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14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 MARISSA MARTINEZ, individually and  
17 on behalf of all similarly situated persons,

18 Plaintiff,

19 v.

20 COMFRT, LLC, a Delaware limited  
21 liability company,

22 Defendant.

Case No. 5:25-cv-03304

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Marissa Martinez (“Plaintiff”) brings this class action complaint  
2 individually and on behalf of all others similarly situated against Comfrt, LLC  
3 (“Defendant” or “Comfrt”). The allegations contained in this class action complaint are  
4 based on Plaintiff’s personal knowledge of facts pertaining to herself and upon  
5 information and belief, including further investigation conducted by Plaintiff’s counsel,  
6 as to the remainder.

### 7 I. NATURE OF THE ACTION

8 1. Defendant has violated California’s “prohibition on advertising non-existent  
9 sales.” *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1106 (9th Cir. 2013). “[P]rice  
10 advertisements matter.” *Id.*

11 2. This is a class action lawsuit brought to address Defendant’s misleading and  
12 unlawful pricing, sales, and discounting practices on its e-commerce storefronts, namely,  
13 www.Comfrt.com, TikTok Shop, Facebook Shop, and Instagram Shop (each a “website”  
14 and collectively the “websites”). The products at issue are all goods that have at any time  
15 been offered on the websites at a sale or discounted price from a higher advertised  
16 “reference price.” The products are Comfrt’s in-house brand clothing and accessories.  
17 Defendant advertises its products with false, misleading, and inflated comparison  
18 reference prices to deceive customers into believing the sale price is a genuine, discounted,  
19 bargain price.

20 3. Anyone visiting the websites who buys an item at an advertised discount from  
21 a higher comparison reference price is misled. This is because that item has not been listed  
22 for sale or sold by Defendant *on the websites*, in the recent past and for a substantial time,  
23 at the former and regular price. Yet Defendant’s use of inflated reference prices,  
24 strikethrough pricing and discounting, and purported limited time sales all lead reasonable  
25 consumers to believe that the products in fact had been listed for sale and sold on the  
26 website, at the former and regular price, in the recent past, for a substantial time.

1 4. Additionally, and alternatively, consumers are misled because the advertised  
2 reference price is not the prevailing market price—i.e., the products’ value in the  
3 marketplace. Indeed, because the products are regularly available on the websites at  
4 discounted prices, the prevailing market price cannot be the higher price.

5 5. On information and belief, all or nearly all the reference prices on the  
6 websites are false and misleading. They are not former or regular prices at which the  
7 products were offered on the websites in the recent past for a substantial time. And they  
8 are not prevailing market prices. They are cherry-picked inflated prices posted to lure  
9 consumers into purchasing items from Defendant.

10 6. Beyond that, Defendant’s products sold on the websites not only have a  
11 market value lower than the promised former and regular price, but the market value is  
12 also lower than the discounted “sale” price. By using false reference pricing, Defendant  
13 artificially drives up demand for the products, and by extension drives up the price of the  
14 products. As a result, consumers received a product worth less than the price paid. To  
15 illustrate, assume a company knows a product will sell in the marketplace at \$30. But to  
16 increase revenue and capture market share, the company advertises the product as having  
17 a regular price of \$100 and being on “sale” at 60% off (i.e., \$60 off). Because consumers  
18 value products based on the regular price, and a purported limited-time sale conveys  
19 savings, the company can sell that \$30 product for \$40.

20 7. As a result, consumers are deceived into spending money they otherwise  
21 would not have spent, purchasing items they would not have purchased, and/or spending  
22 more money for an item than they otherwise would have absent deceptive marketing.

## 23 **II. PARTIES**

24 8. Plaintiff Marissa Martinez is a resident of the State of California and County  
25 of San Bernardino. She resided in San Bernardino County at the time she made her  
26 purchases from the websites.

1 9. Defendant Comfrt, LLC is the corporate owner and operator of Comfrt, a  
2 clothing brand and e-commerce retailer. On information and belief, Defendant is currently  
3 a Delaware limited liability company whose members are all citizens of Delaware and/or  
4 Florida. Defendant is headquartered in Florida. Defendant reorganized under Delaware  
5 law on or about October 31, 2025. Prior to that date, Defendant was a Florida limited  
6 liability company, and prior to that, a New York limited liability company. The Delaware  
7 and Florida entities are effectively identical, with the Delaware entity proceeding as  
8 successor in interest to the former entities, and jointly responsible for conduct challenged  
9 herein.

10 **III. JURISDICTION AND VENUE**

11 10. This Court has jurisdiction over this lawsuit under the Class Action Fairness  
12 Act, 28 U.S.C. § 1332(d)(2), because this is a proposed class action in which: (i) there are  
13 at least 100 class members; (ii) the aggregate amount in controversy exceeds \$5,000,000,  
14 exclusive of interest and costs; and (iii) at least one putative class member and one  
15 Defendant are citizens of different states.

16 11. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a  
17 substantial part of the events or omissions giving rise to the claims herein occurred in this  
18 judicial district. As set forth herein, Defendant owns and operates the website, and  
19 marketed, sold, and shipped products to purchasers located in this district, including at  
20 least one plaintiff. Additionally, Plaintiff Martienz is a resident of San Bernardino County.

21 12. Further, as set forth herein, Defendant has contacts in this district sufficient  
22 to subject it to the personal jurisdiction of this district as if this district were a separate  
23 state. Defendant continuously and systematically places goods into the stream of  
24 commerce for distribution in California, maintains an interactive commercial website,  
25 offers to ship products to California, and allows customers in California to order products.  
26 Exercising jurisdiction over Defendant is fair, just, and reasonable considering the quality  
27 and nature of Defendant's acts that occur in California and which affect interests located  
28

1 in California. Defendant has purposefully availed itself of the privilege of conducting  
2 activities in California and should reasonably anticipate being haled into court in  
3 California.

#### 4 **IV. GENERAL ALLEGATIONS**

##### 5 **A. Company Background**

6 13. Comfrt is a clothing brand and direct-to-consumer retailer of the products.  
7 Defendant is the owner of Comfrt.

8 14. The products are primarily sold direct-to-consumer by Defendant via the  
9 Comfrt.com website. The products are also sold on Defendant’s social media storefronts.

10 15. Defendant highlights the unique and premium nature of its clothing and  
11 accessory products. According to the Comfrt website, “At Comfrt, we understand that  
12 caring for your mental well-being is essential to feeling your best. That’s why we’re  
13 dedicated to creating soothing, slightly weighted clothing and accessories that provide  
14 comfort and calm, like a gentle embrace, no matter where your day takes you. Our goal is  
15 to help you feel grounded and supported, inside and out.”<sup>1</sup>

16 16. The website further states: “We use high-quality, durable materials to ensure  
17 our products stand the test of time. Our items are designed for easy care, allowing you to  
18 enjoy their benefits day after day. . . . Comfrt was founded in back in 2022 with a clear  
19 purpose: to blend fashion with function in a way that supports mental wellness and takes  
20 care of our community. From the beginning, we understood the power of soft, calming  
21 fabrics and how the right clothing can make a difference in how you feel. Our mission is  
22 to create everyday essentials that provide a sense of ease and comfort, no matter where  
23 life takes you—because your mental well-being matters, and so do you.”<sup>2</sup>

24 17. Defendant, through the websites, has sold millions of units of merchandise  
25 to consumers in California and elsewhere.

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26  
27 <sup>1</sup> <https://comfrt.com/content/mindset>.

28 <sup>2</sup> *Id.*

1           **B. Defendant’s Deceptive Pricing Scheme**

2           **1. The Products Are Not Regularly Listed or Sold on the Websites at**  
3           **the Reference Prices**

4           18. Defendant’s business model relies on deceptive reference prices and sale  
5 prices.

6           19. On any given date, all or nearly all products on the websites are represented  
7 as being discounted from a substantially higher reference price. On individual listing pages  
8 or category listing pages, the supposed markdowns are represented to the consumer by  
9 prominently displaying a “crossed-out” reference price next to the sale price.  
10 Representative examples are depicted below.



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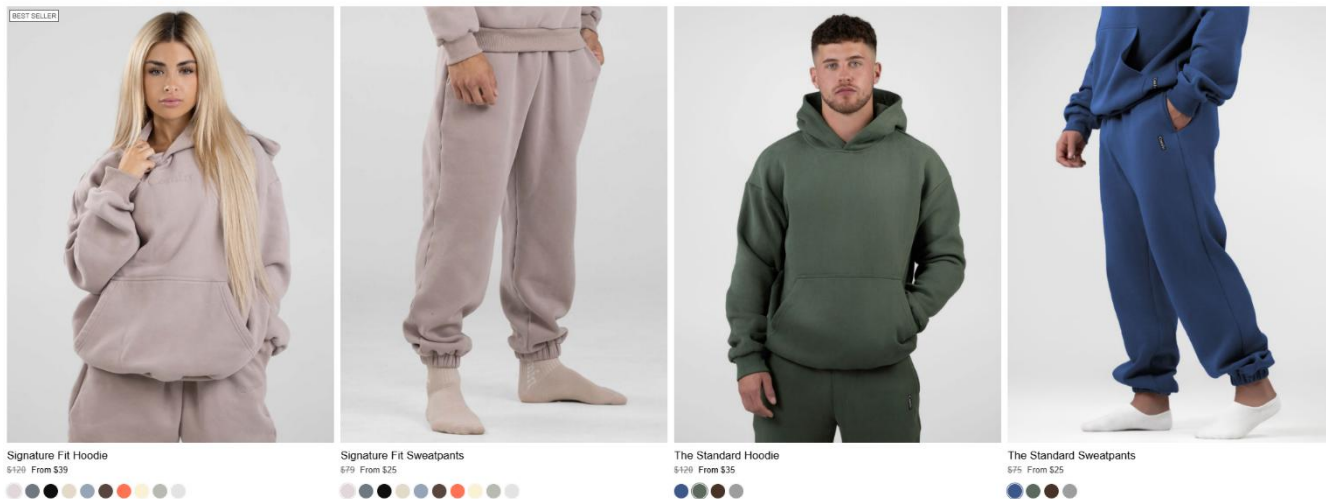
Signature Fit Hoodie

~~\$120~~ \$69



*Screenshots dated April 12, 2024 and April 22, 2024 (Comfrrt.com)*

All Products



Signature Fit Hoodie

\$120 From \$39



Signature Fit Sweatpants

\$79 From \$25



The Standard Hoodie

\$120 From \$35



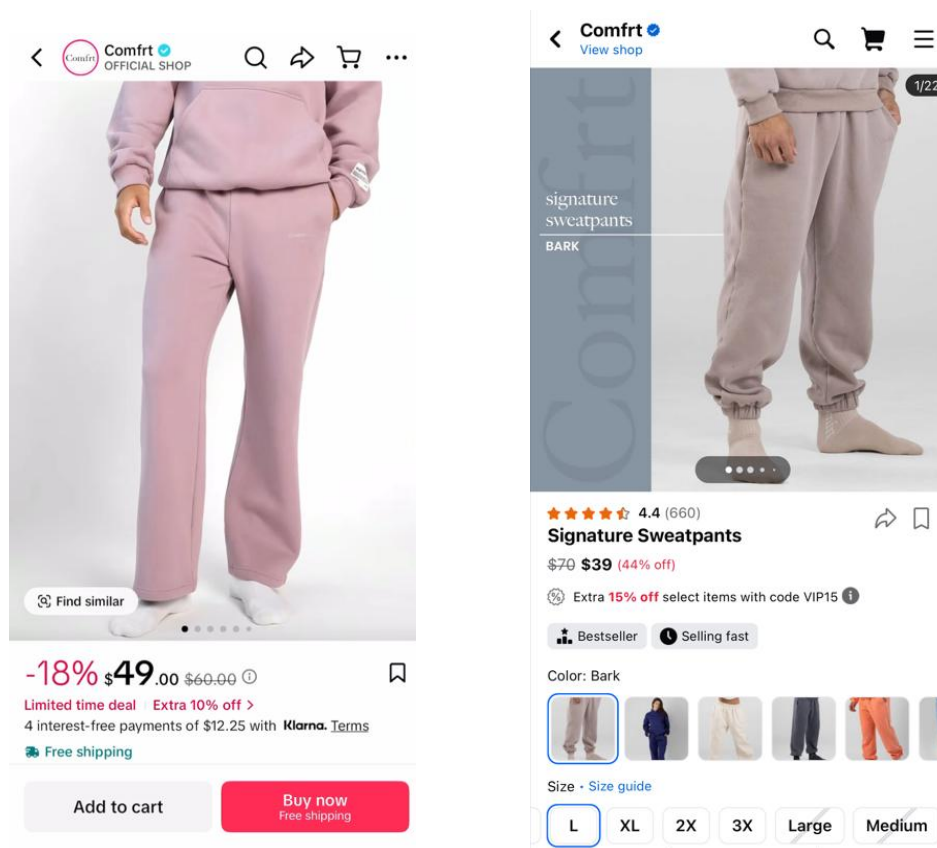
The Standard Sweatpants

\$75 From \$25



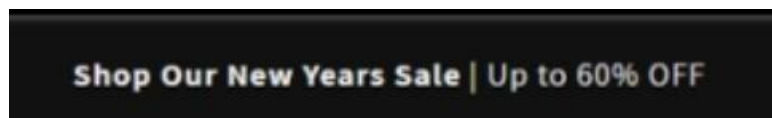
*Screenshot dated August 18, 2024 (Comfrrt.com)*

20. Defendant uses substantively similar style reference price advertising on its social media storefronts via TikTok (left) and Facebook/ Instagram (right).

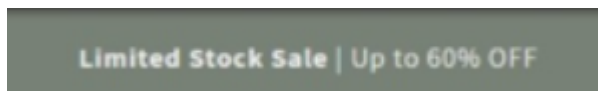


21. To confirm that Defendant regularly offers products at a discount sitewide or nearly sitewide, 16 screenshots of the Comfrt.com homepage, randomly selected and collected by the Internet Archive’s Wayback Machine, were reviewed covering January 2024 to November 2024. On all these days, the website prominently displayed a banner stating the products were discounted “up to \_\_% off.”

01/11/2024, 01/12/2024, 01/18/2024



04/18/2024, 04/20/2024



05/17/2024, 05/27/2024

1 **Mental Health Awareness Month | Up to 60% OFF**

2  
3 06/11/2024

4 **Men's Mental Health Month | Up to 60% OFF**

5  
6  
7 07/19/2024, 08/08/2024

8 **Mental Health Awareness Month | Up to 60% OFF**

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10 08/26/2024, 09/15/2024, 09/26/2024

11 **End of Summer Sale | Up to 60% OFF**

12  
13 10/14/2024

14 **Prime Day Sale | Up to 60% OFF**

15  
16 11/02/2024, 11/19/2024

17 **Early Black Friday Access | Up to 70% OFF**

18  
19 22. There are also many examples of individual product pages confirming this  
20 deceptive advertising practice. On these pages, Defendant advertises the products with a  
21 higher reference price in strikethrough text and an adjacent discounted price described as  
22 the “sale” price. Sometimes the sale price is accompanied by a “% off” descriptor, too. To  
23 illustrate, pricing history for the Signature Fit Hoodie and Signature Sweatpants via  
24 Comft.com on randomly selected dates is detailed below.

a. **Signature Fit Hoodie**<sup>3</sup>



**Signature Fit Hoodie**

~~\$120~~ \$69 **Sale**

Color: Bark



Size: Small



Gabriella is 5' 0" and wears a size M

**ADD TO CART**

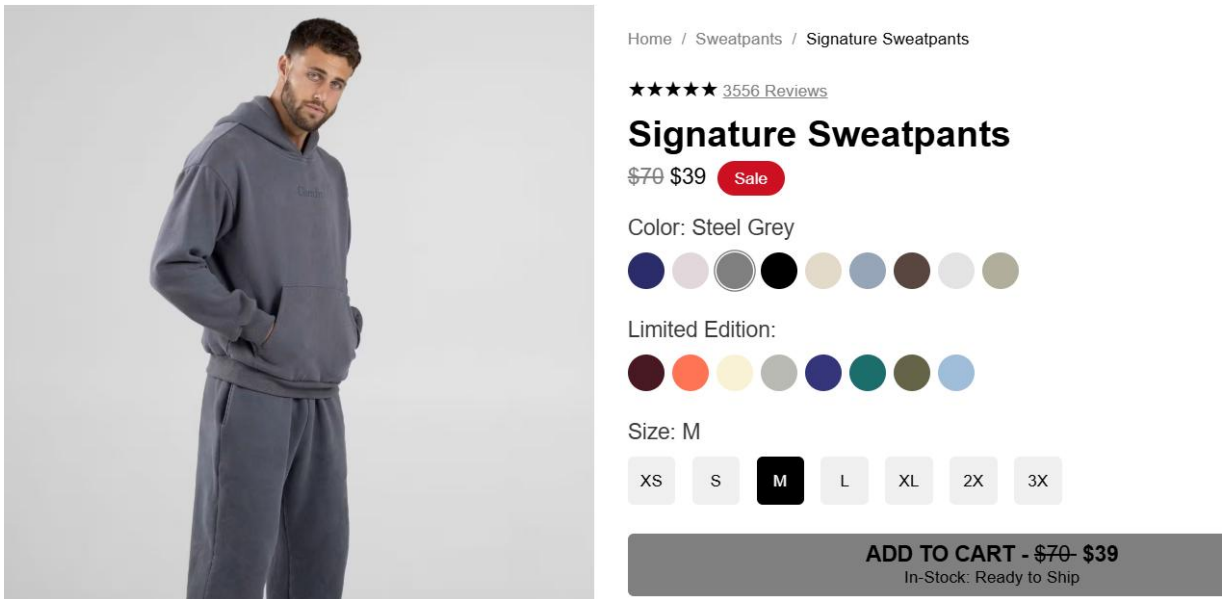
The most comfortable hoodie you'll ever purchase. Our Super S kangaroo pocket and an oversized double-lined hood. Each hood is soft and comfortable. Each hoodie is made from a soft and comfortable fabric. Our hoodies are made from a soft and comfortable fabric. Our hoodies are made from a soft and comfortable fabric.

- i. 04/22/2024: \$120 (strikethrough reference price); \$69 (sale price)
- ii. 05/27/2024: \$120 full price
- iii. 06/11/2024: \$120 full price
- iv. 07/19/2024: \$120 (strikethrough reference price); \$39 (sale price)
- v. 07/19/2024: \$120 (strikethrough reference price); \$39 (sale price)
- vi. 08/04/2024: \$120 (strikethrough reference price); \$45 (sale price)
- vii. 08/19/2024: \$120 (strikethrough reference price); \$49 (sale price)
- viii. 08/22/2024: \$120 (strikethrough reference price); \$49 (sale price)
- ix. 09/23/2024: \$120 (strikethrough reference price); \$59 (sale price)
- x. 10/06/2024: \$120 (strikethrough reference price); \$69 (sale price)
- xi. 10/29/2024: \$120 (strikethrough reference price); \$65 (sale price)
- xii. 11/10/2024: \$120 (strikethrough reference price); \$65 (sale price)
- xiii. 12/04/2024: \$120 (strikethrough reference price); \$75 (sale price)
- xiv. 12/18/2024: \$120 (strikethrough reference price); \$75 (sale price)
- xv. 01/22/2025: \$120 (strikethrough reference price); \$55 (sale price)
- xvi. 02/15/2025: \$120 (strikethrough reference price); \$49 (sale price)

<sup>3</sup> Image dated April 22, 2024.

- xvii. 03/12/2025: \$120 (strikethrough reference price); \$59 (sale price)
- xviii. 04/15/2025: \$120 (strikethrough reference price); \$55 (sale price)
- xix. 05/15/2025: \$120 (strikethrough reference price); \$49 (sale price)
- xx. 06/15/2025: \$120 (strikethrough reference price); \$39 (sale price)
- xxi. 07/15/2025: \$120 (strikethrough reference price); \$39 (sale price)
- xxii. 08/11/2025: \$120 (strikethrough reference price); \$49 (sale price)
- xxiii. 09/15/2025: \$120 (strikethrough reference price); \$65 (sale price)

b. **Signature Fit Sweatpants**<sup>4</sup>



- i. 07/19/2024: \$75 (strikethrough reference price); \$39 (sale price)
- ii. 08/23/2024: \$75 (strikethrough reference price); \$45 (sale price)
- iii. 11/09/2024: \$70 (strikethrough reference price); \$49 (sale price)
- iv. 11/23/2024: \$70 (strikethrough reference price); \$55 (sale price)
- v. 12/11/2024: \$75 full price
- vi. 01/24/2025: \$70 (strikethrough reference price); \$49 (sale price)
- vii. 01/27/2025: \$70 (strikethrough reference price); \$49 (sale price)
- viii. 03/20/2025: \$70 (strikethrough reference price); \$29 (sale price)

<sup>4</sup> Image dated October 9, 2025.

- ix. 03/28/2025: \$70 (strikethrough reference price); \$29 (sale price)
- x. 04/27/2025: \$70 (strikethrough reference price); \$29 (sale price)
- xi. 06/16/2025: \$70 (strikethrough reference price); \$29 (sale price)
- xii. 07/26/2025: \$70 (strikethrough reference price); \$29 (sale price)
- xiii. 08/06/2025: \$70 (strikethrough reference price); \$29 (sale price)
- xiv. 10/09/2025: \$70 (strikethrough reference price); \$39 (sale price)
- xv. 12/05/2025: \$70 (strikethrough reference price); \$39 (sale price)

23. Reasonable consumers understand the strikethrough reference price and sale price to convey that the product was listed or sold *on the websites* at the reference price, in the recent past and for a substantial period of time, but is now being offered to the customer at a substantial discount. In other words, the price is Defendant's regular and former price.

24. Reasonable consumers also expect the product is valued in the marketplace at the reference price, such that consumers are receiving a genuine bargain. Stated differently, reasonable consumers expected to receive a product with a market price and value of the reference price while only paying the discounted bargain price.

25. However, the reference prices are inflated and deceptive because Defendant rarely, if ever, lists or sells items at the reference prices. Instead, the reference prices are artificial and/or cherry-picked prices intended to mislead consumers into believing the discounts are genuine and significant. As a result, Defendant falsely conveys to customers that they are receiving a substantial markdown or discount.

26. This is not a new or isolated sales practice by Defendant, but continued regularly throughout 2025, 2024, 2023, and 2022.

**2. The Reference Price is not the Market Price, Including During the Rolling 90-Day Period Prior to Offering**

27. Separately, the reference prices advertised on the website are not the prevailing market prices.

1 28. Defendant's products are exclusively (or virtually exclusively) sold via the  
2 Comfrt.com website and Comfrt's social media storefronts on TikTok, Facebook, and  
3 Instagram. According to a June 2025 interview of Comfrt's CEO, Hudson Leogrande,  
4 "Compared to most other brands, we're probably one of the most niche. We focus only on  
5 our website and TikTok Shop. You won't find us on Amazon because demand is already  
6 huge, and marketplaces like that just eat into margins. Right now, we're not interested in  
7 chasing volume at the cost of brand value. To us, Amazon is something we're saving for  
8 the future acquirer."<sup>5</sup>

9 29. For any products sold exclusively through Comfrt.com, the prevailing market  
10 price is necessarily the discounted price because the website is the only sales channel and  
11 the products are regularly discounted.

12 30. For the products concurrently sold through Comfrt.com and elsewhere,  
13 Defendant's advertised reference prices are still higher than the prevailing market prices.

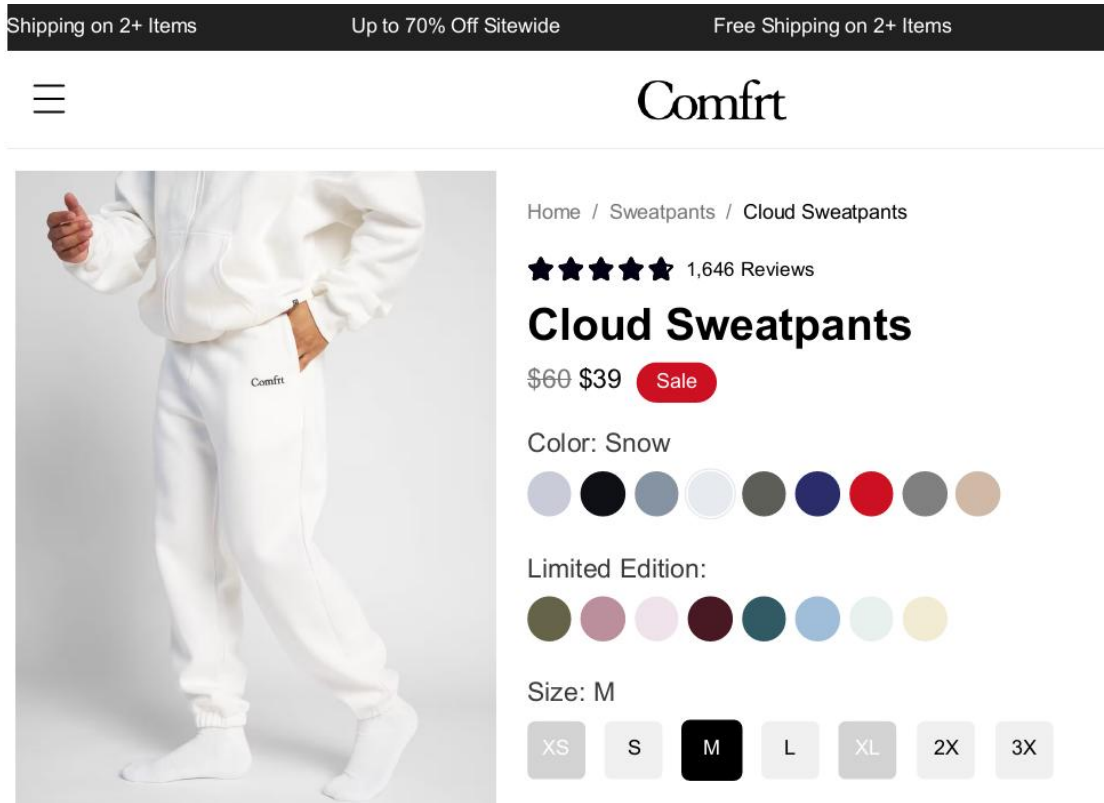
14 31. First, because Defendant consistently sells the products at prices significantly  
15 (i.e., 30% or more) lower than its advertised former prices, there is no reasonable basis to  
16 believe that Defendant consistently sells its products at prices below the prevailing market  
17 prices. Economic principles dictate that in competitive markets the actual prices offered  
18 by vendors selling the same item tend to converge on the market price.

19 32. Second, on information and belief, Comfrt.com is the company's primary  
20 sales channel. Indeed, a June 3, 2025 article states "The brand's primary sales channel is  
21 its website."<sup>6</sup> Further, if a consumer searches Google for "Comfrt," the first organic hit is  
22 Comfrt.com, the first sponsored hit is Comfrt.com, and the first 12 sponsored products are  
23 articles of clothing via Comfrt.com. So, the Comfrt.com website prices are indicative of  
24 the prevailing market prices.

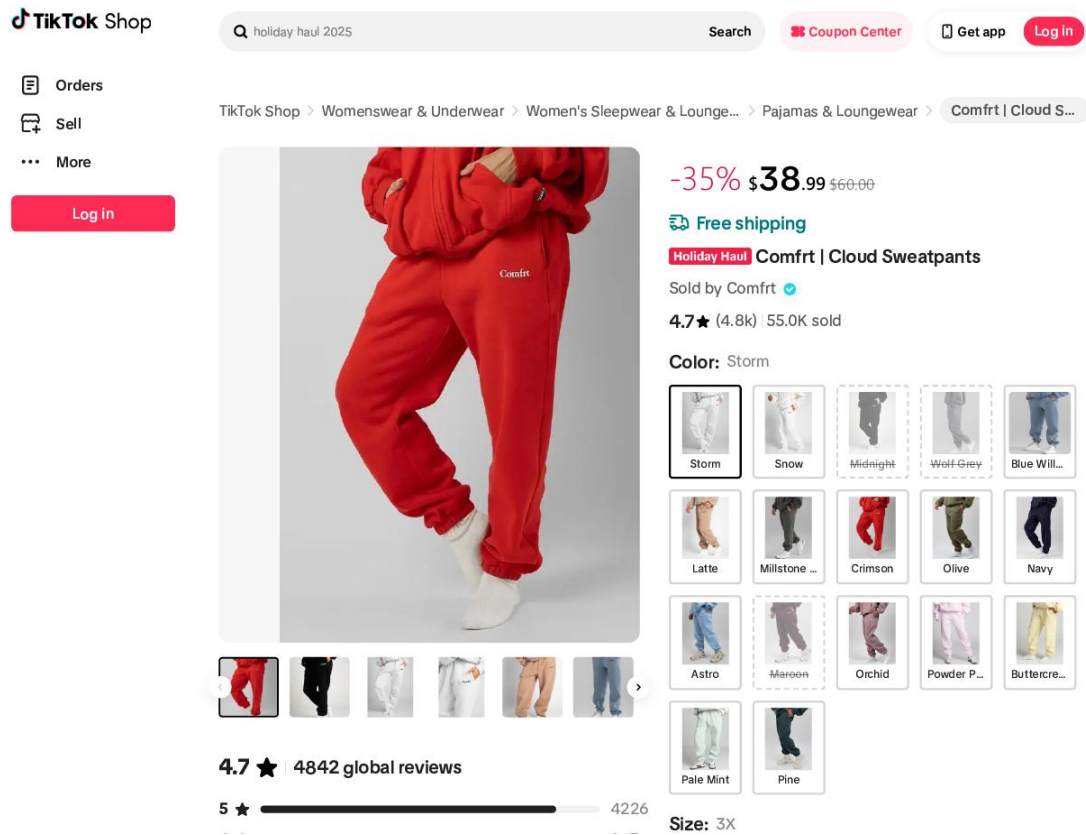
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27 <sup>5</sup> <https://vocal.media/journal/how-weighted-hoodie-made-500-m-in-3-years>.

28 <sup>6</sup> <https://businessmodelanalyst.com/comfrt-clothing-marketing-strategy/>.

1 33. Third, on information and belief, the prices charged on TikTok Shop and  
2 other social media storefronts mirror the prices charged on Comfrit.com. For example, on  
3 December 5, 2025, the Cloud Sweatpants were advertised on Comfrit.com with a \$60  
4 reference price and \$39 sale price. That same day, as shown below, the product was  
5 advertised on TikTok Shop with a \$60 reference price and \$38.99 sale price.



19 *Comfrit.com*



*TikTok Shop*

34. As explained above, on information and belief, Defendant’s advertised reference prices are unsubstantiated, outdated, and cherrypicked. Defendant does not independently verify that the reference prices are the prevailing market prices at which the products are listed for sale by Defendant (or anywhere) for a substantial period of time and in substantial quantities. And Defendant does not update the references prices on a daily basis.

**C. Plaintiff’s Purchases from the Websites**

***Plaintiff Marissa Martinez***

35. On May 5, 2024, Plaintiff Martinez purchased two items of clothing from Comfrrt.com (Order # 25322853). Specifically, she purchased a (1) Coordinate Hoodie, and (2) Cloud Sweatpants. Consistent with archived screenshots of the website, Plaintiff saw the following representations:

- a. Coordinate Hoodie – regular price of ~~\$120~~ (in strikethrough text) and

1 adjacent “sale” price of \$49

2 b. Cloud Sweatpants – regular price of ~~\$85~~ (in strikethrough text) and adjacent  
3 “sale” price of \$39

4 36. On May 12, 2024, Plaintiff Martinez purchased one item of clothing from  
5 Comfrt’s Facebook storefront (Order # 25331129). Specifically, she purchased a  
6 Signature Fit Sweatpants. Consistent with archived screenshots of the website, Plaintiff  
7 saw the following representations:

8 a. Signature Fit Sweatpants – regular price of ~~\$75~~ (in strikethrough text) and  
9 adjacent “sale” price of \$29

10 37. She purchased the products with the understanding that she was receiving all  
11 advertised discounts off the former and regular prices charged by Defendant and the  
12 products’ market price.

13 38. Plaintiff thus viewed and relied on the Defendant’s purported current and  
14 temporary discounts. She relied on the above representations that the products (1) had a  
15 former and regular price of the stated reference price, (2) had been offered for sale on the  
16 websites at the stated reference price in the recent past, on a regular basis, and for a  
17 substantial time, and (3) were truly being sold at a substantial discount, such that the  
18 products were valued at the false reference price.

19 39. The above-listed products Plaintiff purchased were not substantially marked  
20 down, and the discounts were exaggerated.

21 40. On information and belief, for the majority of the 90-day period prior to  
22 Plaintiff’s purchases and months and years more, Defendant rarely, if ever, offered and  
23 sold any of the items at the reference prices.

24 41. Plaintiff would not have purchased the items at the advertised price, or would  
25 not have paid as much as she did, had Defendant been truthful. Plaintiff was persuaded to  
26 make her purchases because of the misleading discounts based on false reference prices.  
27  
28

1           **D. Research Shows That Reference Price Advertising Influences Consumer**  
2           **Behavior and Perceptions of Value**

3           42. Academic studies support the effectiveness of Defendant’s deceptive pricing  
4 scheme.

5           43. “By creating an impression of savings, the presence of a higher reference  
6 price enhances subjects’ perceived value and willingness to buy the product.”<sup>7</sup> Thus,  
7 “empirical studies indicate that, *as discount size increases, consumers’ perceptions of*  
8 *value and their willingness to buy the product increase, while their intention to search for*  
9 *a lower price decreases.*”<sup>8</sup> Indeed, the Ninth Circuit observed that “[m]isinformation  
10 about a product’s ‘normal’ price is . . . significant to many consumers in the same way as  
11 a false product label would be.” *Hinojos*, 718 F.3d at 1106.

12           44. “[D]ecades of research support the conclusion that advertised reference  
13 prices do indeed enhance consumers’ perceptions of the value of the deal.”<sup>9</sup> According to  
14 academic studies, “[c]onsumers are influenced by comparison prices even when the stated  
15 reference prices are implausibly high.”<sup>10</sup>

16           45. Another academic journal explains that “[r]eference price ads strongly  
17 influence consumer perceptions of value . . . . Consumers often make purchases not based  
18 on price but because a retailer assures them that a deal is a good bargain.”<sup>11</sup>

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21           <sup>7</sup> Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative*  
22 *or Deceptive?*, 11 J. Pub. Pol’y & Mktg. 52, 55 (Spring 1992).

23           <sup>8</sup> *Id.* at 56 (emphasis added).

24           <sup>9</sup> Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Believe It*  
25 *Or Not*, J. of Consumer Affairs, Vol. 36, No. 2, at 287 (Winter 2002).

26           <sup>10</sup> *Id.*

27           <sup>11</sup> Joan Lindsey-Mullikin & Ross D. Petty, *Marketing Tactics Discouraging Price*  
28 *Search: Deception and Competition*, 64 J. of Bus. Research 67 (January 2011).

1 46. “[R]esearch has shown that retailer-supplied reference prices clearly enhance  
2 buyers’ perceptions of value” and “have a significant impact on consumer purchasing  
3 decisions.”<sup>12</sup>

4 47. “[R]eference prices are important cues consumers use when making the  
5 decision concerning how much they are willing to pay for the product.”<sup>13</sup> This study also  
6 concluded that “consumers are likely to be misled into a willingness to pay a higher price  
7 for a product simply because the product has a higher reference price.”<sup>14</sup>

8 48. One study quantified this economy injury, concluding that “fake list prices  
9 have a strong influence on purchase outcomes, with a *1-dollar increase in the list price*  
10 *having the same positive effect on purchase likelihood as a 77-cent decrease in the actual*  
11 *selling price.*”<sup>15</sup>

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

### 17 **E. Consumers Suffered Economic Harm**

18 50. Defendant’s products have a market value lower than the promised “regular”  
19 price, and as a result, consumers were harmed. As explained above, the reference prices  
20 are false and the products rarely, if ever, are offered or sold at the reference prices.

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21  
22 <sup>12</sup> Praveen K. Kopalle & Joan Lindsey-Mullikin, *The Impact of External Reference*  
23 *Price On Consumer Price Expectations*, 79 J. of Retailing 225 (2003).

24 <sup>13</sup> Jerry B. Gotlieb & Cyndy Thomas Fitzgerald, *An Investigation Into the Effects*  
25 *of Advertised Reference Prices On the Price Consumers Are Willing To Pay For the*  
26 *Product*, 6 J. of App’d Bus. Res. 1 (1990).

27 <sup>14</sup> *Id.*

28 <sup>15</sup> Donald Ngwe, *Fake Discounts Drive Real Revenues in Retail*, Harvard Bus. Sch.  
(Oct. 14, 2017).

1 Accordingly, Defendant represented that the products had a market value of the higher  
2 reference price, but consumers did not receive products valued at that price.

3 51. Consumers also paid a “price premium” for the products. If the reference  
4 prices were omitted from product listings, then consumers would not have paid as much  
5 as they did for the products (or would not have purchased the products), and Defendant  
6 would not have been able to charge the prices it ultimately did.

7 52. By using false reference pricing, Defendant artificially drives up demand for  
8 the products, and by extension drives up the price of the products. As a result, consumers  
9 received a product worth less than the price paid. Reasonable consumers would not have  
10 paid the prices charged had they known that the products were rarely, if ever, offered for  
11 sale on the website (or alternatively the marketplace) at the reference prices.

12 53. Again, an example illustrates the point. Assume a company knows a product  
13 will sell in the marketplace at \$30. But to increase revenue, the company advertises the  
14 product as having a “regular” price of \$100 and being on “sale” at 60% off (i.e., \$60 off).  
15 Because consumers value products based on the regular price, and a sale conveys  
16 additional savings, the company can sell that \$30 product for \$40. Defendant has done so.

#### 17 **F. Defendant’s Deceptive Pricing Practice Violates Federal Law**

18 54. The Federal Trade Commission Act (“FTCA”) prohibits “unfair or deceptive  
19 acts or practices in or affecting commerce[.]” 15 U.S.C. § 45(a)(1). Under FTC  
20 regulations, false former pricing schemes like the ones employed by Defendant are  
21 deceptive practices that violate the FTCA.

22 55. Pursuant to 16 C.F.R. § 233.1, entitled Former Price Comparisons:

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

1 example, where an *artificial, inflated price* was established for the purpose of  
2 enabling the subsequent offer of a large reduction – the “bargain” being  
3 advertised is a false one; the purchaser is not receiving the unusual value he  
4 expects.

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

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

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

28 56. The FTCA also prohibits the pricing scheme employed by Defendant  
regardless of whether the product advertisements and representations use the words  
“regular,” “original,” or “former” price. Under 16 C.F.R. § 233.1:

(e) If the former price is set forth in the advertisement, *whether accompanied  
or not* by descriptive terminology such as “Regularly,” “Usually,”  
“Formerly,” etc., the advertiser should make certain that the former price is  
not a fictitious one. If the former price, or the amount or percentage of  
reduction, is not stated in the advertisement, as when the ad merely states,

1 “Sale,” the advertiser must take care that the amount of reduction is not so  
2 insignificant as to be meaningless. It should be sufficiently large that the  
3 consumer, if he knew what it was, would believe that a genuine bargain or  
4 saving was being offered. An advertiser who claims that an item has been  
5 “Reduced to \$9.99,” when the former price was \$10, is misleading the  
6 consumer, who will understand the claim to mean that a much greater, and not  
7 merely nominal, reduction was being offered.

8 57. The FTCA also prohibits retailers from offering fake limited duration sales.  
9 See 16 C.F.R. § 233.5 which provides: “[Retailers] should not . . . make a ‘limited’ offer  
10 which, in fact, is not limited.”

### 11 **G. Class Action Allegations**

12 58. Plaintiff brings this action on behalf of herself and all persons similarly  
13 situated pursuant to Rule 23(b)(2), 23(b)(3), and 23(c)(4) of the Federal Rules of Civil  
14 Procedure and seeks certification of the following class:

#### 15 **California Class:**

16 All persons in California who purchased one or more items from Defendant’s e-  
17 commerce storefronts (via Comfirt.com, TikTok, Facebook, and Instagram), during  
18 the Class Period, at a discount from a higher advertised reference price.

19 59. The California Class is collectively referred to as the “Class.” Excluded from  
20 the Class are the Defendant, the officers and directors of the Defendant at all relevant  
21 times, members of their immediate families and their legal representatives, heirs,  
22 successors or assigns and any entity in which either Defendant has or had a controlling  
23 interest. Also excluded from the Class are persons or entities that purchased products from  
24 Defendant for purposes of resale.

25 60. The “Class Period” is the time period beginning on the date established by  
26 the Court’s determination of any applicable statute of limitations, after consideration of  
27  
28

1 any tolling, discovery, concealment, and accrual issues, and ending on the date a class is  
2 certified.<sup>16</sup>

3 61. Plaintiff reserves the right to expand, limit, modify, or amend the class  
4 definitions stated above, including the addition of one or more subclasses, in connection  
5 with a motion for class certification, or at any other time, based upon, among other things,  
6 changing circumstances, or new facts obtained during discovery. In particular, Plaintiff  
7 reserves the right to propose subclasses based on time period, product exclusivity, and  
8 sales channels.

9 62. **Numerosity.** The Class is so numerous that joinder of all members in one  
10 action is impracticable. The exact number and identities of the members of the Class is  
11 unknown to Plaintiff at this time and can only be ascertained through appropriate  
12 discovery, but on information and belief, Plaintiff alleges that there are in excess of 5,000  
13 members of the Class.

14 63. **Typicality.** Plaintiff's claims are typical of those of other members of the  
15 Class, all of whom have suffered similar harm due to Defendant's course of conduct as  
16 described herein.

17 64. **Adequacy of Representation.** Plaintiff is an adequate representative of the  
18 Class and will fairly and adequately protect the interests of the Class. Plaintiff has retained  
19 attorneys who are experienced in the handling of complex litigation and class actions, and  
20 Plaintiff and her counsel intend to diligently prosecute this action.

21 65. **Existence and Predominance of Common Questions of Law or Fact.**  
22 Common questions of law and fact exist as to all members of the Class that predominate  
23 over any questions affecting only individual members of the Class. These common legal  
24 and factual questions, which do not vary among members of the Class, and which may be  
25

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26  
27 <sup>16</sup> The Class Period begins at minimum 4 years from the date of filing of this action,  
28 but based on tolling, may extend beyond that date.

1 determined without reference to the individual circumstances of any member of the Class,  
2 include, but are not limited to, the following:

- 3 a. Whether, during the Class Period, Defendant advertised false reference prices  
4 on products offered on the website.
- 5 b. Whether, during the Class Period, Defendant advertised price discounts from  
6 false reference prices on products offered on the website.
- 7 c. Whether the products listed on Defendant’s website during the Class Period  
8 were offered at their reference prices for any reasonably substantial period of  
9 time prior to being offered at prices that were discounted from their reference  
10 prices.
- 11 d. Whether Defendant’s deceptive pricing scheme using false reference prices  
12 constitute an “unlawful,” “unfair,” or “fraudulent” business practice in  
13 violation of the California Unfair Competition Law, Cal. Bus & Prof. Code  
14 § 17200, et seq.
- 15 e. Whether Defendant’s deceptive pricing scheme using false reference prices  
16 constitutes false advertising in violation of the California False Advertising  
17 Law under Business & Professions Code § 17500, et seq.
- 18 f. Whether Defendant’s use of false reference prices on products offered on  
19 their website during the Class Period was material.
- 20 g. Whether Defendant had a duty to conspicuously disclose to customers that  
21 the reference prices were false former/regular prices.
- 22 h. Whether the members of the Class are entitled to damages and/or restitution.
- 23 i. Whether injunctive relief is appropriate and necessary to enjoin Defendant  
24 from continuing to engage in false or misleading advertising.
- 25 j. Whether Defendant’s conduct was undertaken with conscious disregard of  
26 the rights of the members of the Class and was done with fraud, oppression,  
27 and/or malice.
- 28

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

19           67.     **Substantial Similarity.** The products at issue in the action are substantially  
20 similar in all material respects. Namely, the products were all advertised with a false  
21 reference price in strikethrough text and a false sale price. The products are also all sold  
22 by Defendant direct-to-consumer and fall under the umbrella of clothing and accessories.

23 **v.     TOLLING OF THE STATUTE OF LIMITATIONS AND DELAYED**  
24 **DISCOVERY**

1 68. All applicable statutes of limitations have been tolled by the delayed  
2 discovery doctrine. Plaintiff and Class members could not have reasonably discovered  
3 Defendant’s practice of running perpetual sales, based on deceptive reference prices and  
4 sale prices, at any time prior to commencing this class action litigation.

5 69. A reasonable consumer viewing the websites on multiple occasions would  
6 simply believe that a product is temporarily discounted. Short of visiting and checking  
7 the websites daily for many months, a reasonable consumer would not suspect that  
8 Defendant’s sales and pricing practices were false and misleading. Nor would a reasonable  
9 consumer be able to ascertain the market value of the products being sold absent extensive  
10 investigation.

11 70. Plaintiff did not learn of Defendant’s deceptive practices alleged herein until  
12 shortly before commencing this action.

13 71. As a result, any and all applicable statutes of limitations otherwise applicable  
14 to the allegations herein have been tolled.

15 **FIRST CAUSE OF ACTION**

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

18 **(On Behalf of the California Class)**

19 72. Plaintiff restates the preceding allegations as if set forth herein.

20 73. California Business and Professions Code section 17200 et seq., known as  
21 the California Unfair Competition Law (“UCL”), prohibits acts of “unfair competition,”  
22 including any “unfair or fraudulent business act or practice” as well as “unfair, deceptive,  
23 untrue or misleading advertising.”

24 ***Fraudulent***

25 74. Under the UCL, a business act or practice is “fraudulent” if it is likely to  
26 deceive members of the consuming public.

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

9 76. Defendant's representations that the products were on sale, that the products  
10 had a specific former and regular prices, and that consumers were receiving genuine  
11 discounts from the reference prices, were false and misleading.

12 77. In addition, Defendant had a duty to disclose the truth about its pricing  
13 deception, including, among other things, that the reference prices advertised and  
14 published on its websites were not, in fact, prices at which Defendant's items were listed  
15 or sold on the websites in the recent past for a reasonably substantial period of time, but  
16 in reality, the products never (or rarely) were offered or sold at the advertised reference  
17 prices. Members of the public, therefore, were also likely to be deceived by Defendant's  
18 failure to disclose material information.

19 78. Defendant's advertising was fraudulent because it deceives consumers into  
20 believing they are receiving a product that is worth more than it actually is.

21 79. Defendant's representations were materially misleading to Plaintiff and other  
22 reasonable consumers. Consumers are influenced by price, including significant price  
23 reductions, as employed by Defendant.

24 80. Plaintiff relied on Defendant's misleading representations and omissions, as  
25 detailed above, believing that she was receiving a genuine and temporary discount from  
26 the advertised reference price.  
27  
28

1 81. Absent Defendant’s misrepresentations, Plaintiff and the Class would not  
2 have purchased the items they purchased from Defendant, or, at minimum, they would not  
3 have paid as much for the items as they ultimately did. Plaintiff and the Class’s reliance  
4 was a substantial factor in causing them harm.

5 82. Had the omitted information been disclosed, Plaintiff would have been aware  
6 of it and reasonably would have behaved differently. Among other things, Plaintiff would  
7 not have purchased the items she purchased from Defendant, or, at minimum, would not  
8 have paid as much for the items as she did.

9 83. As a result of Defendant’s fraudulent business acts and practices, Defendant  
10 has and continues to fraudulently obtain money from Plaintiff and members of the Class.

11 ***Unfairness***

12 84. Under the UCL, a business act or practice is “unfair” if its conduct is  
13 substantially injurious to consumers, offends public policy, and is immoral, unethical,  
14 oppressive, and unscrupulous, as the benefits for committing such acts or practices are  
15 outweighed by the gravity of the harm to the alleged victims.

16 85. Defendant’s deceptive marketing gave consumers the false impression that  
17 the products were regularly listed or sold on the websites for a substantially higher price  
18 in the recent past than they were and, thus, led to the false impression that Defendant’s  
19 products were worth more than they were.

20 86. Defendant’s conduct was and continues to be of no benefit to purchasers of  
21 the products, as it is misleading, unfair, unlawful, and injurious to consumers. It is also  
22 against public policy, as it harms fair competition. For example, the federal Lanham Act  
23 includes prohibitions on “commercial advertising or promotion” that “misrepresents the  
24 nature, characteristics, qualities, or geographic origin of his or her or another person’s  
25 goods, services, or commercial activities.” 41 U.S.C. § 1125(a). Similarly, the FTCA and  
26 implementing regulations prohibit advertising a former price “for the purpose of  
27 establishing a fictitious [] price on which a deceptive comparison might be based” (16  
28

1 C.F.R. § 233.1) and prohibit “offer[ing] an advance sale under circumstances where they  
2 do not in good faith expect to increase the price at a later date” (16 C.F.R. § 233.5).  
3 Defendant is siphoning sales away from sellers who compete fairly on price and do not  
4 promote fake regular prices and discounts. Further, there is no benefit to consumers who  
5 pay a sale price that is actually a regular price.

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

9 88. As a result of Defendant’s unfair business acts and practices, Defendant has  
10 and continues to unfairly obtain money from Plaintiff and members of the proposed Class.

11 ***Unlawful***

12 89. A cause of action may be brought under the “unlawful” prong of the UCL if  
13 a practice violates another law. Such action borrows violations of other laws and treats  
14 these violations as unlawful practices independently actionable under the UCL.

15 90. By engaging in false advertising, as well as the false, deceptive, and  
16 misleading conduct alleged above, Defendant engaged in unlawful business acts and  
17 practices in violation of the UCL, including violations of state and federal laws and  
18 regulations. Specifically, as detailed herein, Defendant violated 16 C.F.R. §§ 233.1 and  
19 233.5, and California Business & Professions Code sections 17501.

20 \* \* \*

21 91. In the alternative to those claims seeking remedies at law, Plaintiff and class  
22 members allege that there is no plain, adequate, and complete remedy that exists at law to  
23 address Defendant’s unlawful and unfair business practices. The legal remedies available  
24 to Plaintiff are inadequate because they are not “equally prompt and certain and in other  
25 ways efficient” as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214  
26 (1937); *see also United States v. Bluit*, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct. 6, 1992)  
27 (“The mere existence’ of a possible legal remedy is not sufficient to warrant denial of  
28

1 equitable relief.”); *Quist v. Empire Water Co.*, 2014 Cal. 646, 643 (1928) (“The mere fact  
2 that there may be a remedy at law does not oust the jurisdiction of a court of equity. To  
3 have this effect, the remedy must also be speedy, adequate, and efficacious to the end in  
4 view ... It must reach the whole mischief and secure the whole right of the party in a  
5 perfect manner at the present time and not in the future.”). For example, equitable claims  
6 may be tried by the court, whereas legal claims are tried by jury, and the need for a jury  
7 trial may result in delay and additional expense. Additionally, unlike damages, the Court’s  
8 discretion in fashioning equitable relief is very broad and can be awarded in situations  
9 where the entitlement to damages may prove difficult. *Cortez v. Purolator Air Filtration*  
10 *Products Co.*, 23 Cal.4th 163, 177-180 (2000) (restitution under the UCL can be awarded  
11 “even absent individualized proof that the claimant lacked knowledge of the overcharge  
12 when the transaction occurred.”). Thus, restitution would allow recovery even when  
13 normal consideration associated with damages would not. *See, e.g., Fladeboe v. Am. Isuzu*  
14 *Motors Inc.*, 150 Cal. App. 4th 42, 68 (2007) (noting that restitution is available even in  
15 situations where damages may not be available). Furthermore, the standard, showing, and  
16 necessary elements for a violation of the UCL “unlawful” and “unfair” prongs are different  
17 from those that govern legal claims.

18 92. Plaintiff, on behalf of herself and the members of the Class, seeks restitution  
19 and restitutionary disgorgement of all moneys received by Defendant through the conduct  
20 described above.

21 93. Plaintiff, on behalf of herself and the members of the Class, seeks an  
22 injunction from this Court prohibiting Defendant from engaging in the patterns and  
23 practices described herein, including putting a stop to the deceptive advertisements and  
24 false reference prices in connection with the sale of products on the website. Plaintiff and  
25 class members are entitled to injunctive relief. On information and belief, the  
26 dissemination of Defendant’s false and misleading advertising is ongoing.

1 **SECOND CAUSE OF ACTION**

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

4 **(On Behalf of the California Class)**

5 94. Plaintiff restates the preceding allegations as if set forth herein.

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

15 96. A separate section of the FAL, Cal Bus. & Prof. Code § 17501, provides:

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

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

26 97. As used in Cal Bus. & Prof. Code § 17501:

- 27 ● The term “prevailing market price” refers to the “retail [price] if the  
28 offer is at retail.” *Id.*

- 1           ● The term “advertised thing” refers to the exact same product offered—  
2           *not* an equivalent or similar product. *People v. Superior Ct. (J.C. Penney Corp.)*, 34 Cal. App. 5th 376, 412 (2019) (“if the advertisement  
3           specifies a precise item—say, by reference to name, brand, or other  
4           distinctive features . . . the market and therefore the market price is  
5           potentially determined on the basis of sales of *that item only.*”) (emphasis added).
- 6           ● The term “‘former price’ . . . includes but is not limited to the following  
7           words and phrases when used in connection with advertised prices;  
8           ‘formerly—,’ ‘regularly—,’ ‘usually—,’ ‘originally—,’ ‘reduced from  
9           \_\_\_,’ ‘was \_\_\_ now \_\_\_,’ ‘\_\_\_% *off.*’” 4 Cal. Code Regs., § 1301 (emphasis added).
- 10          ● The “the three-month period is properly construed as a ‘*rolling*’ period,  
11          that is, one whose beginning and end changes each day, thus requiring  
12          a *daily recalculation* of the prevailing market price during the three-  
13          month period.” *People v. Superior Ct. (J.C. Penney Corp.)*, 34 Cal.  
14          App. 5th 376, 416 n.26 (2019) (emphasis added).

14           98. Defendant violated Cal Bus. & Prof. Code § 17500.

15           99. Defendant violated Cal Bus. & Prof. Code § 17501.

16           100. As explained above, Defendant routinely disseminated false and misleading  
17          reference prices on the website for the products, including to Plaintiff. Defendant rarely,  
18          if ever, offered products on the websites at the reference prices within the three months  
19          immediately preceding the publication of the reference prices. Additionally, the reference  
20          prices shown were not the prevailing market prices for the products in the three months  
21          immediately preceding the publication.

22           101. Defendant did not verify that the advertised reference prices were the  
23          prevailing market prices within the preceding three months. On information and belief,  
24          Defendant had no policies or procedures to verify and update the reference prices on a  
25          daily basis.

26           102. Defendant’s marketing gave consumers the false impression that the products  
27          were regularly offered and sold for a substantially higher price in the recent past than they  
28

1 were and, thus, led to the false impression that Defendant's products were worth more  
2 than they were.

3 103. Defendant knew that its advertised reference prices for the products sold on  
4 its website were untrue and/or misleading. Defendant knew that such products had rarely,  
5 if ever, been offered or sold on the websites (or in the marketplace) at the reference prices.

6 104. As a direct and proximate result of Defendant's misleading and false  
7 advertisements, Plaintiff and members of the Class have suffered injury in fact and have  
8 lost money.

9 105. Plaintiff and Class members are entitled to injunctive relief. On information  
10 and belief, the dissemination of Defendant's false and misleading advertising is ongoing.

11 106. In the alternative to those claims seeking remedies at law, Plaintiff and Class  
12 members allege that there is no plain, adequate, and complete remedy that exists at law to  
13 address Defendant's unlawful and unfair business practices. The legal remedies available  
14 to Plaintiff are inadequate because they are not "equally prompt and certain and in other  
15 ways efficient" as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214  
16 (1937); *see also United States v. Bluit*, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct. 6, 1992)  
17 ("The mere existence' of a possible legal remedy is not sufficient to warrant denial of  
18 equitable relief."); *Quist v. Empire Water Co.*, 2014 Cal. 646, 643 (1928) ("The mere fact  
19 that there may be a remedy at law does not oust the jurisdiction of a court of equity. To  
20 have this effect, the remedy must also be speedy, adequate, and efficacious to the end in  
21 view ... It must reach the whole mischief and secure the whole right of the party in a  
22 perfect manner at the present time and not in the future."). For example, equitable claims  
23 may be tried by the court, whereas legal claims are tried by jury, and the need for a jury  
24 trial may result in delay and additional expense. Additionally, unlike damages, the Court's  
25 discretion in fashioning equitable relief is very broad and can be awarded in situations  
26 where the entitlement to damages may prove difficult. *Cortez v. Purolator Air Filtration*  
27 *Products Co.*, 23 Cal.4th 163, 177-180 (2000) (restitution under the UCL can be awarded  
28

1 “even absent individualized proof that the claimant lacked knowledge of the overcharge  
2 when the transaction occurred.”). Thus, restitution would allow recovery even when  
3 normal consideration associated with damages would not. *See, e.g., Fladeboe v. Am. Isuzu*  
4 *Motors Inc.*, 150 Cal. App. 4th 42, 68 (2007) (noting that restitution is available even in  
5 situations where damages may not be available). Furthermore, the standard, showing, and  
6 necessary elements for a violation of the FAL under Cal Bus. & Prof. Code § 17501 are  
7 different from those that govern legal claims.

8 **THIRD CAUSE OF ACTION**

9 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**

10 **CAL. CIV. CODE § 1750, et seq.**

11 **(On Behalf of the California Class)**

12 107. Plaintiff restates the preceding allegations as if set forth herein.

13 108. The Consumer Legal Remedies Act, Cal. Civ. Code sections 1750 *et seq.* (the  
14 “CLRA”), is a California consumer protection statute which allows plaintiffs to bring  
15 private civil actions for “unfair methods of competition and unfair or deceptive acts or  
16 practices undertaken by any person in a transaction . . . which results in the sale or lease  
17 of goods or services to any consumer.” Cal. Civ. Code § 1770(a).

18 109. Plaintiff and each member of the Class are “consumers” as defined by  
19 California Civil Code section 1761(d). Defendant’s sale of products on the website to  
20 Plaintiff and the Class were “transactions” within the meaning of California Civil Code  
21 section 1761(e). The products purchased by Plaintiff and the class are “goods” within the  
22 meaning of California Civil Code section 1761(a).

23 110. Defendant violated and continues to violate the CLRA by engaging in the  
24 following practices prohibited by California Civil Code section 1770(a) in transactions  
25 with Plaintiff and the Class which were intended to result in, and did result in, the sale of  
26 Defendant’s products:

- 1 a. Making false or misleading statements of fact concerning reasons for,  
2 existence of, or amounts of price reductions (Cal. Civ. Code § 1770(a)(13))
- 3 b. Advertising goods or services with intent not to sell them as advertised (Cal.  
4 Civ. Code § 1770(a)(9))
- 5 c. Misrepresenting that goods are of a particular standard, quality, or grade (Cal.  
6 Civ. Code § 1770(a)(7))
- 7 d. Representing that goods do have characteristics they do not actually have  
8 (Cal. Civ. Code § 1770(a)(5))

9 111. Regarding section 1770(a)(13), Defendant made false or misleading  
10 statements of fact concerning the “existence of” and the “amounts of price reductions”  
11 because (a) no true price reductions existed in that Defendant’s products were rarely, if  
12 ever, offered for sale and/or sold *on the websites* at the higher reference prices, let alone  
13 on a regular basis for a reasonably substantial period of time, (b) the advertised reference  
14 prices were not prevailing market prices because, on information and belief, the products  
15 were not predominantly offered or sold on the websites or elsewhere at the reference prices  
16 for a reasonably substantial period of time, (c) the products were not valued in the market  
17 at the advertised reference prices and thus were not sold at a genuine bargain, and (d)  
18 Defendant deceptively represents the products as discounted for a limited time when in  
19 truth the discount never expires or is effectively reinstated upon expiration.

20 112. Regarding section 1770(a)(9), (7), and (5), Defendant advertised products on  
21 the website with the “intent not to sell” them as advertised, and misrepresented  
22 characteristics and standards because, as explained herein, (a) the reference prices on the  
23 website misled customers into believing (i) the products were previously offered for sale  
24 and/or sold *on the websites* at the higher reference prices on a regular basis for a reasonably  
25 substantial period of time, and (ii) the products were valued in the market at the advertised  
26 reference prices but were being sold at a genuine bargain, and (b) Defendant falsely  
27  
28

1 represents the products as temporarily discounted when in truth the discount never expires  
2 or is effectively reinstated upon expiration.

3 113. In addition, Defendant had a duty to conspicuously disclose the truth about  
4 its pricing deception, including that the reference prices advertised on the website were  
5 not prices at which Defendant's items were regularly listed or sold on the website in the  
6 recent past, and in truth, Defendant's products are typically not offered or sold on the  
7 websites (and/or in the marketplace) at the advertised reference prices. Reasonable  
8 consumers were likely to be deceived by Defendant's failure to disclose material  
9 information.

10 114. Plaintiff and the Class reasonably relied on Defendant's representations.  
11 Absent Defendant's misrepresentations, Plaintiff and the Class would not have purchased  
12 the items they purchased from Defendant, or, at the very least, they would not have paid  
13 as much for the items as they did. Plaintiff and the Class's reliance was a substantial factor  
14 in causing them harm.

15 115. Had the omitted information been disclosed, Plaintiff and the Class  
16 reasonably would have been aware of it and behaved differently. Among other things,  
17 Plaintiff and the Class would not have purchased the items they purchased from Defendant  
18 or, at the very least, would not have paid as much for the items as they did.

19 116. Plaintiff, through counsel, is providing notice to Defendant pursuant to Cal.  
20 Civ. Code § 1782(a) via certified mail. Plaintiff claims no damages under this count, but  
21 will amend this Complaint after expiration of the 30-day response period to seek money  
22 damages and punitive damages under the CLRA. At this time, Plaintiff seeks only  
23 injunctive or other equitable relief under the CLRA as described above.

24 **FOURTH CAUSE OF ACTION**

25 **FRAUD (INTENTIONAL MISREPRESENTATION AND OMISSION)**

26 **(On Behalf of the California Class)**

27 117. Plaintiff restates the preceding allegations as if set forth herein.  
28

1 118. Plaintiff pleads this claim under California law.

2 119. Defendant made false or misleading statements of fact concerning the  
3 existence and amounts of price reductions because, as explained above, (a) the reference  
4 prices misled customers into believing the products were previously offered for sale and/or  
5 sold on the websites at the higher reference prices on a regular basis for a reasonably  
6 substantial period of time, and (b) the advertised discounts are fictitious or exaggerated.

7 120. In addition, Defendant had a duty to conspicuously disclose the truth about  
8 its pricing deception, including that (1) the reference prices advertised and published on  
9 the website were not prices at which Defendant's items had been offered and/or sold on  
10 the websites in the recent past on a regular basis for a reasonably substantial period of  
11 time, (2) Defendant's products rarely (if ever) were offered or sold anywhere at the  
12 advertised reference prices on a regular basis for a reasonably substantial period of time,  
13 and (3) the advertised reference prices are not indicative of market value.

14 121. Defendant knew that its representations were false when made. Defendant  
15 knew that the items Plaintiff and the Class purchased had rarely, if ever, been offered or  
16 sold on the website (or elsewhere) at the substantially higher reference price.

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

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

23 124. Plaintiff and the Class reasonably relied on Defendant's representations.  
24 Absent Defendant's misrepresentations, Plaintiff and the Class would not have purchased  
25 the items they purchased from Defendant or, at minimum, would not have paid as much  
26 for the items as they ultimately did. Plaintiff and the Class's reliance was a substantial  
27 factor in causing them harm.

1 125. Had the omitted information been disclosed, Plaintiff and the Class  
2 reasonably would have behaved differently. Among other things, they would not have  
3 purchased the items they purchased from Defendant or would not have paid as much for  
4 the items as they ultimately did.

5 126. As a direct and proximate result of the above, Plaintiff and the Class have  
6 suffered damages in an amount to be proven at trial.

7 127. Plaintiff and the Class are also entitled to punitive or exemplary damages.  
8 Defendant, through its senior executives and officers, undertook the illegal acts  
9 intentionally or with conscious disregard of the rights of Plaintiff and the Class, and did  
10 so with fraud, malice, and/or oppression. Based on the allegations above, Defendant's  
11 actions were fraudulent because Defendant intended to and did deceive and injure Plaintiff  
12 and the Class. Based on the allegations above, Defendant's conduct was made with malice  
13 because Defendant acted with the intent to and did cause injury to Plaintiff and the Class,  
14 and because Defendant willfully and knowingly disregarded the rights of Plaintiff and the  
15 Class.

16 **FIFTH CAUSE OF ACTION**

17 **UNJUST ENRICHMENT/QUASI-CONTRACT**

18 **(On Behalf of the California Class)**

19 128. Plaintiff restates the preceding allegations as if set forth herein.

20 129. Plaintiff pleads this claim under California law and in the alternative to her  
21 remaining claims.

22 130. California law permits a standalone claim for unjust enrichment, allowing the  
23 court to construe the cause of action as a quasi-contract claim. *Astiana v. Hain Celestial*  
24 *Group, Inc.*, 783 F.3d 753, 756 (9th Cir. 2015).

25 131. California law recognizes a right to disgorgement of profits resulting from  
26 unjust enrichment, even where an individual has not suffered a corresponding loss. *In re*  
27 *Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 599 (9th Cir. 2020).

1 132. California law requires disgorgement of unjustly earned profits regardless of  
2 whether a defendant's actions caused a plaintiff to directly expend his or her own financial  
3 resources or whether a defendant's actions directly caused the plaintiff's property to  
4 become less valuable.

5 133. Under California law, a stake in unjustly earned profits exists regardless of  
6 the plaintiff's actual loss.

7 134. By its wrongful acts and omissions, Defendant was unjustly enriched at the  
8 expense of and to the detriment of Plaintiff and the Class and/or while Plaintiff and the  
9 Class were unjustly deprived. Defendant's unlawful and deceptive pricing scheme induced  
10 Plaintiff and the Class to spend money they otherwise would not have spent, purchase  
11 items they otherwise would not have purchased, and/or spend more money for a product  
12 than they otherwise would have absent the deceptive advertising.

13 135. Plaintiff and members of the Class also conferred a monetary benefit on  
14 Defendant in the form of Defendant's profits generated by the deceptive marketing  
15 scheme. Defendant profited from inappropriately and artificially inflated prices.

16 136. On behalf of the Class, Plaintiff seeks restitution from Defendant and an  
17 order disgorging all deceptively obtained payments and profits.

18 137. Plaintiff and the Class seek this equitable remedy because their legal  
19 remedies are inadequate. An unjust enrichment theory provides the equitable  
20 disgorgement of profits even where an individual has not suffered a corresponding loss in  
21 the form of money damages.

22 **SIXTH CAUSE OF ACTION**

23 **NEGLIGENT MISREPRESENTATION**

24 **(On Behalf of the California Class)**

25 138. Plaintiff restates the preceding allegations as if set forth herein.

26 139. Plaintiff pleads this claim under California law.

1 140. Defendant made false or misleading statements of fact concerning the  
2 existence of and the amounts of price reductions because, as explained herein, (a) the  
3 advertised reference prices misled customers into believing the products were previously  
4 offered for sale and/or sold on the websites at the higher reference prices on a regular basis  
5 for a reasonably substantial period of time, and (b) the advertised discounts are fictitious  
6 or exaggerated.

7 141. In addition, Defendant had a duty to conspicuously disclose the truth about  
8 its pricing deception, including that the reference prices advertised on the websites were  
9 not prices at which Defendant's items were listed or sold on the websites in the recent past  
10 on a regular basis for a reasonably substantial period of time, and in truth, Defendant's  
11 products are typically not offered or sold on the website (and/or in the marketplace) at the  
12 advertised reference prices.

13 142. Defendant knew that its representations were false when made. Defendant  
14 knew that the items Plaintiff and the Class purchased had rarely, if ever, been offered or  
15 sold on the websites at the substantially higher reference price in the recent past. And  
16 Defendant knew or should have known that the reference prices were not the prevailing  
17 market prices.

18 143. Defendant had no good faith or reasonable basis to believe that its  
19 representations were true when made.

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

24 145. Defendant engaged in this deception to the Plaintiff and the Class's detriment  
25 to increase Defendant's own sales and profits.

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

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

8 148. As a direct and proximate result of the above, Plaintiff and the Class have  
9 suffered damages in an amount to be proven at trial.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, individually and on behalf of the proposed Class,  
12 respectfully prays for following relief:

- 13 a. Certification of this case as a class action on behalf of the proposed Class and  
14 any subclasses defined above, appointment of Plaintiff as Class  
15 representative, and appointment of their counsel as Class counsel;
- 16 b. An award to Plaintiff and the proposed Class and subclasses of restitution  
17 and/or other equitable relief, including, without limitation, restitutionary  
18 disgorgement of all profits Defendant obtained from each Plaintiff and the  
19 proposed Class as a result of its unlawful, unfair and fraudulent business  
20 practices described herein;
- 21 c. An injunction ordering Defendant to cease the false advertising and unfair  
22 business practices complained of herein;
- 23 d. An award of all economic, monetary, actual, consequential, and  
24 compensatory damages caused by Defendant's conduct;
- 25 e. An award of nominal, punitive, and statutory damages where available;
- 26 f. Reasonable expenses and attorneys' fees;
- 27 g. Pre- and post-judgment interest, to the extent allowable; and  
28

1 h. For such further relief that the Court may deem just and proper.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff, individually and on behalf of the proposed Class, demand a trial by jury  
4 for all claims so triable.

5  
6 Dated: December 8, 2025

MILBERG, PLLC

7  
8 By: /s/ Alexander E. Wolf

9 ALEXANDER E. WOLF  
10 WILLIAM J. EDELMAN  
11 Attorneys for Plaintiff  
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