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ELECTRONICALLY
FILED

*Superior Court of California,
County of San Francisco*

01/17/2024
Clerk of the Court

BY: AUSTIN LAM
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

MASON JULIAN and ALEXANDER TAT,
individually and on behalf of all other persons
similarly situated,

Plaintiffs,

v.

PURPLE INNOVATION, LLC,

Defendant.

Case No.: **CGC-24-611689**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Mason Julian and Alexander Tat (collectively, “Plaintiffs”) bring this action
2 individually and on behalf of all others similarly situated against Defendant Purple Innovation,
3 LLC (“Defendant” or “Purple”). Plaintiffs make the following allegations pursuant to the
4 investigation of their counsel and based upon information and belief, except as to the allegations
5 specifically pertaining to themselves, which are based on personal knowledge.

6 NATURE OF THE ACTION

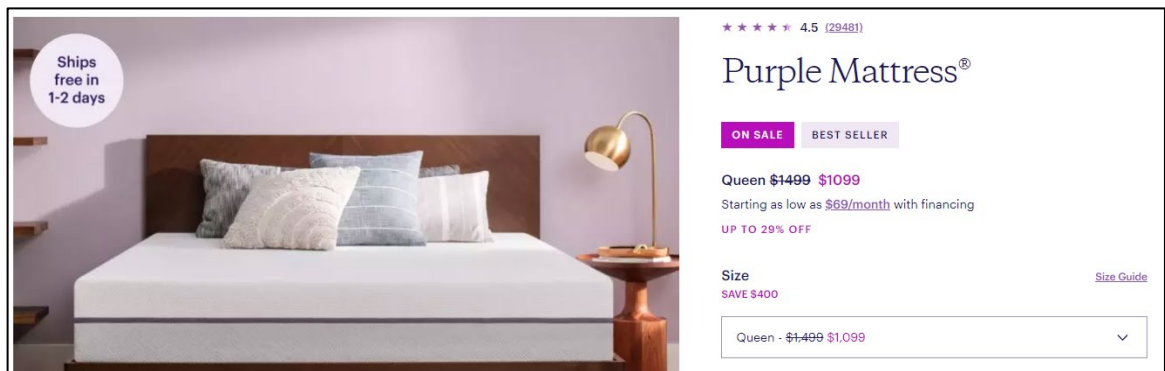
7 1. The online mattress market is booming. Online mattress sales generated nearly \$5.2
8 billion in 2021 alone.¹

9 2. Defendant seeks to carve out its own share of this hypercompetitive market by
10 offering perpetual “sales” and discounted prices through its online e-commerce store.

11 3. It is no secret that consumers actively seek out bargains and discounted items when
12 making purchasing decisions. Retailers, including Defendant, are well aware of consumers’
13 susceptibility to such perceived bargains. Products perceived by consumers to be discounted,
14 however, are not always actual bargains. In an effort to give off the appearance of a bargain,
15 Defendant intentionally misleads consumers as to the quality and value of the merchandise
16 available on its website (the “Products”) through its deceptive sales tactics.

17 4. When consumers visit Defendant’s online store, they are shown purported “sale”
18 prices on Defendant’s Products, including its signature mattress:

19 **Figure 1:**



27 ¹ [https://www.digitalcommerce360.com/article/mattress-ecommerce-](https://www.digitalcommerce360.com/article/mattress-ecommerce-sales/#:~:text=But%20mattress%20retailers%20are%20still,from%20%244.31%20billion%20in%202020.)
28 [sales/#:~:text=But%20mattress%20retailers%20are%20still,from%20%244.31%20billion%20in%202020.](https://www.digitalcommerce360.com/article/mattress-ecommerce-sales/#:~:text=But%20mattress%20retailers%20are%20still,from%20%244.31%20billion%20in%202020.)

1 because Defendant's Products were not of the represented quality and value. Mr. Julian understood
2 that his purchase involved a direct transaction between himself and Defendant, because the Product
3 he purchased came with packaging, labeling, and other materials prepared by Defendant, including
4 representations and warranties regarding the advertised claims.

5 16. Plaintiff Alexander Tat is an individual consumer who, at all times material hereto,
6 was a citizen of California and resident of Milpitas, California.

7 17. Mr. Tat made a purchase from Defendant's e-commerce website, including a queen-
8 size Purple Mattress (the "Product"). Mr. Tat purchased the Product on or about November 25,
9 2023, for a "sale" price of \$1,079.00. The Product Mr. Tat purchased displayed an original, strike-
10 through price of \$1,399.00, representing a \$320.00 "discount." Before purchasing the Product, Mr.
11 Tat reviewed information about the Product, including Defendant's representations that the Product
12 was being offered at a discounted "sale" price, including but not limited to that the product was "on
13 sale," that there was a "% off," that the original, non-sale strikethrough price of the Product was
14 higher than the advertised price, and that Plaintiff Tat would "save \$X" from his purchase. When
15 purchasing the Product, Mr. Tat also reviewed the accompanying labels, disclosures, warranties,
16 and marketing materials, and understood them as representation and warranties by Defendant that
17 the Product was ordinarily offered at a higher price.

18 18. Mr. Tat relied on Defendant's false, misleading, and deceptive representations and
19 warranties about the Product in making his decision to purchase the Product. Accordingly, these
20 representations and warranties were part of the basis of the bargain, in that he would not have
21 purchased the Product, or would not have paid as much for the Product, had he known Defendant's
22 representations were not true. Defendant's representations about its Products are false and
23 misleading because they induce consumers into believing that they are purchasing Products of a
24 higher value and quality than they actually are.

25 19. Had Mr. Tat known the truth—that the representations he relied upon in making his
26 purchase were false, misleading, and deceptive—he would not have purchased the Products or
27 would have paid less for the Products. Mr. Tat did not receive the benefit of his bargain, because
28 Defendant's Products were not of the represented quality and value. Mr. Tat understood that his

1 purchase involved a direct transaction between himself and Defendant, because the Product he
2 purchased came with packaging, labeling, and other materials prepared by Defendant, including
3 representations and warranties regarding the advertised claims.

4 20. Defendant Purple Innovation, LLC is a limited liability company with a principal
5 place of business in Lehi, Utah. Defendant manufactures, markets, and advertises and distributes
6 its Products throughout the United States, including California. Defendant manufactured,
7 marketed, and sold the Products during the relevant Class Period. The planning and execution of
8 the advertising, marketing, labeling, packaging, testing, and/or business operations concerning the
9 Products were primarily or exclusively carried out by Defendant.

10 **FACTUAL BACKGROUND**

11 21. Defendant manufactures, markets, sells, and distributes its Products throughout the
12 United States, including California, through its online e-commerce store.

13 **State And Federal Pricing Guidelines**

14 22. California law provides clear guidelines as to permissible and unlawful sales tactics:

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

26 Bus. & Prof. Code § 17501.

27 23. Additionally, California law expressly prohibits making false or misleading
28 statements of fact “concerning reasons for, existence of, or amounts of price reductions.” *See* Cal.
Civ. Code § 1770(a)(13).

29 24. The Federal Trade Commission (“FTC”) provides retailers with additional guidance
as to permissible and unlawful sales tactics. *See* 16 C.F.R. § 233.

1 25. The FTC provides the following guidance on former price comparisons:

2 One of the most commonly used forms of bargain advertising is to
3 offer a reduction from the advertiser’s own former price for an
4 article. If the former price is the actual, bona fide price at which the
5 article was offered to the public on a regular basis for a reasonably
6 substantial period of time, it provides a legitimate basis for the
7 advertising of a price comparison. Where the former price is
8 genuine, the bargain being advertised is a true one. **If, on the other
9 hand, the former price being advertised is not bona fide but
10 fictitious - for example, where an artificial, inflated price was
11 established for the purpose of enabling the subsequent offer of a
12 large reduction - the “bargain” being advertised is a false one;
13 the purchaser is not receiving the unusual value he expects. In
14 such a case, the “reduced” price is, in reality, probably just the
15 seller’s regular price.**

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

17 26. The FTC further provides that “[t]he advertiser should be especially careful [...] that
18 the price is one at which the product was openly and actively offered for sale, for a reasonably
19 substantial period of time, in the recent, regular course of his business, **honestly and in good faith
20 - and, of course, not for the purpose of establishing a fictitious higher price on which a
21 deceptive comparison might be based.**” 16 CFR § 233.1(b) (emphasis added).

22 27. The FTC also provides retailers with guidance as to retail price comparison:

23 Another commonly used form of bargain advertising is to offer goods
24 at prices lower than those being charged by others for the same
25 merchandise in the advertiser’s trade area (the area in which he does
26 business). This may be done either on a temporary or a permanent
27 basis, but in either case **the advertised higher price must be based
28 upon fact, and not be fictitious or misleading.** Whenever an
29 advertiser represents that he is selling below the prices being charged
30 in his area for a particular article, he should be reasonably certain
31 that the higher price he advertises does not appreciably exceed the
32 price at which substantial sales of the article are being made in the
33 area - that is, a sufficient number of sales so that a consumer would
34 consider a reduction from the price to represent a genuine bargain or
35 saving.

36 C.F.R. § 233.2(a) (emphasis added).

37 28. Essentially, federal and state law provides that sales practices should be offered in
38 good-faith and accurately reflect the price at which comparable products are sold in the market.

1 **Defendant's Deceptive Sales Practices**

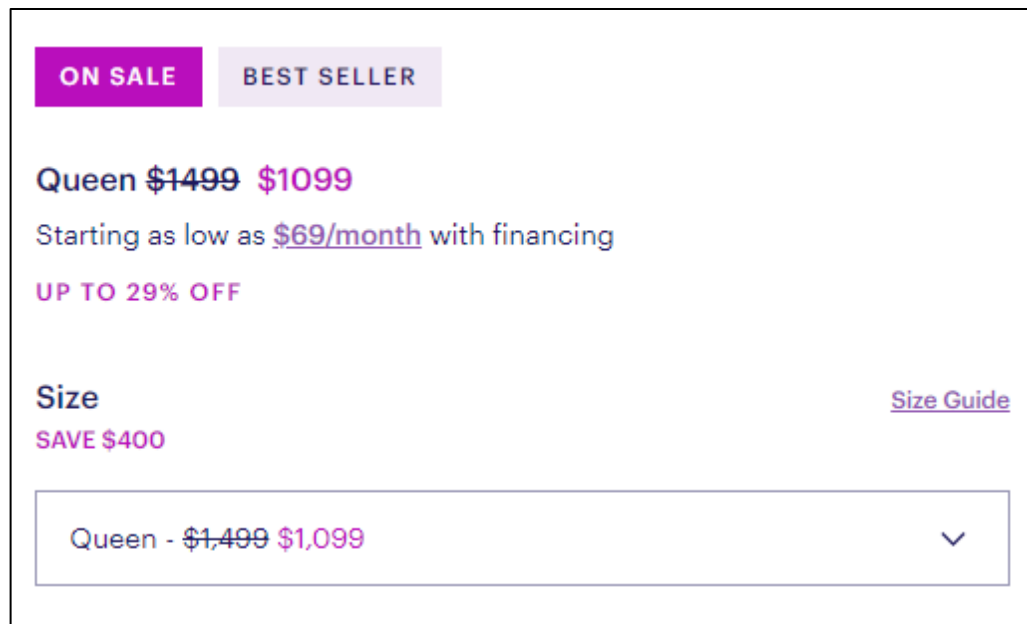
2 29. Defendant primarily sells its Products through its e-commerce website.

3 30. In an effort to increase sales, Defendant engages in a pervasive online marketing
4 scheme to artificially inflate the prices of its Products for the sole purpose of marking them at a
5 discounted “sale” price. Defendant is aware that consumers typically lack material information
6 about a product and often rely on information from sellers when making purchasing decisions,
7 especially when a products quality or value is difficult to discern.²

8 31. Defendant has multiple methods of deceiving consumers into believing that they are
9 receiving a bargain on the mattresses they purchase through Defendant’s online store.

10 32. First, Defendant utilizes a fictitious strikethrough reference price accompanied by a
11 purported “sav[ings]” percentage. Next to the fictitious reference price is a lower purported “sale”
12 price. Defendant further warrants to consumers that they “save \$X” through their purchase and
13 that such products are “on sale”:

14 **Figure 2:**



25

26 ² *Information and Consumer Behavior*, Phillip Nelson, *Journal of Political Economy* 78, no. 2, p.
27 311-312 (1970) (“Not only do consumers lack full information about the price of goods, but their
28 information is probably even poorer about the quality variation of products simply because the
latter information is more difficult to obtain.”).

1 43. Commonality: The questions of law and fact common to the Class Members which
2 predominate over any questions which may affect individual Class Members include, but are not
3 limited to:

- 4 (a) Whether Defendant is responsible for the conduct alleged herein which was
5 uniformly directed at all consumers who purchased the Products;
6 (b) Whether Defendant’s misconduct set forth in this Complaint demonstrates
7 that Defendant engaged in unfair, fraudulent, or unlawful business practices
8 with respect to the advertising, marketing, and sale of the Products;
9 (c) Whether Defendant made false and/or misleading statements concerning the
10 Products that were likely to deceive a reasonable consumer and/or the
11 public;
12 (d) Whether Plaintiffs and the Class are entitled to injunctive relief; and
13 (e) Whether Plaintiffs and the Class are entitled to money damages under the
14 same causes of action as the other Class Members.

15 44. Typicality: Plaintiffs are members of the Class they seek to represent. Plaintiffs’
16 claims are typical of the claims of each Class Member in that every member of the Class was
17 susceptible to the same deceptive, misleading conduct and purchased the Defendant’s Products.
18 Plaintiffs are entitled to relief under the same causes of action as the other Class Members.

19 45. Adequacy: Plaintiffs are adequate Class representatives because their interests do
20 not conflict with the interests of the Class members they seek to represent; their consumer fraud
21 claims are common to all other members of the Class and they have a strong interest in vindicating
22 their rights; they have retained counsel competent and experienced in complex class action
23 litigation and they intend to vigorously prosecute this action. Plaintiffs have no interests which
24 conflicts with those of the Class. The Class Members’ interests will be fairly and adequately
25 protected by Plaintiffs and their counsel. Defendant has acted in a manner generally applicable to
26 the Class, making relief appropriate with respect to Plaintiffs and the Class Members. The
27 prosecution of separate actions by individual Class Members would create a risk of inconsistent
28 and varying adjudications.

1 63. Plaintiffs bring this claim individually and on behalf of the members of the Class
2 against Defendant.

3 64. California’s FAL, (Bus. & Prof. Code §§ 17500, *et seq.*) makes it “unlawful for any
4 person to make or disseminate or cause to be made or disseminated before the public in this state,
5 ... in any advertising device ... or in any other manner or means whatever, including over the
6 Internet, any statement, concerning ... personal property or services, professional or otherwise, or
7 performance or disposition thereof, which is untrue or misleading and which is known, or which by
8 the exercise of reasonable care should be known, to be untrue or misleading.”

9 65. California’s FAL further provides that “no price shall be advertised as a former
10 price of any advertised thing, unless the alleged former price was the prevailing market price ...
11 within three months next immediately preceding the publication of the advertisement or unless the
12 date when the alleged former price did prevail is clearly, exactly, and conspicuously stated in the
13 advertisement.” *See* Cal. Bus. & Prof. Code § 17501.

14 66. Defendant violated California’s FAL by representing that its Products were “on
15 sale” or “% off,” representing that consumers would “save \$X,” and displaying a strikethrough
16 reference price. Defendant never offered the Products at the advertised strike-through price. Such
17 a deceptive marketing practice misled consumers by creating a false impression that the Products
18 were of a higher value and worth more than their actual worth.

19 67. Defendant’s actions in violation of § 17500 were false and misleading such that the
20 general public was likely to be deceived.

21 68. As a direct and proximate result of these acts, consumers have been and are being
22 harmed. Plaintiffs and members of the Class have suffered injury and actual out-of-pocket losses
23 because: (a) Plaintiffs and members of the Class would not have purchased the Products if they had
24 known the true facts regarding the value and prevailing market price of the Products; (b) Plaintiffs
25 and members of the Class paid a price premium due to the misrepresentations about the Products;
26 and (c) the Products did not have the promised quality or value.

27 69. Plaintiffs brings this action pursuant to § 17535 for injunctive relief to enjoin the
28 practices described herein and to require Defendant to issue corrective and disclosures to

1 consumers. Plaintiffs and members of the Class are therefore entitled to: (a) an order requiring
2 Defendant to cease the acts of unfair competition alleged herein; (b) full restitution of all monies
3 paid to Defendant as a result of its deceptive practices; (c) interest at the highest rate allowable by
4 law; and (d) the payment of Plaintiffs' attorneys' fees and costs.

5 **COUNT III**
6 **Violation of Unfair Competition Law**
7 **Business & Professions Code §§ 17200, et seq.**

8 70. Plaintiffs and Class Members reallege and incorporate by reference each allegation
9 set forth above as if fully set forth herein.

10 71. Plaintiffs bring this claim individually and on behalf of the members of the Class
11 against Defendant.

12 72. Defendant is subject to the UCL, Bus. & Prof. Code § 17200 *et seq.* The UCL
13 provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or
14 fraudulent business practices and unfair, deceptive, untrue or misleading advertising" The
15 UCL also provides for injunctive relief and restitution for violations.

16 73. "By proscribing any unlawful business practice, § 17200 borrows violations of other
17 laws and treats them as unlawful practices that the UCL makes independently actionable." *Cel-*
18 *Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal. 4th 163, 180 (1999)
19 (citations and internal quotation marks omitted).

20 74. Virtually any law or regulation—federal or state, statutory, or common law—can
21 serve as a predicate for a UCL "unlawful" violation. *Klein v. Chevron U.S.A., Inc.*, 202 Cal. App.
22 4th 1342, 1383 (2012).

23 75. Defendant has violated the UCL's "unlawful prong" as a result of its violations of
24 the CLRA, FAL, and federal regulations as described herein.

25 76. Throughout the Class Period, Defendant committed acts of unfair competition, as
26 defined by § 17200, by representing that its Products were "on sale" or "% off," representing that
27 consumers would "save \$X," and displaying a strikethrough reference price. Defendant never sold
28 its Products at the advertised strikethrough price. Such a deceptive marketing practice misled

1 consumers by creating a false impression that the Products were of a higher value and worth more
2 than their actual worth.

3 77. As detailed above, the CLRA prohibits a business from “[a]dvertising goods or
4 services with intent to not sell them as advertised.” Cal. Civ. Code § 1770(a)(9).

5 78. Further, the CLRA prohibits a business from “[m]aking false or misleading
6 statements of fact concerning reasons for, existence of, or amounts of price reductions.” Cal. Civ.
7 Code § 1770(a)(13).

8 79. California law also expressly prohibits false reference price schemes. Specifically,
9 the FAL provides:

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

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

17 Bus. & Prof. Code § 17501.

18 80. Federal regulations also provide:

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

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

1 81. The FTC further provides that “[t]he advertiser should be especially careful [...] that
2 the price is one at which the product was openly and actively offered for sale, for a reasonably
3 substantial period of time, in the recent, regular course of his business, **honestly and in good faith**
4 **- and, of course, not for the purpose of establishing a fictitious higher price on which a**
5 **deceptive comparison might be based.”** 16 C.F.R. § 233.1(b) (emphasis added).

6 82. The FTC also provides retailers with guidance as to retail price comparison:

7 Another commonly used form of bargain advertising is to offer goods
8 at prices lower than those being charged by others for the same
9 merchandise in the advertiser’s trade area (the area in which he does
10 business). This may be done either on a temporary or a permanent
11 basis, but in either case **the advertised higher price must be based**
12 **upon fact, and not be fictitious or misleading.** Whenever an
13 advertiser represents that he is selling below the prices being charged
14 in his area for a particular article, he should be reasonably certain
that the higher price he advertises does not appreciably exceed the
price at which substantial sales of the article are being made in the
area - that is, a sufficient number of sales so that a consumer would
consider a reduction from the price to represent a genuine bargain or
saving.

15 16 C.F.R. § 233.2(a) (emphasis added).

16 83. As described herein, the alleged acts and practices resulted in violations of federal
17 and state law.

18 84. Defendant’s misrepresentations and other conduct, described herein, violated the
19 “unfair prong” of the UCL because the conduct is substantially injuries to consumers, offends
20 public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the
21 conduct outweighs any alleged benefits. Defendant’s conduct is unfair in that the harm to Plaintiffs
22 and members of the California Subclass arising from Defendant’s conduct outweighs the utility, if
23 any, of those practices.

24 85. Defendant’s practices as described herein are of no benefit to consumers, who are
25 tricked into believing that the Products are of a higher grade, quality, worth, and/or value than they
26 actually are. Defendant’s practice of injecting misinformation into the marketplace about the value
27 of its Products is unethical and unscrupulous, especially because consumers trust companies like
28 Defendant to provide accurate information about their Products. Taking advantage of that trust,

1 Defendant misrepresents the value of its Products to increase its sales. Consumers reasonably
2 believe that Defendant is an authority on the value of mattresses and therefore reasonably believe
3 Defendant's representations that its Products are of a higher grade, quality, worth, and/or value
4 than they actually are.

5 86. Defendant's conduct described herein violated the "fraudulent" prong of the UCL
6 by representing that the Products were of a higher grade, quality, worth, and/or value, when in fact
7 they were not.

8 87. Plaintiffs and members of the Class are not sophisticated experts with independent
9 knowledge of the value of mattresses, and they acted reasonably when they purchased the Products
10 based on their belief that Defendant's representations were true.

11 88. Defendant knew or should have known, through the exercise of reasonable care, that
12 its representations about the Products were untrue and misleading.

13 89. As a direct and proximate result of these acts, consumers have been and are being
14 harmed. Thus, Plaintiffs and members of the Class are entitled to preliminary and injunctive relief.

15 **COUNT IV**
16 **Fraud**

17 90. Plaintiffs and Class Members reallege and incorporate by reference each allegation
18 set forth above as if fully set forth herein.

19 91. Plaintiffs bring this claim individually and on behalf of the members of the Class
20 against Defendant.

21 92. As discussed above, Defendant failed to disclose material facts about its sales
22 practices, including that its "sale" prices were the normal prices at which the Products were
23 typically sold, that its strikethrough prices were fictitious, and that these deceptive sales practices
24 operated solely for the purpose of inducing consumers to make purchases they otherwise would not
25 have made.

26 93. These omissions made by Defendant, as described above, upon which Plaintiffs and
27 members of the Class reasonably and justifiably relied, were intended to and actually did induce
28 Plaintiffs and members of the Class to purchase the Products.

- 1 (c) Entering preliminary and permanent injunctive relief against Defendant, directing
2 Defendant to correct its sales practices and to comply with consumer protection
3 statutes;
- 4 (d) Awarding monetary damages, including treble damages;
- 5 (e) Awarding punitive damages;
- 6 (f) Awarding Plaintiffs and Class Members their costs and expenses incurred in this
7 action, including reasonable allowance of fees for Plaintiffs' attorneys and experts,
8 and reimbursement of Plaintiffs' expenses; and
- 9 (g) Granting such other and further relief as the Court may deem just and proper.

10 **JURY DEMAND**

11 Plaintiffs hereby demand a trial by jury on all claims so triable.

12
13 Dated: January 17, 2024

BURSOR & FISHER, P.A.

14 By: 
15 _____
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