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9 **UNITED STATES DISTRICT COURT**
 10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 CARLOS MARTINEZ, on behalf of
 12 himself and all others similarly situated,

13 Plaintiff,

14 vs.

15 FRANCHISE GROUP INC., a Delaware
 Corporation, and DOES 1- 50, inclusive,

16 Defendants.

Case No. '23CV0277 BAS DDL

CLASS ACTION COMPLAINT

Violations of:

1. **California’s Unfair Competition Laws (“UCL”), CAL. BUS. & PROF. CODE §§ 17200, et seq.;**
2. **California’s False Advertising Laws (“FAL”), CAL. BUS. & PROF. CODE §§ 17500, et seq.;**
3. **California Consumer Legal Remedies Act (“CLRA”), CAL. CIV. CODE §§ 1750, et seq.**

DEMAND FOR JURY TRIAL

1 Plaintiff Carlos Martinez (“Plaintiff”) brings this action on behalf of himself and all
2 others similarly situated against Defendant Franchise Group, Inc. (“Defendant” or
3 “Franchise Group”), and states:

4 **I. NATURE OF THE ACTION**

5 1. Discounts of products benefit both sellers and their customers—when they are
6 legitimate. To the detriment of consumers, as stated by the Ninth Circuit, sellers are “well
7 aware of consumers’ susceptibility to a bargain, [and] therefore have an incentive to lie to
8 their customers.” *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1101 (9th Cir. 2013). Products
9 perceived by consumers as discounted are thus not always actual bargains, and consumers’
10 perceptions can stem directly from sellers’ deceptions. This class action seeks monetary
11 damages, restitution, declaratory and injunctive relief from Defendant arising from its own
12 deceptive business practice of advertising fictitious “original” prices and corresponding
13 phantom discounts on its website, americanfreight.com, where it sells furniture, mattresses,
14 and appliances.

15 2. False reference pricing occurs when a seller fabricates a false “original” price
16 for a product and then offers that product at a substantially lower price under the guise of a
17 sale. The resulting artificial price disparity misleads consumers into believing the product
18 they are buying has a higher market value, and it induces them into purchasing the product.
19 This practice artificially inflates the true market price for these products by raising
20 consumers’ internal reference price and, in turn, the value consumers ascribe to these
21 products (i.e., demand). Consequently, false reference pricing schemes enable retailers, like
22 Defendant, to sell products above their true market price and value—and consumers are left
23 to pay the price.

24 3. The following example of a hypothetical DVD seller, which is parallel to
25 Defendant’s deceptive business practice, illustrates the illegal false reference pricing
26 scheme and its attendant harm to consumers. A seller knows it can sell a particular DVD at
27 \$5.00, which represents both the market price and the price at which the seller could
28 regularly offer the DVD and make a profit. Instead, however, the seller creates an inflated

1 “original” price for the DVD of \$100.00 and advertises the DVD as “on sale” at **90% off**
2 rendering the “**sale**” **price** of the DVD \$10.00. When a consumer purchases the DVD, he
3 presumes he got a “good deal” on a DVD previously sold—i.e., valued by others in the
4 market—at an “original” price of \$100.00. The consumer’s presumption and purchase stem
5 directly from the seller’s purposeful deception. For example, if the seller tried to sell that
6 same DVD for \$10.00 **without** referencing a false original price of \$100.00, and the
7 attendant 90% off discount, that seller would not be able to sell any DVDs at \$10.00 because
8 the true, original market price of the DVD is \$5.00. In contrast, by presenting consumers
9 with a false “original” price of \$100.00, consumers will purchase the DVD at \$10.00; the
10 seller thus has fabricated an increase in demand for the DVD through the **perceived value**
11 of both the DVD itself and the substantial discount of \$90.00. Consumers’ increased
12 willingness and demand to pay \$10.00 for the DVD will in turn impact the overall market
13 price of the DVD. Therefore, the seller can create a false market price for the DVD at \$10.00
14 by advertising a false “original” price and a corresponding phantom discount of 90% off.
15 Plaintiff’s case seeks to remedy this deception, its attendant harm to consumers, and that
16 disparity—the impact on the increase in market price through Defendant’s application of an
17 illegal discounting scheme.

18 4. It is well-established that false reference pricing violates state and federal law.
19 Even so, sellers, including Franchise Group, continue to use the tactic because they know
20 they will be able to increase sales and profits by tricking consumers into making purchasing
21 decisions based on the advertised reference prices. The information available to consumers
22 varies for different types of products; nonetheless, consumers frequently lack full
23 information about products and as a result often use information from sellers to make
24 purchase decisions.

25 5. Through its false and misleading marketing, advertising, and pricing scheme
26 alleged herein, Franchise Group violated, and continues to violate, California and Federal
27 law, which prohibit the advertisement of goods for sale discounted from false former prices.
28 California and Federal law also prohibit the dissemination of misleading statements about

1 the existence and amount of price reductions. Specifically, Defendant violated and
2 continues to violate:

3 a. California’s Unfair Competition Law (“UCL”), CAL. BUS. & PROF.
4 CODE §§ 17200, *et seq.*;

5 b. California’s False Advertising Law (“FAL”), CAL. BUS. & PROF. CODE
6 §§ 17500, *et seq.*; and

7 c. California Consumer Legal Remedies Act (“CLRA”), CAL. CIV. CODE
8 §§ 1750, *et seq.*;

9 6. Plaintiff brings this action on behalf of himself and other similarly situated
10 consumers who have purchased one or more products through americanfreight.com that
11 were deceptively represented as discounted from a false reference price. Plaintiff seeks to
12 halt the dissemination of this false, misleading, and deceptive pricing scheme, to correct the
13 false and misleading perception it has created in the minds of consumers, and to obtain
14 redress for those who have purchased products tainted by this deceptive pricing scheme.
15 Plaintiff also seeks to enjoin Defendant from using false and misleading misrepresentations
16 regarding former price comparisons in its labeling, marketing, and advertising permanently.
17 Furthermore, Plaintiff seeks to obtain actual, statutory, and punitive damages, restitution,
18 injunctive relief, reasonable costs and attorneys’ fees, and other appropriate relief in the
19 amount by which Defendant was unjustly enriched as a result of its sales offered at a false
20 discount.

21 **II. JURISDICTION AND VENUE**

22 7. This Court has original jurisdiction of this action pursuant to the Class Action
23 Fairness Act, 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interest and
24 costs, exceeds the sum or value of \$5,000,000 and at least some members of the proposed
25 Class (defined below) have a different citizenship from Defendant.

26 8. The Southern District of California has personal jurisdiction over Defendant
27 and is the proper venue for this action pursuant to 28 U.S.C. § 1391(b)(1) in which the
28 Plaintiff resides. Further, Defendant is a corporation or other business entity which does

1 conduct business in the State of California. Defendant conducts substantial business in this
 2 district and has sufficient minimum contacts in California, and/or otherwise intentionally
 3 avails itself to the California market through the operation of its e-commerce website within
 4 the State of California.

5 III. GENERAL ALLEGATIONS

6 A. Retailers Benefit from False Reference Pricing Schemes.

7 9. Franchise Group engages in a false and misleading reference price scheme in
 8 the marketing and selling of its products on its e-commerce website.

9 10. Sellers substantially benefit from employing false reference pricing schemes
 10 and experience increased sales because consumers use advertised reference prices to make
 11 purchase decisions. The information available to consumers can vary significantly amongst
 12 different types of products.¹ Nonetheless, consumers frequently lack fundamental
 13 information about a product and as a result often rely on information from sellers to make
 14 purchase decisions, especially when a product's value or quality is otherwise difficult to
 15 discern.²

16 11. Consumers incorporate Defendant's deceptive advertised reference prices into
 17 decision processes for a few reasons. First, a product's "price is also used as an indicator of
 18 product quality."³ In other words, consumers view Defendant's deceptive advertised
 19

20 ¹ Even within a product, consumers may have imperfect information on the individual
 21 attributes. Economists describe "search goods" as those whose attributes "can be
 22 ascertained in the search process prior to purchase" (e.g., style of a shirt), "experience
 23 goods" as those whose attributes "can be discovered only after purchase as the product is
 24 used" (e.g., longevity of a shirt), and "credence goods" as those whose attributes "cannot
 25 be evaluated in normal use" (e.g., whether the shirt's cotton was produced using organic
 26 farming methods). Darby, Michael R., and Edi Karni. "Free Competition and the Optimal
 27 Amount of Fraud." *The Journal of Law and Economics* 16 no. 1 (1973): 67-88, pp. 68-69.

28 ² "Not only do consumers lack full information about the prices of goods, but their
 information is probably even poorer about the quality variation of products simply because
 the latter information is more difficult to obtain". Nelson, Phillip. "Information and
 Consumer Behavior." *Journal of Political Economy* 78, no. 2 (1970): 311-329, pp. 311-
 312. *See also* David Adam Friedman, *Reconsidering Fictitious Pricing*, 100 Minn. L. Rev.
 921, 935 (2016).

³ Grewal, Dhruv, and Larry D. Compeau. "Comparative price advertising: Informative or
 deceptive?" *Journal of Public Policy & Marketing* (1992): 52-62, p. 54. *Also see* Thaler,
 Richard. "Mental Accounting and Consumer Choice." *Marketing Science* 4, no. 3 (1985):
 199-214, p. 212 ("The [reference price] will be more successful as a reference price the less

1 reference prices as a proxy for product quality. Second, reference prices “appeal[] to
 2 consumers’ desire for bargains or deals.”⁴ Academic researchers note how consumers
 3 “sometimes expend more time and energy to get a discount than seems reasonable given the
 4 financial gain involved,” and “often derive more satisfaction from finding a sale price than
 5 might be expected on the basis of the amount of money they actually save.”⁵ Under this
 6 concept, coined “transaction utility” by Noble Prize-winning economist Richard Thaler,
 7 consumers place some value on the psychological experience of obtaining a product at a
 8 perceived bargain.⁶

9 12. Research in marketing and economics has long recognized that consumer
 10 demand can be influenced by “internal” and “external” reference prices.⁷ Internal reference
 11 prices are “prices stored in memory” (*e.g.*, a consumer’s price expectations adapted from
 12 past experience) while external reference prices are “provided by observed stimuli in the
 13 purchase environment” (*e.g.*, a “suggested retail price,” or other comparative sale price).⁸
 14 Researchers report that consumer’s internal reference prices adjust toward external
 15 reference prices when valuing a product.⁹ For products purchased infrequently, external

16 _____
 17 often the good is purchased. The [reference price] is most likely to serve as a proxy for
 18 quality when the consumer has trouble determining quality in other ways (such as by
 inspection”).

19 ⁴ Grewal, Dhruv, and Larry D. Compeau. “Comparative price advertising: Informative or
 20 deceptive?” *Journal of Public Policy & Marketing* (1992): 52-62, p. 52.

21 ⁵ Darke, Peter and Darren Dahl. “Fairness and Discounts: The Subjective Value of a
 22 Bargain.” *Journal of Consumer Psychology* 13, no 3 (2003): 328-338, p. 328.

23 ⁶ “To incorporate ... the psychology of buying into the model, two kinds of utility are
 24 postulated: *acquisition utility* and *transaction utility*. The former depends on the value of
 25 the good received compared to the outlay, the latter depends solely on the perceived merits
 26 of the ‘deal’”. Thaler, Richard. “Mental Accounting and Consumer Choice.” *Marketing
 Science* 4, no. 3 (1985): 199-214, p. 205.

27 ⁷ Empirical results “suggest that internal reference prices are a significant factor in purchase
 28 decisions. The results also add empirical evidence that external reference prices
 significantly enter the brand-choice decision.” Mayhew, Glenn E. and Russell S. Winer.
 “An Empirical Analysis of Internal and External Reference Prices using Scanner Data.”
Journal of Consumer Research 19, no. 1 (1992): 62-70, p. 68.

⁸ Mayhew, Glenn E. and Russell S. Winer. “An Empirical Analysis of Internal and External
 Reference Prices using Scanner Data.” *Journal of Consumer Research* 19, no. 1 (1992): 62-
 70, p. 62.

⁹ “Buyers’ internal reference prices adapt to the stimuli prices presented in the
 advertisement. That is, buyers either adjust their internal reference price or accept the

1 reference prices can be particularly influential because these consumers have little or no
 2 prior internal reference.¹⁰ In other words, “[t]he deceptive potential of such advertised
 3 reference prices are likely to be considerably higher for buyers with less experience or
 4 knowledge of the product and product category.”¹¹ Academic literature further reports that
 5 “there is ample evidence that consumers use reference prices in making brand choices”¹²
 6 and publications have summarized the empirical data as follows:

7 Inflated reference prices can have multiple effects on consumers. They can
 8 increase consumers’ value perceptions (transaction value and acquisition
 9 value), reduce their search intentions for lower prices, increase their purchase
 10 intentions, and reduce their purchase intentions for competing products ...
 11 Inflated and/or false advertised reference prices enhance consumers’ internal
 12 reference price estimates and, ultimately, increase their perceptions of value
 13 and likelihood to purchase[.]¹³

14 13. Sellers, including Defendant, understand consumers are vulnerable to
 15 perceived bargains. Thus, Defendant has a substantial financial interest in exploiting
 16 consumers’ well-known behavioral tendencies by inducing consumers into believing they
 17 are receiving a bargain—even when they are not. The phenomena of people
 18 disproportionately relying on an initial piece of information when making a decision, known
 19 as “anchoring,”¹⁴ is especially relevant in this context.¹⁵ Reference prices are often the *first*,

20 advertised reference price to make judgments about the product’s value and the value of the
 21 deal.” Grewal, Dhruv, Kent B. Monroe, and Ramayya Krishnan. “The Effects of Price-
 22 Comparison Advertising on Buyers’ Perceptions of Acquisition Value, Transaction Value,
 23 and Behavioral Intentions.” *The Journal of Marketing* 62 (1998): 46-59, p. 48.

24 ¹⁰ As Thalen notes, “the [suggested retail price] will be more successful as a reference price
 25 the less often the good is purchased.” Thaler, Richard. “Mental Accounting and Consumer
 26 Choice.” *Marketing Science* 4, no. 3 (1985): 199-214, p. 212.

27 ¹¹ Grewal, Dhruv, and Larry D. Compeau. “Pricing and public policy: A research agenda
 28 and an overview of the special issue.” *Journal of Public Policy & Marketing* 18, no. 1
 (1999): 3-10, p. 7.

¹² Kalyanaram, Gurusurthy, and Russell S. Winer. “Empirical Generalizations from
 Reference Price Research.” *Marketing Science* 14, no. 3 (1995): G161-G169, p. G161.

¹³ Grewal, Dhruv, and Larry D. Compeau. “Pricing and public policy: A research agenda
 and an overview of the special issue.” *Journal of Public Policy & Marketing* 18, no. 1
 (1999): 3-10, p. 7.

¹⁴ See Program on Negotiation, *Anchoring Effect*, HARV. L. SCH., <http://www.pon.harvard.edu/tag/anchoring-effect> (“[T]he anchoring effect, [is] the tendency for the first offer to
 “anchor” the bargaining that follows in its direction, even if the offer recipient thinks the
 offer is out of line.”).

¹⁵ Friedman, *supra* note 2, at 933.

1 if not the *only*, insight into a product besides the sale price itself. Thus, consumers use the
2 reference price as a baseline upon which to perceive a product's value.

3 **B. California and Federal Pricing Regulations Prohibit False "Original**
4 **price" references and Out-Dated "Original price" references.**

5 14. Under California law, a seller may only discount an item from its own *original*
6 *price* for up to 90 days; or in the alternative, a seller may offer a discount from the original
7 price of an item being offered by a competitor, within the relevant market, for up to 90 days.
8 In either scenario, a seller can only offer a "sale" from an original price for 90 days. At that
9 point, on day 91, the seller has two options: the product must either return to its full original
10 price, or the seller may continue to sell the product at the discounted price, as long as it
11 discloses to the consumer the date on which the product was last offered for sale at its
12 alleged former price. See BUS. & PROF. CODE § 17501. Under California law, a seller
13 cannot use an old, outdated, "original price" as the basis for a sale or discount, unless it
14 discloses to the consumer the date on which the prior original price was offered in the
15 market. *Id.*

16 15. Additionally, laws in the State of California expressly prohibit making false or
17 misleading statements of fact "concerning reasons for, existence of, or amounts of price
18 reductions." See CAL. CIV. CODE § 1770(a)(13).

19 16. Additionally, under the FTCA, when a seller offers a discount from its own,
20 former *original price*, the original price is required to have been a price at which the seller
21 held that item out for sale on a regular basis, for a commercially reasonable period of time.
22 See 16 C.F.R. § 233.1(a) and (b).

23 **C. Defendant's Fraudulent Price Discounting Scheme Violates California**
24 **State Law and Federal Regulations.**

25 17. Defendant engages in a false and misleading reference price scheme in the
26 marketing and selling of the products offered on its e-commerce website. Defendant
27 advertises furniture, mattresses, appliances and other related items for sale by listing them
28 with a fictitious original price and a corresponding sale price. The original price

1 communicates “the product’s worth and the prestige that ownership of the product
2 conveys.” *Hinojos*, 718 F.3d at 1106 (citing Dhruv Grewal & Larry D. Compeau,
3 *Comparative Price Advertising: Informative or Deceptive?*, 11 J. PUB. POL’Y & MKTG. 52,
4 55 (Spring 1992) (“By creating an impression of savings, the presence of a higher reference
5 price enhances subjects’ perceived value and willingness to buy the product.”).
6 “Misinformation about a product’s ‘normal’ price is . . . significant to many consumers in
7 the same way as a false product label would be.” *Hinojos*, 718 F.3d at 1106.

8 18. Defendant consistently advertises its products on its e-commerce website
9 americanfreight.com alongside a higher “original” price, and the corresponding sale price.
10 Defendant advertises a seemingly original price, in truth, a false reference price, with a
11 “strikethrough,” which suggests to customers that Defendant previously offered its products
12 at the strikethrough price. The false reference price operates as a baseline consumers rely on
13 to assess a product’s value. Moreover, it is shown underneath the “sale” price to communicate
14 to consumers that Defendant is selling a product at a substantial discount, even though the
15 product is not in fact discounted. Additionally, underneath the false original price, the words
16 “You Save \$___” are displayed and the corresponding difference between the false original
17 price and the sale price is listed in bold green font to communicate the false savings. The
18 sale price displayed directly above the false reference price conveys the “deep discount” at
19 which Defendant presently offers a product, ostensibly for a limited time.

20 19. However, the products sold on Defendant’s e-commerce website are never sold
21 at the price consumers are led to presume is the full original price—the price displayed with
22 a strikethrough underneath the “sale” price. The “deep discount” of products communicated
23 to consumers viewing Defendant’s e-commerce website constitutes a misrepresentation by
24 Defendant. The “original” price communicated by Defendant merely serves as a false
25 reference price Defendant uses as part of a larger scheme to deceptively manufacture false
26 discounts to incentivize consumers to make purchases.

27 20. Defendant’s purposeful practice operates by deceiving consumers into
28 (1) making purchases they otherwise would not have made and (2) paying substantially

1 more for products they believed are heavily discounted and thus worth more than their
2 actual value. The only plausible explanation for Defendant's above illustrated practice is to
3 drive sales, artificially inflate the perceived value of its products, and, as a result, artificially
4 inflate the price at which consumers are willing to buy its products. Defendant has, and
5 without intervention will continue to, increase sales by creating the illusion of short-lived
6 bargains through purporting to offer products on sale from false original prices.

7 21. Defendant's perpetual listings of its products as discounted on its e-commerce
8 website americanfreight.com constitute false, fraudulent, and deceptive advertising because
9 the advertised reference prices it displays list substantially higher prices than those ever
10 offered by Defendant. The communicated reference prices only serve to deceive consumers;
11 they function as benchmark prices from which the false discount and corresponding "sale"
12 price are derived. Defendant's scheme tricks consumers into justifiably believing they are
13 getting a significant deal when, in reality, consumers are paying the usual retail price for
14 products.

15 22. In sum, the false reference prices, the strikethrough of said prices, the "You
16 Save" price, and the sale prices all displayed next to each other on product listing pages on
17 Defendant's e-commerce website americanfreight.com are all part of Defendant's
18 purposeful, deceptive scheme. The products sold through Defendant's e-commerce website
19 americanfreight.com are never offered for sale, nor sold, at the advertised false reference
20 price. Defendant advertises false reference prices with a purpose to induce consumers into
21 believing its products were once sold at said price. The strikethrough of the false reference
22 prices next to products creates a false sense of urgency in consumers. Defendant intends for
23 consumers to be misled that Defendant will sell its products at the advertised, higher
24 reference price "again" if they do not purchase its products soon, and consumers are misled.
25 Consumers believe they are receiving a substantial bargain when they purchase products on
26 Defendant's e-commerce website at the "discounted" sale price. However, Defendant did
27 not actually sell products on its e-commerce website americanfreight.com at the advertised
28 reference prices within 90 days of discounting them. In fact, Defendant never offered or

1 sold products at their advertised false reference price, and consumers thus never received a
2 true bargain. All while fully aware of its deception, Defendant has achieved, and might
3 continue to achieve, its ultimate, continuing purpose of driving sales with sham markdowns.

4 23. Nowhere on Defendant’s e-commerce website does Defendant disclose that
5 the reference or “original” prices are not: former prices; or recent, within 90 days, regularly
6 offered former prices; or prices at which identical products are sold elsewhere in the market.
7 The omission of these disclosures, coupled with Defendant’s use of fictitious advertised
8 reference prices, renders Defendant’s pricing scheme inherently misleading.

9 24. Moreover, the advertised discounts were fictitious because the reference prices
10 did not represent a *bona fide* price at which Defendant previously sold or offered to sell the
11 products, on a regular basis, for a commercially reasonable period of time, as required by
12 the Federal Trade Commission (“FTC”). In addition, the represented advertised reference
13 prices were not the prevailing market retail price within the three months (90 days)
14 immediately preceding the publication of the advertised former reference price, as required
15 by California law.

16 25. Thus, Defendant’s scheme intends to, and does, provide misinformation to the
17 customer. This misinformation communicates to consumers, including Plaintiff, that the
18 products sold on Defendant’s e-commerce website have greater value than the advertised
19 discounted price.

20 26. The reference prices listed and advertised on products sold through
21 Defendant’s e-commerce website are false or severely outdated reference prices, utilized
22 only to perpetuate Defendant’s false discount scheme.

23 27. Defendant knows that its reference price advertising is false, deceptive,
24 misleading, and unlawful under state and federal law.

25 28. Defendant fraudulently concealed from, and intentionally failed to disclose to,
26 Plaintiff and other members of the Class the truth about its advertised discount prices and
27 former reference prices.

28

1 schemes, purchased the following item online from San Diego County, California on
2 September 30, 2022:

Item:	Quantity:	False Reference Price:	Sale Price Paid by Plaintiff:
Edie Occasional Collection	1	\$629.99	\$87.97

3
4
5
6 35. Plaintiff examined the above-listed product on Defendant’s website before
7 deciding to purchase the aforementioned product after reviewing the item’s advertised sale
8 price. The item Plaintiff purchased was advertised as having an original price of \$542.02
9 more than the sale price displayed on the website. Defendant advertised the item as having
10 a sale price at a discount.

11 36. After observing that the original price of the “Edie Occasional Collection”
12 table was \$629.99 based on the number \$629.99 with a strikethrough, and the accompanying
13 sale price itself of \$87.97, Plaintiff believed he was receiving a significant discount on the
14 product he had chosen. Because he was interested in the product and felt that the discounted
15 price would likely not last, and that he was getting a significant bargain on the product,
16 Plaintiff proceeded to finish checking out and purchased it.

17 37. However, this product was never offered for sale at the original price
18 communicated on Defendant’s e-commerce website and certainly not within the 90 days
19 preceding Plaintiff’s purchase. Neither Plaintiff’s receipt nor any other language on the
20 website observed or relied upon by Plaintiff indicated that the product was not offered
21 previously at the reference price. Instead, Plaintiff’s receipt indicated “Total Savings” of
22 \$542.02 for his purchase.

23 38. Plaintiff reasonably relied upon Defendant’s artificially inflated reference
24 prices and false discounts when purchasing the aforementioned product from Defendant’s
25 e-commerce website. Plaintiff would not have made such a purchase but for Defendant’s
26 representations regarding the substantial discount being offered for the product. Plaintiff
27 would like to continue buying from Defendant’s e-commerce website in the future but
28 cannot be certain of the veracity of Defendant’s advertised bargains.

1 39. Plaintiff and the Class reasonably and justifiably acted and relied on the
2 substantial price differences that Defendant advertised, and they made purchases believing
3 they were receiving a substantial discount on a product of greater value than the value it had
4 in actuality. Plaintiff, like other Class members, was lured in, relied on, and was damaged
5 by the deceptive pricing scheme Defendant carried out.

6 40. Plaintiff was damaged in his purchase because Defendant's false reference
7 price discounting scheme inflated the true market value of item he purchased. Plaintiff is
8 susceptible to this reoccurring harm because he cannot be certain that Defendant has
9 corrected this deceptive pricing scheme and he desires to shop at Defendant's
10 americanfreight.com website in the future. However, he currently cannot trust that
11 Defendant will accurately price its products truthfully and in a non-misleading fashion in
12 compliance with applicable law. Plaintiff does not have the resources on his own to
13 determine whether Defendant is complying with State and Federal law with respect to its
14 pricing practices.

15 41. Additionally, because of the variety of merchandise available on Defendant's
16 website, and due to the likelihood that Defendant may yet develop and market additional
17 falsely priced items for sale online, Plaintiff may again, though by mistake, purchase a
18 falsely discounted item from Defendant under the impression that the advertised reference
19 price represented a *bona fide* former price at which the item was previously offered for sale
20 by Defendant. Indeed, Plaintiff desires to continue purchasing products from
21 americanfreight.com in the future. Moreover, Class members will continue to purchase
22 products from americanfreight.com while reasonably but incorrectly believing that their
23 advertised reference prices represent *bona fide* former prices at which they were previously
24 offered for sale by Defendant.

25 42. Absent an equitable injunction enjoining Defendant from continuing in the
26 unlawful course of conduct alleged herein, Plaintiff, Class members and the public will be
27 irreparably harmed and denied an effective and complete remedy because they face a real
28 and tangible threat of future harm emanating from Defendant's ongoing conduct that cannot

1 be remedied with monetary damages. Accordingly, Plaintiff, Class members, and the
2 general public lack an adequate remedy at law and an injunction is the only form of relief
3 which will guarantee Plaintiff and other consumers the appropriate assurances.

4 43. Moreover, Plaintiff lacks an adequate remedy at law with respect to his claim
5 for equitable restitution because he has not yet retained an expert to determine whether an
6 award of damages can or will adequately remedy his monetary losses caused by Defendant.
7 Particularly, as legal damages focus on remedying the loss to the plaintiff and equitable
8 restitution focuses wholly distinctly on restoring monies wrongly acquired by the defendant,
9 legal damages are inadequate to remedy Plaintiff's losses because Plaintiff does not know
10 at this juncture, and is certainly not required to set forth evidence, whether a model for legal
11 damages (as opposed to equitable restitution) will be viable or will adequately compensate
12 Plaintiff's losses.

13 44. Finally, Plaintiff's case is substantially predicated on Defendant's violation of
14 CAL BUS. & PROF. CODE § 17501, an equitable claim, as Plaintiff's counsel's investigation
15 revolved around ensuring that Defendant did not sell products at the indicated reference
16 price within the 90 days preceding Plaintiff's purchase and, likewise, that Defendant failed
17 to disclose to consumers the date on which products were last offered at their advertised
18 reference price. This claim and test of liability go to the heart of Plaintiff's case and the
19 same test is not available under a CLRA legal claim for damages. Thus, Plaintiff does *not*
20 have an adequate remedy at law because the CLRA does not provide the same metric of
21 liability as CAL BUS. & PROF. CODE § 17501, which is integral not only to Plaintiff's prayer
22 for restitution, but also to Plaintiff's very theory of liability at trial.

23 **Defendant**

24 45. Defendant is incorporated in Delaware with its principal executive offices in
25 Delaware, Ohio. Plaintiff is informed and believes that Defendant operates the
26 americanfreight.com website, and advertises, markets, distributes, and/or sells furniture,
27 mattresses, and appliances in California and throughout the United States.

28

1 affecting individual Class members. These common legal and factual questions include, but
2 are not limited to, the following:

3 a. whether, during the Class Period, Defendant used advertised false
4 reference prices on products sold through its e-commerce website;

5 b. whether, during the Class Period, the original price advertised by
6 Defendant was the prevailing market price for the products in question during the
7 three months period preceding the dissemination and/or publication of the advertised
8 former prices;

9 c. whether Defendant's alleged conduct constitutes violations of the laws
10 asserted;

11 d. whether Defendant engaged in unfair, unlawful and/or fraudulent
12 business practices under the laws asserted;

13 e. whether Defendant engaged in false or misleading advertising;

14 f. whether Plaintiff and Class members are entitled to damages and/or
15 restitution and the proper measure of that loss;

16 g. whether an injunction is necessary to prevent Defendant from
17 continuing to use false, misleading or illegal price comparison; and

18 h. whether Plaintiff and the Class are entitled to an award of reasonable
19 attorneys' fees, interest, and costs of suit.

20 50. **Typicality:** Plaintiff's claims are typical of the claims of the Class members
21 because, *inter alia*, all Class members have been deceived (or were likely to be deceived)
22 by Defendant's false and deceptive price advertising scheme, as alleged herein. Plaintiff is
23 advancing the same claims and legal theories on behalf of himself and all Class members.

24 51. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the
25 members of the Class. Plaintiff has retained counsel experienced in complex consumer class
26 action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no
27 antagonistic or adverse interest to those of the Class.
28

1 52. **Superiority:** The nature of this action and the nature of laws available to
2 Plaintiff and the Class make the use of the class action format a particularly efficient and
3 appropriate procedure to afford relief to them and the Class for the wrongs alleged. The
4 damages or other financial detriment suffered by individual Class members is relatively
5 modest compared to the burden and expense that would be entailed by individual litigation
6 of their claims against Defendant. It would thus be virtually impossible for Plaintiff and
7 Class members, on an individual basis, to obtain effective redress for the wrongs done to
8 them. Absent the class action, Class members and the general public would not likely
9 recover, or would not likely have the chance to recover, damages, restitution, or injunctive
10 relief, and Defendant will be permitted to retain the proceeds of its fraudulent and deceptive
11 misdeeds.

12 53. All Class members, including Plaintiff, were exposed to one or more of
13 Defendant's misrepresentations or omissions of material fact in advertising false reference
14 prices. Due to the scope and extent of Defendant's consistent false sale prices, advertising
15 scheme, disseminated in a constant years-long campaign to consumers, it can be reasonably
16 inferred that such misrepresentations or omissions of material fact were uniformly made to
17 all members of the Class. In addition, it can be reasonably presumed that all members of
18 the Class, including Plaintiff, affirmatively acted in response to the representations
19 contained in Defendant's false advertising scheme when purchasing products sold through
20 Defendant's e-commerce website.

21 54. **Ascertainability:** Defendant keeps extensive records of its customers through
22 its online sales data, as well as through, *inter alia*, general marketing programs. Defendant
23 has one or more databases through which all, or a significant majority of, Class members
24 may be identified and ascertained, and it maintains contact information, including email and
25 home address, through which notice of this action could be disseminated in accordance with
26 due process requirements

1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Violation of California’s Unfair Competition Law (“UCL”)**
4 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***

5 55. Plaintiff repeats and re-alleges the allegations contained in every preceding
6 paragraph as if fully set forth herein.

7 56. Plaintiff brings this claim individually and on behalf of the members of the
8 proposed Class against Defendant Franchise Group for violations of the UCL, CAL. BUS. &
9 PROF. CODE §§ 17200, *et seq.*

10 57. The UCL defines “unfair business competition” to include any “unlawful,
11 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading”
12 advertising. CAL. BUS. PROF. CODE § 17200.

13 58. The UCL imposes strict liability. Plaintiff need not prove that Defendant
14 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—
15 but only that such practices occurred.

16 **“Unfair” Prong**

17 59. A business act or practice is “unfair” under the UCL if it offends an established
18 public policy or is immoral, unethical, oppressive, unscrupulous or substantially injurious
19 to consumers, and that unfairness is determined by weighing the reasons, justifications and
20 motives of the practice against the gravity of the harm to the alleged victims.

21 60. Defendant’s actions constitute “unfair” business practices because, as alleged
22 above, Defendant engaged in misleading and deceptive price comparison advertising that
23 represented false reference prices and corresponding deeply discounted phantom “sale”
24 prices. Defendant’s acts and practices offended an established public policy of transparency
25 in pricing, and constituted immoral, unethical, oppressive, and unscrupulous activities that
26 are substantially injurious to consumers.

27 61. The harm to Plaintiff and Class members outweighs the utility of Defendant’s
28 practices because Defendant’s practice of advertising false discounts provides no utility and

1 only harms consumers. There were reasonably available alternatives to further Defendant’s
2 legitimate business interests other than the misleading and deceptive conduct described
3 herein.

4 **“Fraudulent” Prong**

5 62. A business act or practice is “fraudulent” under the UCL if it is likely to
6 deceive members of the consuming public.

7 63. Defendant’s acts and practices alleged above constitute fraudulent business
8 acts or practices as it has deceived Plaintiff and is highly likely to deceive members of the
9 consuming public. Plaintiff relied on Defendant’s fraudulent and deceptive representations
10 regarding its false or outdated “original prices” for products sold by Defendant through its
11 e-commerce website. These misrepresentations played a substantial role in Plaintiff’s
12 decision to purchase the product at a purportedly steep discount, and Plaintiff would not
13 have purchased the product without Defendant’s misrepresentations.

14 **“Unlawful” Prong**

15 64. A business act or practice is “unlawful” under the UCL if it violates any other
16 law or regulation.

17 65. Defendant’s act and practices alleged above constitute unlawful business acts
18 or practices as it has violated state and federal law in connection with its deceptive pricing
19 scheme. The FTCA prohibits “unfair or deceptive acts or practices in or affecting
20 commerce” (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false
21 advertisements. 15 U.S.C. § 52(a). Under the FTC, false former pricing schemes, like
22 Defendant’s, are described as deceptive practices that would violate the FTCA:

23 (a) One of the most commonly used forms of bargain advertising is to offer a
24 reduction from the advertiser’s own former price for an article. If the former
25 priced is the actual, bona fide price at which the article was offered to the
26 public on a regular basis for a reasonably substantial period of time, it provides
27 a legitimate basis for the advertising of a price comparison. Where the former
28 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
example, where an artificial, inflated price was 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.

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

5 16 C.F.R. § 233.1(a) and (b) (emphasis added).

6 66. In addition to federal law, California law also expressly prohibits false former
7 pricing schemes. The FAL, CAL. BUS. & PROF. CODE § 17501, entitled “*Worth or value;*
8 *statements as to former price,*” states:

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

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

15 CAL. BUS. & PROF. CODE § 17501 (emphasis added).

16 67. As detailed in Plaintiff’s Third Cause of Action below, the CLRA, CAL. CIV.
17 CODE § 1770(a)(9), prohibits a business from “[a]dvertising goods or services with intent
18 not to sell them as advertised,” and subsection (a)(13) prohibits a business from “[m]aking
19 false or misleading statements of fact concerning reasons for, existence of, or amounts of
20 price reductions.”

21 68. As detailed herein, the acts and practices alleged were intended to or did result
22 in violations of the FTCA, the FAL, and the CLRA.

23 69. Defendant’s practices, as set forth above, misled Plaintiff, the proposed Class,
24 and the public in the past and will continue to mislead in the future. Consequently,
25 Defendant’s practices constitute an unlawful, fraudulent, and unfair business practice within
26 the meaning of the UCL.

27 70. Defendant’s violations of the UCL, through its unlawful, unfair, and fraudulent
28 business practices, are ongoing and present a continuing threat that Class members and the

1 public will be deceived into purchasing products based on price comparisons of arbitrary
2 and inflated “reference” prices and substantially discounted “sale” prices. These false
3 comparisons created phantom markdowns and lead to financial damage for consumers like
4 Plaintiff and the class.

5 71. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent
6 injunctive relief enjoining Defendant from further engagement in this unfair competition,
7 as well as disgorgement and restitution to Plaintiff and the Class of all Defendant’s revenues
8 wrongfully obtained from them as a result of Defendant’s unfair competition, or such
9 portion of those revenues as the Court may find equitable.

10 **SECOND CAUSE OF ACTION**

11 **Violation of California’s False Advertising Law (“FAL”)**
12 **CAL. BUS. & PROF. CODE §§ 17500, *et seq.***

13 72. Plaintiff repeats and re-alleges the allegations contained in every preceding
14 paragraph as if fully set forth herein.

15 73. Plaintiff brings this claim individually and on behalf of the members of the
16 proposed Class against Defendant for violations of the FAL, CAL. BUS. & PROF. CODE
17 §§ 17500, *et seq.*

18 74. CAL. BUS. & PROF. CODE § 17500 provides:

19 It is unlawful for any . . . corporation . . . with intent directly or indirectly to
20 dispose of . . . personal property or to perform services, professional or
21 otherwise, or anything of any nature whatsoever or to induce the public to enter
22 into any obligation relating thereto, to make or disseminate or cause to be made
23 or disseminated . . . from this state before the public in any state, in any
24 newspaper or other publication, or any advertising device, or by public outcry
or proclamation, or in any other manner or means whatever, including over the
Internet, any statement, concerning that . . . personal property or those services
. . . which is untrue or misleading, and which is known, or which by the exercise
of reasonable care should be known, to be untrue or misleading . . .

25 (Emphasis added).

26 75. The “intent” required by section 17500 is the intent to make or disseminate
27 personal property (or cause such personal property to be made or disseminated), and not the
28 intent to mislead the public in the making or dissemination of such property.

1 81. Plaintiff brings this claim individually and on behalf of the members of the
2 proposed Class against Defendant for violations of the CLRA, CAL. CIV. CODE § 1750, *et*
3 *seq.*

4 82. This cause of action is brought pursuant to the CLRA, CAL. CIV. CODE § 1750,
5 *et seq.* Plaintiff and each member of the proposed Class are “consumers” as defined by
6 CAL. CIV. CODE § 1761(d). Defendant’s sale of products through its e-commerce website,
7 americanfreight.com, were “transactions” within the meaning of CAL. CIV. CODE § 1761(e).
8 The products purchased by Plaintiff and the Class are “goods” or “services” within the
9 meaning of CAL. CIV. CODE §§ 1761(a) - (b).

10 83. Defendant violated and continues to violate the CLRA by engaging in the
11 following practices proscribed by CAL. CIV. CODE § 1770(a) in transactions with Plaintiff
12 and the Class which were intended to result in, and did result in, the sale of products sold
13 through its website:

- 14 a. advertising goods or services with intent not to sell them as advertised;
15 § 1770(a)(9); and
- 16 b. making false or misleading statements of fact concerning reasons for,
17 existence of, or amounts of price reductions; § 1770(a)(13).

18 84. On February 13, 2023, Plaintiff, through counsel, sent a CLRA demand letter
19 to Defendant that provided notice of Defendant’s violation of the CLRA and demanded
20 Defendant correct, repair, replace, or otherwise rectify the unlawful, unfair, false, and
21 deceptive practices complained of herein. The letter also stated that if Defendant refused to
22 do so, Plaintiff would file a complaint seeking damages in accordance with the CLRA. If
23 Defendant does not respond to Plaintiff’s letter or agree to rectify the problems associated
24 with the actions detailed above and give notice to all affected consumers within 30 days of
25 the date of written notice pursuant to § 1782, Plaintiff will amend his complaint to seek
26 actual, punitive, and statutory damages, as appropriate against Defendant.

27 85. Filed concurrently herewith is a declaration of venue pursuant to CAL. CIV.
28 CODE §1780(d).

VII. PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of himself and all other members of the Class, requests that this Court award relief against Defendant as follows:

- a. an order certifying the Class and designating Plaintiff as the Class Representative and his counsel as Class Counsel;
- b. awarding restitution and disgorgement of all profits and unjust enrichment that Defendant obtained from Plaintiff and the Class members as a result of its unlawful, unfair, and fraudulent business practices described herein;
- c. awarding Plaintiff and members of the Class actual, statutory, and punitive damages;
- d. awarding declaratory and injunctive relief as permitted by law or equity, including: enjoining Defendant from continuing the unlawful practices as set forth herein, and directing Defendant to identify, with Court supervision, victims of its misconduct and pay them all money they are required to pay;
- e. order Defendant to engage in a corrective advertising campaign;
- f. awarding attorneys’ fees and costs; and
- g. for such other and further relief as the Court may deem necessary or appropriate.

VIII. DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial for all of the claims so triable.

Dated: February 13, 2023

LYNCH CARPENTER, LLP

By: /s/ Todd D. Carpenter

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [AmericanFreight.com Offers Fake Discounts, Class Action Claims](#)
