, who would be unable to compare similar
24

25 ² Standard Test Method for Warp (End) Count and Filling (Pick) Count of Woven Fabrics; *see also*
ASTM Designation: D3775-12; ASTM D 123-03, Standard Terminology Relating to Textiles.

26 ³ The filling is also referred to as the weft.

27 ⁴ ASTM Designation: D3775-12 at 9.1.1.

28 ⁵ ASTM Designation: D3775-12 at 9.1.2.

⁶ ATMI, Letter to FTC, Jan. 31, 2002.

⁷ FTC, Letter to ATMI, Mar. 18, 2002.

1 products, because their “thread counts [] may have been calculated in two dramatically different
2 ways.”⁸

3 14. The FTC stated that counting individual yarns within a ply to arrive at a total thread
4 count did not appear to be supported by a “reasonable basis.”

5 15. It offered an example of a non-deceptive way to tell consumers of thread count and
6 yarn ply, such as “300 thread count, 2 ply yarn,” instead of “600 thread count,” which “would likely
7 mislead consumers about the quality of the product being purchased.”

8 16. Though the Product is represented as having a “1000 Thread Count,” laboratory
9 analysis based on ASTM D 3775 determined this figure is false and misleading.



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22 17. This determined that the Product has 65 warp yarns and 168 weft yarns per inch, for
23 a total thread count of 233.

24 18. However, Defendant counted the 12 individual filaments in each warp yarn as
25 separate yarns, yielding the inflated figure of 780 threads.⁹

26 19. It then added 168 weft yarns, for a total thread count of 948.

27 ⁸ FTC, Letter to NTA, Aug. 2, 2005.

28 ⁹ 65 multiplied by 12.

1 representations and omissions were false and misleading or would not have purchased it.

2 33. The value of the Product that Plaintiff purchased was materially less than its value
3 as represented by Defendant.

4 34. Plaintiff chose between Defendant’s Product and products represented similarly, but
5 which did not misrepresent their attributes, features, and/or components.

6 35. Plaintiff intends to, seeks to, and will purchase the Product again when he can do so
7 with the assurance the Product's representations are consistent with its attributes, features, and/or
8 composition.

9 36. Plaintiff is unable to rely on the representations not only of this Product, but other
10 similar sheet sets that are represented with a high thread count, because he is unsure whether those
11 representations are truthful.

12 37. If Defendant’s labeling were to be truthful, Plaintiff could rely on the labeling of
13 other such products.

14 **JURISDICTION AND VENUE**

15 38. Jurisdiction over this proceeding is based on activity conducted in the State of
16 California, and in this County, and misconduct alleged herein which was intentionally directed at
17 residents of the State of California.

18 39. This Court has jurisdiction under Article VI, § 10 of the California Constitution and
19 § 410.10 of the Code of Civil Procedure (“CCP”).

20 40. This Court has subject matter jurisdiction over this class action pursuant to Bus. &
21 Prof Code (“BPC”) § 17200 et seq. (the “UCL”) and CCP § 382.

22 41. Plaintiff does not assert any claims arising under the laws of the United States of
23 America.

24 42. Venue is proper in this judicial district pursuant to CCP § 395, because Defendant
25 distributes the Product for sale to consumers within this State to department stores, home furnishing
26 stores, warehouse club stores, big box stores, and online.

27 **CLASS DEFINITION AND ALLEGATIONS**

28 43. This action is brought as a class action pursuant to CCP § 382 on behalf of the

1 following class:

2 **California Class:** All persons in California who purchased the
3 Product in California during the statutes of limitations for each
4 cause of action alleged.

4 44. Excluded from the Class are (a) Defendant, Defendant’s board members, executive-
5 level officers, and attorneys, and immediate family members of any of the foregoing persons; (b)
6 governmental entities; (c) the Court, the Court’s immediate family, and Court staff and (d) any
7 person that timely and properly excludes himself or herself from the Class.

8 45. Common questions of issues, law, and fact predominate and include whether
9 Defendant’s representations were and are misleading and if Plaintiff and class members are entitled
10 to damages.

11 46. Plaintiff’s claims and basis for relief are typical to other members because all were
12 subjected to the same unfair, misleading, and deceptive representations, omissions, and actions.

13 47. Plaintiff is an adequate representative because his interests do not conflict with other
14 members.

15 48. No individual inquiry is necessary since the focus is only on Defendant’s practices
16 and the class is definable and ascertainable.

17 49. The class of persons is sufficiently numerous because Defendant has sold the Product
18 with the identified representations for several years throughout this State, and it was bought by
19 thousands of consumers.

20 50. Individual actions would risk inconsistent results, be repetitive and are impractical
21 to justify, as the claims are modest relative to the scope of the harm.

22 51. Plaintiff’s counsel is competent and experienced in complex class action litigation
23 and intends to protect class members’ interests adequately and fairly.

24 52. Plaintiff seeks class-wide injunctive relief because the practices continue.

25 **CLAIMS FOR RELIEF**

26 **FIRST CLAIM**

27 **Violation of California’s Unfair Competition Law,
28 Cal. Bus. & Prof. Code § 17200, *et seq.***

28 53. Plaintiff incorporates all preceding paragraphs.

1 54. California’s Unfair Competition Law, BPC § 17200, *et seq.* (“UCL”), prohibits any
2 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading
3 advertising.

4 55. Defendant’s conduct is “unlawful” because it violates California’s False Advertising
5 Law, BPC § 17500, *et seq.* (“FAL”), and Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et*
6 *seq.* (“CLRA”).

7 56. Each of the challenged statements and omissions made and actions taken by
8 Defendant as described herein violates the FAL, and therefore violates the “unlawful” prong of the
9 UCL.

10 57. Defendant’s conduct was and continues to be “fraudulent” because it made
11 materially false representations and omissions that caused consumers to believe the Product had a
12 thread count of 1,000, even though its thread count only approaches 1,000 when each filament is
13 counted individually, contrary to industry standard methods.

14 58. Defendant is aware the Product does not have a thread count of 1,000 when industry
15 standard methods are used to count the number of threads used.

16 59. Had Plaintiff been aware of Defendant’s practices, he would not have purchased the
17 Product or paid as much, suffering damages.

18 60. Defendant’s practices are also considered “unfair” under the UCL by, among other
19 things, failing to abide by industry standard thread count methods that would have resulted in
20 substantially more accurate representations of Product thread counts.

21 61. In the course of conducting business, Defendant committed “unfair” business acts or
22 practices, by which it has been unjustly enriched. Because the gravity of harm to Plaintiff and the
23 competitive market outweighs the utility of Defendant’s conduct (zero), Defendant’s conduct is
24 “unfair” having offended an established public policy in the form of falsely representing and
25 advertising the thread count in its Product in violation of state statutes and industry standards.

26 62. Defendant engaged in immoral, unethical, oppressive, and unscrupulous activities
27 that are reasonably avoidable and substantially injurious to the public at large. There were
28 reasonably available alternatives to further Defendant’s legitimate business interests other than the

1 conduct described herein.

2 63. Plaintiff was economically harmed by Defendant’s alleged violations of the “unfair”
3 prong of the UCL.

4 64. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining
5 Defendant from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and
6 practices and to commence corrective advertising.

7 **SECOND CLAIM**

8 **Violation of California’s False Advertising Law,
9 Cal. Bus. & Prof. Code § 17500, *et seq.***

9 65. The FAL prohibits “mak[ing] any false or misleading advertising claim.”

10 66. Defendant makes “false [and] misleading advertising claim[s]” by deceiving
11 consumers about how the Product’s thread count being 1,000, when it only approaches 1,000 when
12 each filament is counted individually, contrary to industry standard methods.

13 67. In reliance on this false and misleading advertising, Plaintiff purchased and used the
14 Product without knowledge its thread count was significantly lower when industry standard methods
15 were used.

16 68. Defendant knew or should have known that its representations and omissions were
17 likely to deceive consumers.

18 69. Plaintiff and Class Members seek injunctive and equitable relief, restitution, and an
19 order for the disgorgement of the funds by which Defendant was unjustly enriched.

20 **THIRD CLAIM**

21 **Violation of California’s Consumers Legal Remedies Act,
22 Cal. Civ. Code § 1750, *et seq.***

23 70. The CLRA adopts a statutory scheme prohibiting deceptive practices in connection
24 with the conduct of a business providing goods, property, or services primarily for personal, family,
25 or household purposes.

26 71. Defendant’s policies, acts, and practices were designed to, and did, result in the
27 purchase and use of the Product primarily for personal, family, or household purposes, and violated
28 and continue to violate sections of the CLRA, including:

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- a. Civil Code § 1770(a)(5), because Defendant represented that the Product had characteristics, attributes, features, capabilities, uses, benefits, and qualities it did not have;
- b. Civil Code § 1770(a)(9), because Defendant advertised the Product with an intent not to sell it as advertised; and
- c. Civil Code § 1770(a)(16), because Defendant represented that the Product had been supplied in accordance with its previous representations, when it was not.

72. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff will send a CLRA Notice to Defendant concurrently with the filing of this action or shortly thereafter, which details and includes these violations of the CLRA, demand correction of these violations, and provide the opportunity to correct these business practices.

73. If Defendant does not correct these business practices, Plaintiff will amend or seek leave to amend the Complaint to add claims for monetary relief, including restitution and actual damages under the CLRA.

74. If Defendant does not correct these business practices, Plaintiff will request injunctive relief and ask that this Court enjoin Defendant from continuing to employ the unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780.

FOURTH CLAIM
Breach of Express Warranty and Implied Warranty of Merchantability/Fitness for a Particular Purpose

75. The Product was manufactured, identified, marketed and sold by Defendant and expressly and impliedly warranted to Plaintiff that the thread count promised on the label was the thread count of the Product, and that this number was based on an industry standard calculation, instead of through a method resulting in an inflated thread count.

76. Defendant directly marketed the Product to Plaintiff and consumers through its advertisements and marketing, through various forms of media, on the packaging, in print circulars, direct mail, product descriptions distributed to resellers, and targeted digital advertising.

1 77. Defendant knew the product attributes that potential customers like Plaintiff were
2 seeking and developed its marketing and labeling to directly meet those needs and desires.

3 78. Defendant's representations about the Product were conveyed in writing and
4 promised it would be defect-free, and Plaintiff understood this meant that the thread count promised
5 on the label was the thread count of the Product, and that this number was based on an industry
6 standard calculation, instead of through a method resulting in an inflated thread count.

7 79. Defendant affirmed and promised that the thread count promised on the label was
8 the thread count of the Product, and that this number was based on an industry standard calculation,
9 instead of through a method resulting in an inflated thread count.

10 80. Defendant described the Product so Plaintiff and consumers believed the thread
11 count promised on the label was based on an objective industry standard calculation, instead of
12 through a method which results in an inflated thread count, which became part of the basis of the
13 bargain that it would conform to its affirmations and promises.

14 81. Defendant had a duty to disclose and/or provide non-deceptive descriptions and
15 marketing of the Product.

16 82. This duty is based on its outsized role in the market for this type of Product, selling
17 under the trusted Beautyrest brand in bedding and sleep products.

18 83. Plaintiff recently became aware of Defendant's breach of the Product's warranties.

19 84. Plaintiff provided or provides notice to Defendant, its agents, representatives,
20 retailers, and their employees that it breached the Product's warranties.

21 85. Defendant received notice and should have been aware of these issues due to
22 complaints by third parties, including regulators, competitors, and consumers, to its main offices,
23 and by consumers through online forums.

24 86. The Product did not conform to its affirmations of fact and promises due to
25 Defendant's actions.

26 87. The Product was not merchantable because it was not fit to pass in the trade as
27 advertised, not fit for the ordinary purpose for which it was intended and did not conform to the
28 promises or affirmations of fact made on the packaging, container or label, because it lacked the

1 softness and durability of sheets with a thread count of 1,000.

2 88. The Product was not merchantable because Defendant had reason to know the
3 particular purpose for which the Product was bought by Plaintiff, because he expected sheets that
4 were softer and more durable based on such a thread count, and he relied on Defendant’s skill and
5 judgment to select or furnish such a suitable product, based on qualities and attributes such as
6 comfort and softness.

7 **FIFTH CLAIM**
8 **Unjust Enrichment**

9 89. Defendant obtained benefits and monies because the Product was not as represented
10 and expected, to the detriment and impoverishment of Plaintiff and class members, who seek
11 restitution and disgorgement of inequitably obtained profits.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of himself and members of the proposed Class, pray for
14 judgment and relief as follows:

- 15 A. Certification of the Class, designating Plaintiff as representative of the Class and
16 Plaintiff’s Counsel as counsel for the Class;
- 17 B. A declaration that Defendant has committed the violations alleged;
- 18 C. For injunctive relief the Court deems appropriate;
- 19 D. For restitution and disgorgement pursuant to, without limitation, the California
20 Business & Professions Code §§ 17200, *et seq.* and Cal Civ. Code § 1780, except for
21 monetary damages under the CLRA;
- 22 E. Compensatory damages, the amount of which is to be determined at trial, except for
23 monetary damages under the CLRA;
- 24 F. For punitive damages;
- 25 G. For attorneys’ fees;
- 26 H. For costs of suit incurred;
- 27 I. For pre- and post-judgment interest; and
- 28 J. For such further relief as this Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all causes of action so triable.
Dated: August 14, 2023

Respectfully submitted,

/s/ Manfred P. Muecke

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