

1 **CUSTODIO & DUBEY, LLP**
Robert Abiri (SBN 238681)
2 445 S. Figueroa Street, Suite 2520
Los Angeles, CA 90071
3 Telephone: (213) 593-9095
Facsimile: (213) 785-2899
4 abiri@cd-lawyers.com

5 **TREEHOUSE LAW, LLP**
Joshua Nassir (SBN 318344)
6 Benjamin Heikali (SBN 307466)
7 Ruhandy Glezakos (SBN 307473)
10250 Constellation Blvd., Suite 100
8 Los Angeles, CA 90067
Telephone: (310) 751-5948
9 jnassir@treehouselaw.com
10 bheikali@treehouselaw.com
rglezakos@treehouselaw.com

11 *Attorneys for Plaintiff and the Putative Classes*

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 Sean Nugent, on behalf of himself and all
16 others similarly situated,

17 Plaintiff,

18 v.

19 Secretlab US, Inc., a Delaware corporation;

20 Defendant.

CASE NO.: 3:22-cv-08944

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Sean Nugent (“Plaintiff”), on behalf of himself and all others similarly situated,
2 brings this class action against Defendant Secretlab US, Inc. (“Defendant” or “Secretlab”) based on
3 Defendant’s false and deceptive marketing and sale of its Secretlab Gaming Chairs. Plaintiff makes
4 the following allegations based on the investigation of his counsel, and on information and belief,
5 except as to allegations pertaining to Plaintiff individually, which are based on his personal
6 knowledge.

7 **INTRODUCTION**

8 1. This case is predicated on a systemic course of false, misleading, and unlawful
9 conduct. Specifically, Defendant has continually advertised on its website a purported discount on
10 its Secretlab Gaming Chairs (the “Chairs” or “Products”).¹ This discount is based on the Chairs’
11 purported original price, with a corresponding purported savings advertised to consumers.
12 Unbeknownst to consumers, these price discounts are false because the Chairs were never sold at
13 the purported original price, or if they were ever sold at the purported original price, the Chairs were
14 offered for the original price for an inconsequential period of time and then continuously discounted,
15 rendering the purported original price to be false and misleading.

16 2. These false discounts are simply a marketing tactic, explicitly outlawed by California
17 law and criticized by the Federal Trade Commission, as they are meant to convince consumers that
18 the product they are viewing has been long sold at an original, higher price, and the customer should
19 speedily purchase the product before it goes back to its original price. *See e.g.*, 16 C.F.R. § 233.1(a)
20 (if a “former price being advertised is not bona fide but fictitious – for example, where an artificial
21 price, inflated price was established for the purpose of enabling the subsequent offer of a large
22 reduction – the ‘bargain’ being advertised is a false one; the purchaser is not receiving the unusual
23 value he expects.”)

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27 ¹ The Products include the following: (1) Secretlab TITAN 2020 chairs; (2) Secretlab OMEGA 2020
28 chairs; (3) Secretlab THRONE 2020 chairs; (4) Secretlab Titan XL 2020 chairs; (5) Secretlab
OMEGA 2018 chairs; Secretlab TITAN 2018 chairs; and (6) Secretlab THRONE 2018 chairs.

1 3. Indeed, California statutory and regulatory law expressly prohibits false former
2 pricing schemes. Cal. Bus. & Prof. Code § 17501, entitled “*Value determinations; Former price*
3 *advertisements,*” states:

4 For the purpose of this article the worth or value of any thing advertised is the prevailing
5 market price, wholesale if the offer is at wholesale, retail if the offer is at retail, at the time
6 of publication of such advertisement in the locality wherein the advertisement is published.
7 *No price shall be advertised as a former price of any advertised thing, unless the alleged*
8 *former price was the prevailing market price as above defined within three months next*
9 *immediately preceding the publication of the advertisement* or unless the date when the
10 alleged former price did prevail is clearly, exactly and conspicuously stated in the
11 advertisement. [Emphasis added.]

12 4. Secretlab’s false pricing scheme was disseminated to California consumers via its
13 website www.secretlab.com (the “Website”), which was the sole location consumers could purchase
14 the Products during the Class Period (defined below in Paragraphs 25).

15 5. Notably, during the Class Period, the Products were exclusively sold on Defendant’s
16 Website. Indeed, as the Website’s FAQ states, “By cutting out the middleman and selling directly
17 to you, we get rid of extra expenses like retailer and distributor margins and storefront costs. These
18 cost savings are then passed on to you, so you get the best value when you buy from us.”² Thus,
19 aside from the pricing on the Website set by Secretlab, there was no other market price for the
20 Products being sold during the Class Period.

21 6. This practice is consistent across the Products sold by Secretlab, and Secretlab continued
22 to engage in this deceptive marketing practice for years. As a result, the Products have been, and upon
23 information and belief, until shortly after Secretlab received Plaintiff’s pre-suit letter, continued to
24 be, falsely and deceptively marketed.

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28 ² <https://secretlab.co/pages/faq>. Plaintiff did not view the FAQ portion of the Website prior
to purchasing the Product.

1 and lost money as a result of Defendant’s misleading, false, unfair, and deceptive practices, as
2 described herein.

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DEFENDANT

12. Secretlab is a Delaware corporation that maintains its principal place of business and headquarters in Delaware. It markets, sells, and distributes the Products throughout California and the United States. During the Class Period, the Products are sold online only through the Website.

FACTUAL ALLEGATIONS

13. Defendant is one of the leading gaming chair retailers in the United States. Consumers trust Defendant to be honest and forthright in its advertising and marketing of its products, including the Products at issue here.

14. Despite this trust, Defendant has engaged in false and deceptive advertising in the marketing and sale of the Products.

15. Specifically, as demonstrated below, Secretlab advertises its Products with a purported original price, and then immediately under it, a purported savings followed by a large, red font displaying a final purported sale price (hereinafter, the “Sale Representations”).

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SECRET LAB PRODUCTS FAQ CERTIFICATIONS CONTACT SHO

Home > Products > TITAN Series

TITAN Series

★★★★★ 1988 customer reviews | 4.9/5 rating

Active Promotions ▾

Direct Pricing Free Shipping NEW YEAR SALE

MSRP ~~\$500~~
You Save **\$111 (22% off)**
Direct Price **\$389** (why?)

Guaranteed ship out by today. Order within 15h 1m 46s

PRE-ORDER

● Pre-order: Estimated to ship out by 23rd January or earlier ⓘ

TITAN

16. Based on the foregoing example, a reasonable consumer would expect that the Product is originally priced at, and is typically sold for, \$500. Further, a reasonable consumer would believe that while the Product is typically sold for \$500, that the Product was currently on sale for a discounted price of \$389. However, the Product was never sold at the “original price” for a period of greater than three months. In fact, based on Plaintiff and his counsel’s investigation and belief, during the Class Period, none of the Products were ever sold at their purported original price. To the extent they may have been offered at the “Original” price for a short period of time, which has not been uncovered in Plaintiff and his Counsel’s investigation, this period of time was negligible and not “the prevailing market price” for the Products. Thus, throughout the Class Period, the Products were not sold at their purported original price, and were never truly on “sale” in the manner described by Defendant.

1 17. The digital archive of Defendant’s Website evidences Defendant’s deceptive
2 marketing and sales practices,³ demonstrating that this practice was an ongoing sales tactic by
3 Defendant:

4 **a. “Secretlab TITAN 2018” chair pricing:**

5 i. February 2018:

6 1. Advertised Original Price: \$500

7 2. Advertised Sale Price: \$369

8 ii. January 2019:

9 1. Advertised Original Price: \$500

10 2. Advertised Sale Price: \$389

11 iii. May 2019:

12 1. Advertised Original Price: \$500

13 2. Advertised Sale Price: \$389

14 iv. August 2019:

15 1. Advertised Original Price: \$500

16 2. Advertised Sale Price: \$349

17 v. January 2020:

18 1. Advertised Original Price: \$379

19 2. Advertised Sale Price: \$314

20 **b. “Secretlab TITAN 2020” chair pricing:**

21 i. June 2019:

22 1. Advertised Original Price: \$500

23 2. Advertised Sale Price: \$399

24 ii. August 2019:

25 1. Advertised Original Price: \$500

26 2. Advertised Sale Price: \$399

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28 ³ All dates and pricing were pulled from the “The Wayback Machine,” a digital archive of the
World Wide Web, which can be found at web.archive.org.

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- iii. September 2019:
 - 1. Advertised Original Price: \$500
 - 2. Advertised Sale Price: \$399
- iv. October 2019:
 - 1. Advertised Original Price: \$500
 - 2. Advertised Sale Price: \$399
- v. November 2019:
 - 1. Advertised Original Price: \$500
 - 2. Advertised Sale Price: \$399
- vi. December 2019:
 - 1. Advertised Original Price: \$500
 - 2. Advertised Sale Price: \$379
- vii. March 2020:
 - 1. Advertised Original Price: \$500
 - 2. Advertised Sale Price: \$399
- viii. April 2020:
 - 1. Advertised Original Price: \$500
 - 2. Advertised Sale Price: \$399
- ix. May 2020:
 - 1. Advertised Original Price: \$500
 - 2. Advertised Sale Price: \$399
- x. September 2020:
 - 1. Advertised Original Price: \$500
 - 2. Advertised Sale Price: \$399
- xi. October 2020:
 - 1. Advertised Original Price: \$500
 - 2. Advertised Sale Price: \$459
- xii. November 2020:

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2. Advertised Sale Price: \$409

xxii. January 2022

1. Advertised Original Price: \$449

2. Advertised Sale Price: \$409

c. “Secretlab TITAN XL 2020” chair pricing:

i. March 2020:

1. Advertised Original Price: \$559

2. Advertised Sale Price: \$479

ii. April 2020:

1. Advertised Original Price: \$559

2. Advertised Sale Price: \$479

iii. May 2020:

1. Advertised Original Price: \$559

2. Advertised Sale Price: \$479

iv. September 2020:

1. Advertised Original Price: \$559

2. Advertised Sale Price: \$479

v. October 2020:

1. Advertised Original Price: \$559

2. Advertised Sale Price: \$539

vi. November 2020:

1. Advertised Original Price: \$559

2. Advertised Sale Price: \$539

vii. February 2021:

1. Advertised Original Price: \$559

2. Advertised Sale Price: \$479

viii. December 2021

1. Advertised Original Price: \$529

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2. Advertised Sale Price: \$494

ix. January 2022

1. Advertised Original Price: \$529

2. Advertised Sale Price: \$494

d. “Secretlab OMEGA 2018” chair pricing:

i. February 2018:

1. Advertised Original Price: \$440

2. Advertised Sale Price: \$329

ii. April 2019:

1. Advertised Original Price: \$440

2. Advertised Sale Price: \$329

iii. May 2019:

1. Advertised Original Price: \$440

2. Advertised Sale Price: \$329

iv. August 2019:

1. Advertised Original Price: \$440

2. Advertised Sale Price: \$299

e. “Secretlab OMEGA 2020” chair pricing:

i. June 2019:

1. Advertised Original Price: \$440

2. Advertised Sale Price: \$359

ii. August 2019:

1. Advertised Original Price: \$440

2. Advertised Sale Price: \$359

iii. September 2019:

1. Advertised Original Price: \$440

2. Advertised Sale Price: \$359

iv. October 2019:

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- 1. Advertised Original Price: \$440
- 2. Advertised Sale Price: \$359
- v. November 2019:
 - 1. Advertised Original Price: \$440
 - 2. Advertised Sale Price: \$359
- vi. December 2019:
 - 1. Advertised Original Price: \$440
 - 2. Advertised Sale Price: \$359
- vii. April 2020:
 - 1. Advertised Original Price: \$440
 - 2. Advertised Sale Price: \$359
- viii. May 2020:
 - 1. Advertised Original Price: \$440
 - 2. Advertised Sale Price: \$359
- ix. June 2020:
 - 1. Advertised Original Price: \$440
 - 2. Advertised Sale Price: \$359
- x. September 2020:
 - 1. Advertised Original Price: \$440
 - 2. Advertised Sale Price: \$359
- xi. October 2020:
 - 1. Advertised Original Price: \$440
 - 2. Advertised Sale Price: \$419
- xii. November 2020:
 - 1. Advertised Original Price: \$440
 - 2. Advertised Sale Price: \$419
- xiii. January 2021
 - 1. Advertised Original Price: \$440

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2. Advertised Sale Price: \$379

xiv. August 2021

1. Advertised Original Price: \$439

2. Advertised Sale Price: \$359

xv. September 2021

1. Advertised Original Price: \$499

2. Advertised Sale Price: \$399

xvi. October 2021

1. Advertised Original Price: \$499

2. Advertised Sale Price: \$399

xvii. December 2021

1. Advertised Original Price: \$399

2. Advertised Sale Price: \$359

xviii. January 2022

1. Advertised Original Price: \$399

2. Advertised Sale Price: \$359

xix. February 2022

1. Advertised Original Price: \$549

2. Advertised Sale Price: \$449

f. “Secretlab THRONE 2018” chair pricing:

i. February 2018:

1. Advertised Original Price: \$390

2. Advertised Sale Price: \$299

ii. May 2019:

1. Advertised Original Price: \$390

2. Advertised Sale Price: \$299

iii. June 2019:

1. Advertised Original Price: \$390

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2. Advertised Sale Price: \$329

iv. August 2019:

1. Advertised Original Price: \$390

2. Advertised Sale Price: \$269

v. January 2020:

1. Advertised Original Price: \$299

2. Advertised Sale Price: \$234

g. “Secretlab THRONE 2020” chair pricing:

i. August 2019:

1. Advertised Original Price: \$390

2. Advertised Sale Price: \$329

ii. September 2019:

1. Advertised Original Price: \$390

2. Advertised Sale Price: \$329

iii. October 2019:

1. Advertised Original Price: \$390

2. Advertised Sale Price: \$329

iv. November 2019:

1. Advertised Original Price: \$390

2. Advertised Sale Price: \$329

18. As a result, Defendant’s marketing of the Products is false and deceptive, and misleads reasonable consumers.

19. The price of the Products is a material factor to Plaintiff and falsely advertising them as being on sale made purchasers such as Plaintiff and other reasonable consumers believe they were receiving a substantial discount on an item of greater value than they actually were.

20. Defendant’s decision to use red, larger font to highlight the purported sale price of the Products further demonstrates the materiality of the Sale Representations.

1 28. Plaintiff is a member of all the Classes.

2 29. **Numerosity**: Members of each Class are so numerous and geographically dispersed
3 that individual joinder of all Class members is impracticable. The precise number of Class members
4 is unknown to Plaintiff but is likely to be ascertained by the Defendant's records or through sales
5 data. At a minimum, there likely are tens of thousands of Class members.

6 30. **Commonality**: There are questions of law and fact common to the proposed
7 class(es). Common questions of law and fact include, without limitations:
8

- 9 a. whether Defendant's course of conduct alleged herein violates the statutes and
10 other laws that are pled in this Complaint;
- 11 b. whether reasonable consumers would rely upon Defendant's representations
12 about the Products and reasonably believe the Products' Sale Representations;
- 13 c. whether Defendant knew or should have known its representations were false or
14 misleading;
- 15 d. whether Defendant was unjustly enriched by retaining monies from the sale of
16 the Products;
- 17 e. whether certification of each Class is appropriate under Rule 23;
- 18 f. whether Plaintiff and the members of each Class are entitled to declaratory,
19 equitable, and/or other relief, and the scope of such relief; and
20
- 21 g. the amount and nature of the relief to be awarded to the Plaintiff and the Class,
22 including whether Plaintiff and the Class are entitled to punitive damages.
23

24 31. **Typicality**: Plaintiff's claims are typical of the other Class members because
25 Plaintiff, as well as Class members, purchased the Products. Plaintiff and the members of the Classes
26 relied on the representations made by the Defendant about the Products prior to purchasing the
27
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1 Product. Plaintiff and the members of each Class paid for Defendant's Products and would not have
2 purchased them had they known that the Defendant's representations were untrue.

3 32. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the proposed
4 Classes as his interests do not conflict with the interests of the members of the proposed Classes he
5 seeks to represent, and he has retained counsel competent and experienced in class action litigation.
6 Thus, the interests of the members of the Classes will be fairly and adequately protected by Plaintiff
7 and his counsel.
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9 33. **Predominance:** Pursuant to Rule 23(b)(3), the common issues of law and fact
10 identified in this Complaint predominate over any other questions affecting only individual
11 members of the Classes. Class issues fully predominate over any individual issue because no inquiry
12 into individual conduct is necessary; all that is required is a narrow focus on Defendant's misconduct
13 detailed at length in this Complaint.
14

15 34. **Superiority:** A class action is superior to all other available methods for the fair and
16 efficient adjudication of this litigation because individual litigation of each claim is impractical. It
17 would be unduly burdensome to have individual litigation of hundreds of thousands of individual
18 claims in separate lawsuits, every one of which would present the issues presented in the
19 Complaint/lawsuit. Further, because of the damages suffered by any individual Class member may
20 be relatively modest in relation to the cost of litigation, the expense and burden of individual
21 litigation make it difficult, if not impossible. Furthermore, many of the Class members may be
22 unaware that claims exist against the Defendant.
23

24 **FIRST CLAIM FOR RELIEF**
25 **Violation of California's Consumers Legal Remedies Act**
26 **California Civil Code § 1750, *et seq.***
27 **(For the California Consumer Subclass)**

28 35. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set forth herein.

1 36. Plaintiff brings this claim individually and on behalf of the members of the proposed
2 California Consumer Subclass against Defendant pursuant to California’s Consumers Legal
3 Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*

4 37. The Products are “goods” within the meaning of Cal. Civ. Code § 1761(a), and the
5 purchases of the Products by Plaintiff and members of the California Consumer Subclass constitute
6 “transactions” within the meaning of Cal. Civ. Code § 1761(e).

7 38. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not
8 to sell them as advertised.” Through the Sale Representations, Defendant represented that the
9 Products were on sale from an original price when they were not. Accordingly, Defendant has
10 violated section 1770(a)(9) of the CLRA.

11 39. Cal. Civ. Code § 1770(a)(13) prohibits “[m]aking false or misleading statements of
12 fact concerning reasons for, existence of, or amounts of price reductions.” Through the Sale
13 Representations, Defendant has made false and misleading statements of fact concerning the
14 existence of a price reduction, leading reasonable consumers to believe the Products were sold at a
15 higher original price at a prevailing rate when they were not. Therefore, Defendant has violated
16 section 1770(a)(13) of the CLRA.

17 40. At all relevant times, Defendant has known that the Sale Representations were false,
18 and that Plaintiff and other members of the California Consumer Subclass would reasonably and
19 justifiably rely on the Products’ Sale Representations when purchasing the Products. Nonetheless,
20 Defendant deceptively advertises the Products as such in order to deceive consumers into believing
21 they are receiving a more expensive product than they are actually receiving, based on the purported
22 sale discount.

23 41. Plaintiff and members of the California Consumer Subclass have justifiably relied
24 on Defendant’s misleading representations when purchasing the Products. Moreover, based on the
25 materiality of Defendant’s misleading and deceptive conduct, reliance may be presumed or inferred
26 for Plaintiff and members of California Consumer Subclass.

27 42. Plaintiff and members of the California Consumer Subclass have suffered and
28 continue to suffer injuries caused by Defendant because they would not have purchased the

1 Products, had they known that the Products do are falsely advertised as being on “sale” when they
2 actually were not.

3 43. Under Cal. Civ. Code § 1782, on June 6, 2022, counsel for Plaintiff mailed a notice
4 and demand letter by certified mail to Defendant, outlining that Defendant has violated the CLRA
5 for the reasons described herein. Defendant responded on June 21, 2022, and as of yet, has refused
6 to take any action to rectify this misconduct. Because Defendant has failed to fully rectify the issues
7 within 30 days after receipt of the notice and demand letter, Plaintiff timely filed the Class Action
8 Complaint for a claim for damages under the CLRA.

9 **SECOND CLAIM FOR RELIEF**
10 **Violation of California’s False Advertising Law**
11 **California Business & Professions Code § 17500, *et seq***
(For the California Class)

12 44. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set
13 forth herein.

14 45. Plaintiff brings this claim individually and on behalf of the members of the proposed
15 California Class against Defendant pursuant to California’s False Advertising Law (“FAL”), Cal.
16 Bus. & Prof. Code § 17500, *et seq*.

17 46. The FAL makes it “unlawful for any person to make or disseminate or cause to be
18 made or disseminated before the public . . . in any advertising device . . . or in any other manner or
19 means whatever, including over the Internet, any statement, concerning . . . personal property or
20 services professional or otherwise, or performance or disposition thereof, which is untrue or
21 misleading and which is known, or which by the exercise of reasonable care should be known, to
22 be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

23 47. Similarly, this section provides, “[n]o price shall be advertised as a former price of
24 any advertised thing, unless the alleged former price was the prevailing market price ... ***within three***
25 ***months next immediately preceding*** the publication of the advertisement or unless the date when
26 the alleged former price did prevail is clearly, exactly and conspicuously stated in the
27 advertisement.” (emphasis added). Cal. Bus. & Prof. Code § 17501.

28 48. Defendant has represented and continues to represent to the public, including

1 Plaintiff and members of the proposed California Class, through its deceptive advertising, that the
2 Products are discounted from a higher, original price, and thus were on sale, giving the false
3 impression that Defendant's Products were worth more than they actually were. However, the
4 Products were never sold at this purported, higher original price as the prevailing market price for
5 far longer than the three months preceding the Products' advertisement publication. Because
6 Defendant has disseminated misleading information regarding the Products, and Defendant knew
7 the representations were misleading, Defendant has violated the FAL.

8 49. As a result of Defendant's false advertising, Defendant has and continues to
9 unlawfully obtain money from Plaintiff and members of the California Class. Plaintiff therefore
10 requests that the Court cause Defendant to restore this fraudulently obtained money to them and
11 members of the proposed California Class, to disgorge the profits Defendant made on these
12 transactions. Otherwise, Plaintiff and members of the proposed California Class may be irreparably
13 harmed and/or denied an effective and complete remedy.

14 **THIRD CLAIM FOR RELIEF**
15 **Violation of California's Unfair Competition Law ("UCL"),**
16 **California Business & Professions Code § 17200, *et seq.***
(For the California Class)

17 50. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set
18 forth herein.

19 51. Plaintiff brings this claim individually and on behalf of the members of the proposed
20 California Class against Defendant pursuant to California Business & Professions Code § 17200
21 ("UCL").

22 52. The UCL, Cal. Bus. & Prof Code § 17200, provides, in pertinent part, that "unfair
23 competition shall mean and include unlawful, unfair or fraudulent business practices and unfair,
24 deceptive, untrue or misleading advertising"

25 53. Under the UCL, a business act or practice is "unlawful" if it violates any established
26 state or federal law. Defendant's false and misleading advertising of the Products was and continues
27 to be "unlawful" because it violates the CLRA, the FAL (including Cal. Bus. & Prof. Code § 17501
28 as described above), the FTCA, and other applicable laws as described herein. As a result of

1 Defendant's unlawful business acts and practices, Defendant has unlawfully obtained money from
2 Plaintiff and members of the proposed California Class.

3 54. Under the UCL, a business act or practice is "unfair" if its conduct is substantially
4 injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and
5 unscrupulous, as the benefits for committing such acts or practices are outweighed by the gravity of
6 the harm to the alleged victims. Defendant's conduct was and continues to be of no benefit to
7 purchasers of the Products, as it is misleading, unfair, unlawful, and is injurious to consumers who
8 rely on the Sale Representations. Deceiving consumers into believing they are receiving a discount
9 on the Products, but in actuality are just paying the normal price, is of no benefit to consumers.
10 Therefore, Defendant's conduct was and continues to be "unfair." As a result of Defendant's unfair
11 business acts and practices, Defendant has and continues to unfairly obtain money from Plaintiff
12 and members of the proposed California Class.

13 55. Under the UCL, a business act or practice is "fraudulent" if it actually deceives or is
14 likely to deceive members of the consuming public. Defendant's conduct here was and continues to
15 be fraudulent because it has the effect of deceiving consumers into believing they are receiving a
16 product that is worth more than it actually is, by presenting a fake sale price. Because Defendant
17 misled Plaintiff and members of the California Class, Defendant's conduct was "fraudulent." As a
18 result of Defendant's fraudulent business acts and practices, Defendant has and continues to
19 fraudulently obtain money from Plaintiff and members of the California Class.

20 56. Plaintiff requests that the Court cause Defendant to restore this unlawfully, unfairly,
21 and fraudulently obtained money to them, and members of the proposed California Class, to
22 disgorge the profits Defendant made on these transactions. Otherwise, Plaintiff and members of the
23 proposed California Class may be irreparably harmed and/or denied an effective and complete
24 remedy.

25 **FOURTH CLAIM FOR RELIEF**
26 **Common Law Fraud**
(for the Classes)

27 57. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set
28 forth herein.

1 58. Plaintiff brings this claim individually and on behalf of the members of the Classes
2 for common law fraud.

3 59. Defendant has willfully, falsely, and knowingly misrepresented the Products' pricing
4 through the Products' Sale Representations, as they knew that the Products were never sold at their
5 purported, higher original sale price for a significant period of time, if at all.

6 60. Defendant has therefore made knowing, fraudulent misrepresentations as to the
7 Products.

8 61. Defendant's misrepresentations were material (i.e., they affected Plaintiff and
9 members of the Classes' purchasing decisions given their importance), because they relate to the
10 central value of the Products, given that the Products are presented as being worth more than they
11 actually are.
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13 62. Defendant knew that the higher, purported original price was false and misleading as
14 the Products were only sold by Defendant on its Website during the Class Period.
15

16 63. Defendant intended that Plaintiff and members of the Classes rely on the Sale
17 Representations, because if they had known the truth of the pricing they would not have purchased
18 the Products at all.

19 64. Plaintiff and members of the Classes have reasonably and justifiably relied on
20 Defendant's misrepresentations when purchasing the Products, and if Plaintiff and members of the
21 Classes had known the truth about the Products, they would not have paid monies for the Products.
22

23 65. For these reasons, Plaintiff and members of the Classes have suffered monetary
24 losses, including interest they would have accrued on these monies, as a direct and proximate result
25 of Defendant's fraudulent conduct.
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PRAYER FOR RELIEF

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2 **WHEREFORE**, Plaintiff, individually and on behalf of the proposed Classes, respectfully
3 prays for following relief:

4 A. Certification of this case as a class action on behalf of the proposed California Class
5 defined above, appointment of Plaintiff as Class representative, and appointment of their counsel as
6 Class counsel;

7 B. A declaration that Defendant’s actions, as described herein, violate the claims
8 described herein;

9 D. An award to Plaintiff and the proposed California Class of restitution and/or other
10 equitable relief, including, without limitation, restitutionary disgorgement of all profits Defendant
11 obtained from Plaintiff and the proposed California Class as a result of its unlawful, unfair and
12 fraudulent business practices described herein;

13 E. An award of all economic, monetary, actual, consequential, and compensatory
14 damages caused by Defendant’s conduct;

15 F. An award of nominal, punitive, and statutory damages;

16 H. An award to Plaintiff and her counsel of reasonable expenses and attorneys’ fees;

17 I. An award to Plaintiff and the proposed California Class of pre and post-judgment
18 interest, to the extent allowable; and

19 J. For such further relief that the Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and the proposed Classes, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: December 16, 2022

CUSTODIO & DUBEY, LLP

By: /s/ Robert Abiri

Robert Abiri (SBN 238681)
abiri@cd-lawyers.com
445 S. Figueroa Street, Suite 2520
Los Angeles, CA 90071
Telephone: (213) 593-9095
Facsimile: (213) 785-2899

*Attorney for Plaintiff and the
Putative Classes*