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THE PEOPLE OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

SEARS, ROEBUCK AND CO., SEARS
HOLDINGS MANAGEMENT
CORPORATION, and DOES 1-10, inclusive,

Defendants.

Case No. _____

**COMPLAINT FOR EQUITABLE
RELIEF AND CIVIL PENALTIES FOR
VIOLATIONS OF:**

**(1) California Business & Professions
Code §§ 17200, *et seq.* (Unfair
Competition Law); and**

**(2) California Business & Professions
Code §§ 17500, *et seq.* (False Advertising
Law).**

1 The People of the State of California (“People”) allege the following against
2 Defendants Sears, Roebuck and Co. and Sears Holdings Management Corporation (collectively,
3 “Sears”):

4 I. INTRODUCTION

5 1. The People bring this civil law enforcement action against Sears to address
6 the unlawful, unfair, and fraudulent business practice commonly referred to as “false reference
7 pricing.”¹ “False reference pricing” is the act of misrepresenting the original or regular price of
8 some good that is purportedly offered at a “sale price,” a business practice that Sears engages in
9 to increase sales. To illustrate, Sears may advertise swim trunks for \$3.99, representing that this
10 constitutes an 80% discount off of its “regular” price of \$20, even though Sears did not previously
11 sell the swim trunks at the purported “regular” price.

12 2. Retailers employ false reference pricing because it misleads consumers into
13 believing they are “getting a good deal,” thereby increasing sales. The United States Court of
14 Appeals for the Ninth Circuit succinctly stated: “Most consumers have, at some point, purchased
15 merchandise that was marketed as being ‘on sale’ because the proffered discount seemed too
16 good to pass up. Retailers, well aware of consumers’ susceptibility to a bargain, therefore have
17 an incentive to lie to their customers by falsely claiming that their products have previously sold
18 at a far higher ‘original’ price in order to induce customers to purchase merchandise at a
19 purportedly marked-down ‘sale’ price. Because such practices are misleading—and effective—
20 the California legislature has prohibited them.” *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1101
21 (9th Cir. 2013).

22 3. Sears has engaged in false reference pricing as a frequent business practice,
23 thereby misleading consumers. In fact, the People’s investigation has uncovered that Sears’ use
24 of false reference prices applies to thousands of products. While the private plaintiffs’ bar has
25 actively pursued retailers, including Sears, for false reference pricing, it has been unable to curb
26

27 ¹ In addition to the instant action, the People are contemporaneously filing similar actions
28 against J.C. Penney Corporation, Inc., Kohl’s Department Stores, Inc., and Macy’s, Inc. in the
Los Angeles County Superior Court. The People anticipate submitting notices of related cases,
and thereafter requesting that all of these matters be coordinated.

1 this industry practice. It is, therefore, incumbent on the People to take action, and the People
2 respectfully request this Court's assistance to protect Californians from such misleading and
3 deceptive business acts and practices.

4 **II. THE PARTIES**

5 4. The People bring this civil law enforcement action by and through Michael
6 N. Feuer, the Los Angeles City Attorney, pursuant to statutory authority provided under
7 California Business and Professions Code sections 17200, *et seq.* ("Unfair Competition Law")
8 and 17500, *et seq.* ("False Advertising Law").²

9 5. Sears, Roebuck and Co. and Sears Holdings Management Corporation are
10 subsidiaries of Sears Holdings Corporation, a publicly-traded Delaware corporation (NASDAQ:
11 SHLD), with its principal executive offices in Hoffman Estates, Illinois. According to Sears
12 Holdings Corporation's 2015 Annual Report (for the fiscal year ending January 30, 2016) filed
13 with the U.S. Securities & Exchange Commission, Sears has 705 stores located across all 50
14 states and Puerto Rico, and offers a wide array of products and service offerings across many
15 merchandise categories, including appliances, consumer electronics/connected solutions, tools,
16 sporting goods, outdoor living, lawn and garden equipment, certain automotive services and
17 products, such as tires and batteries, home fashion products, as well as apparel, footwear, jewelry,
18 and accessories for the whole family.

19 6. The true names and capacities of Defendants sued herein as Does 1 through
20 10, inclusive, are unknown to the People. The People therefore sue these Defendants by such
21 fictitious names. When the true names and capacities of these Defendants have been ascertained,
22 the People will seek leave of this Court to amend this Complaint to insert in lieu of such fictitious
23 names the true names and capacities of the fictitiously-named Defendants. The People are
24 informed and believe, and thereon allege, that these Defendants participated in, and in some part
25 are responsible for, the illegal acts alleged herein. Each reference in this Complaint to Sears is
26 also a reference to all Defendants sued as Does.

27
28 ² All further references are to California codes, unless otherwise noted.

1 7. Whenever reference is made in this Complaint to any act or omission of
2 Sears, such reference shall be deemed to mean that Sears' officers, directors, employees, agents,
3 and/or representatives did, ratified, or authorized such act or omission while actively engaged in
4 the management, direction, or control of the affairs of Sears, or while acting within the course and
5 scope of their duties.

6 8. Whenever reference is made in this Complaint to any act or omission of
7 Defendants, such reference shall be deemed to mean the act or omission of each Defendant acting
8 jointly and severally.

9 **III. JURISDICTION AND VENUE**

10 9. Venue is proper in Los Angeles County, pursuant to Business and
11 Professions Code section 17204, because the violations alleged in this Complaint occurred in the
12 City and County of Los Angeles. This Court has jurisdiction pursuant to Article VI, section 10 of
13 the California Constitution and section 393 of the Code of Civil Procedure.

14 10. This Court has personal jurisdiction over Sears because: (i) a substantial
15 portion of the wrongdoing alleged in this Complaint took place in the State of California, (ii)
16 Sears is authorized to do business in this state, (iii) Sears has sufficient minimum contacts with
17 this state, and/or (iv) Sears otherwise intentionally avails itself of the markets in this state through
18 the promotion, marketing, and sale of its products in this state, thus rendering this Court's
19 exercise of jurisdiction permissible under traditional notions of fair play and substantial justice.

20 **IV. SEARS – COMPANY PROFILE**

21 11. Sears, one of the largest retailers in the United States, directly markets its
22 merchandise to consumers in the City of Los Angeles, across the State of California, and
23 throughout the nation via its e-commerce website (www.sears.com) and other mediums.

24 12. In 2015 alone, Sears invested \$169 million in capital expenditures,
25 including but not limited to investments in online and mobile shopping capabilities. According to
26 Sears, each month there are more than 15 million visitors to www.sears.com with 2.4 billion page
27 views a year, making www.sears.com the third largest online mass merchant.

13. Sears' marketing strategies have proven to be successful. In 2015, Sears grossed nearly \$15 billion in total sales. However, Sears' success has, in significant part, been the product of unlawful, unfair, and fraudulent marketing and advertising practices.

14. Sears' misleading and deceptive false price advertising scheme has played a major role in Sears' overall marketing and business strategy, and Sears has leveraged its marketing expertise and technology to perpetrate a false price advertising scheme of massive proportions to the detriment of California consumers.

V. FALSE REFERENCE PRICING – AN OVERVIEW

15. A retailer's "reference price," the stated price presented alongside the retailer's "on sale" price, provides consumers a reference point with which to evaluate the prospective purchase. The reference price is often described with terms such as "Regular Price," "Original Price," "Former Price," and/or "List Price."

16. A retailer's reference price impacts the consumer's behavior in the marketplace. As the reference price increases, so does the consumer's perception of the value of the transaction, the consumer's willingness to make the purchase, and the amount of money the consumer is willing to pay for the product.

17. When the reference price is bona fide and truthful, it helps consumers make informed purchasing decisions. In contrast, consumers are harmed when merchants advertise their products alongside falsely-inflated former prices, *i.e.*, "false reference prices," as consumers are provided a false sense of value. In this situation, the reference price is no longer informative but deceptive because consumers are deprived of a full and fair opportunity to accurately evaluate the specific sales offer in its relevant market.

18. The hidden nature of false discount pricing makes it effective. Consumers, unaware of the practices at issue, instead complete their purchases feeling like they "got a good deal." In addition, retailers make falsely-discounted sales without suspicion because consumers do not have access to the comprehensive historical pricing information necessary to reveal the fraud.

1 19. Beyond the adverse impact upon consumers’ welfare, the practice of
2 employing false reference pricing also negatively affects the integrity of competition in retail
3 markets. A retailer’s use of false reference prices constitutes an unfair method of competition,
4 injuring honest competitors that sell the same or similar products, or otherwise compete in the
5 same market, using only valid and accurate reference prices.

6 20. Over the past forty years, a substantial body of research on the effects of
7 reference prices (also referred to in the relevant literature as “advertised reference prices,”
8 “external reference prices,” and “comparative prices”) shows that reference prices: (i) impact
9 consumers’ perceptions of the value of the sales deal; (ii) impact consumers’ willingness to make
10 the purchase; and (iii) decrease consumers’ intentions to search for a lower price. Consumers
11 form an “internal reference price,” also known as an “expected price,” an “aspirational price” (a
12 price the consumer would like to pay), or a “normative price” (a price that is “fair”). Consumers
13 store and retrieve the “internal reference price” from memory to judge the merits of a specific
14 price offer. Even where an advertised reference price is exaggerated and not itself completely
15 believed, perceptions of value increase in comparison to a promotion with no advertised reference
16 price. Thus, retailers’ use of reference prices influences consumers’ “internal reference price,”
17 and subsequently, increase consumers’ willingness to purchase the product.

18 21. As a result of its effectiveness as a marketing practice, the use of false
19 reference prices has proliferated recently, in both frequency and in degree. *See, e.g.,* David A.
20 Friedman, *Reconsidering Fictitious Pricing*, 100 Min. L. Rev. 921, 923 (2016).

21 **VI. SPECIFIC LAWS RELATING TO FALSE REFERENCE PRICING**

22 22. Under California law, “[n]o price shall be advertised as a former price of
23 any advertised thing, unless the alleged former price was the prevailing market price . . . within
24 three months next immediately preceding the publication of the advertisement.” CAL. BUS. &
25 PROF. CODE § 17501.

26 23. With respect to sales to consumers, California law prohibits “[m]aking
27 false or misleading statements of fact concerning reasons for, existence of, or amounts of price
28 reductions.” CAL. CIV. CODE § 1770(a)(13).

VII. SEARS ENGAGES IN DECEPTIVE ADVERTISING

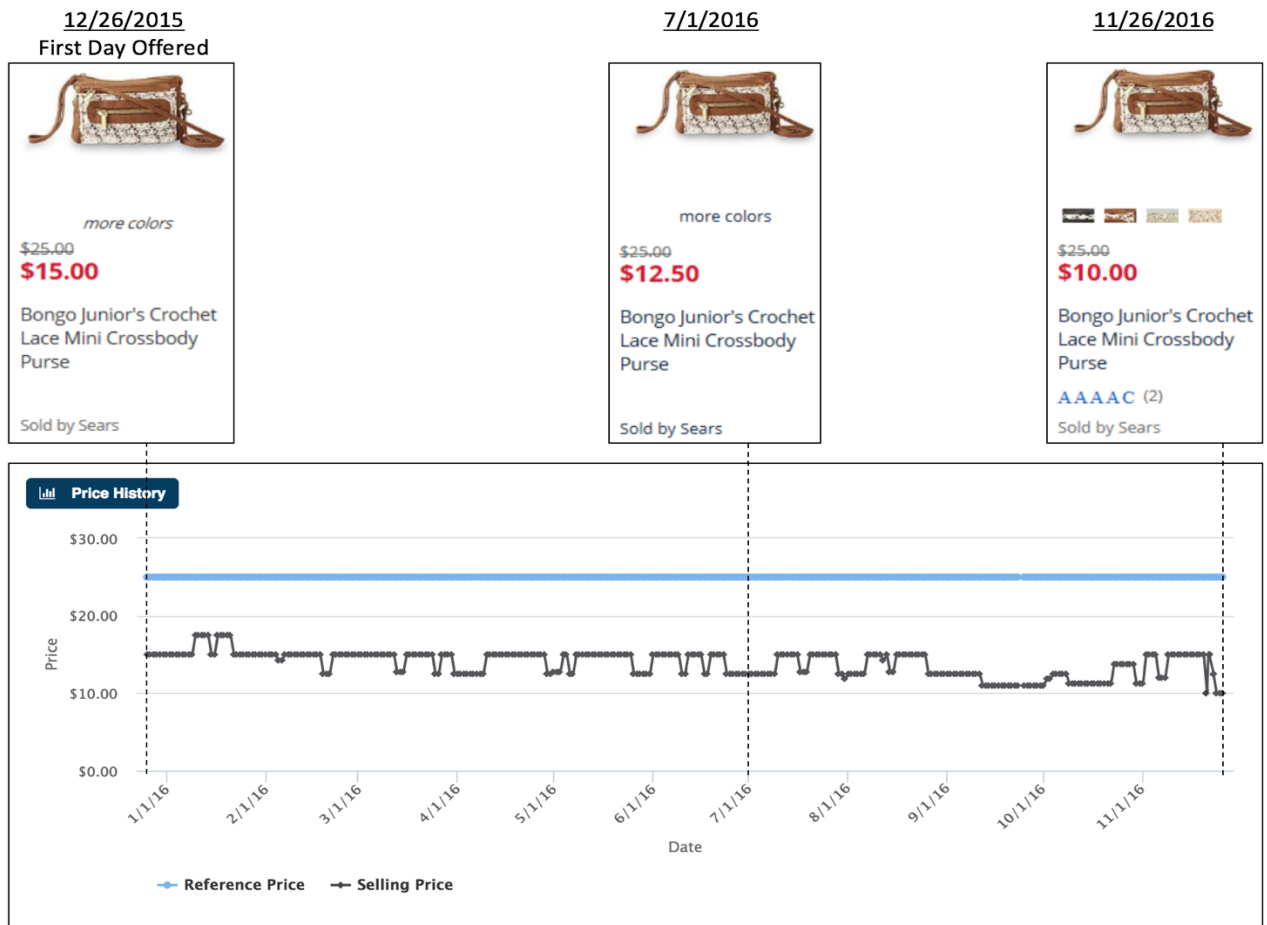
24. Sears creates an illusion of savings by engaging in false reference pricing.

25. Sears intends that customers will perceive that its reference prices actually stand for former prices regularly charged by Sears.

26. Sears deliberately and artificially sets the false reference prices high so that customers feel that they are getting a bargain when purchasing products. Sears also prominently advertises that its false discounts are being offered for only a limited time in order to create a false sense of urgency and to mislead customers that they will miss out on the purported markdowns if they do not buy the products immediately.

27. One example is the “Bongo Junior’s Crochet Lace Mini Crossbody Purse,” a Sears in-house product exclusively offered by Sears and/or its affiliates. Sears first offered this product for sale online on December 26, 2015, as shown in the screenshot below:

Bongo Junior's Crochet Lace Mini Crossbody Purse
Item #: 088VA87085412P



28. On the first day Sears offered this item for sale online, the website showed a “regular” price of \$25 and a “sale” price of \$15.

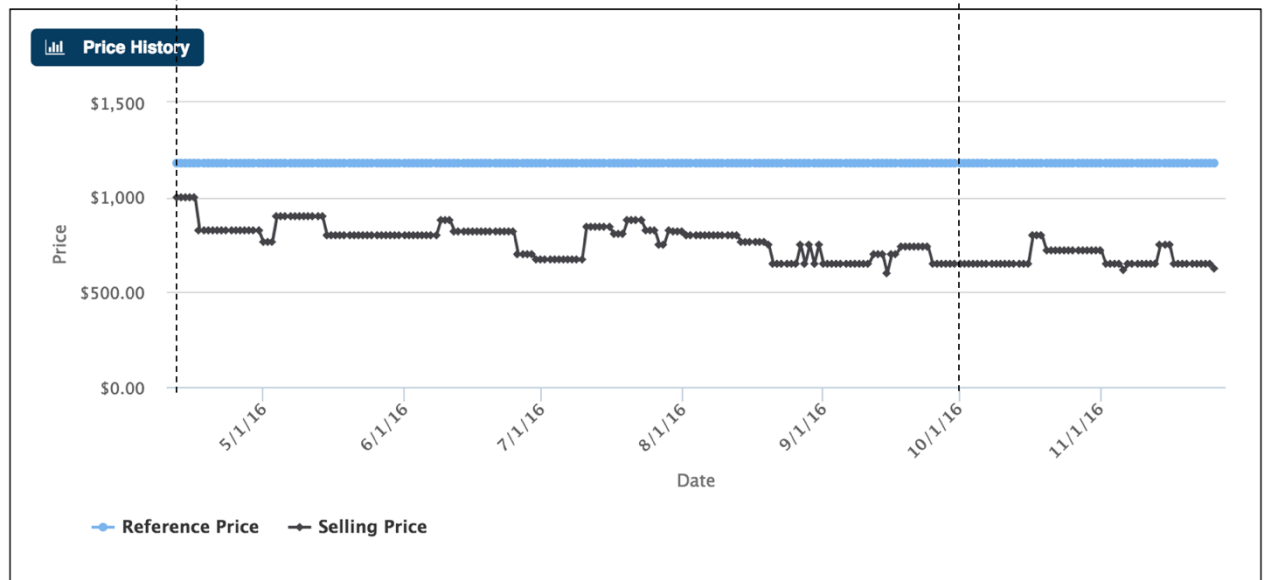
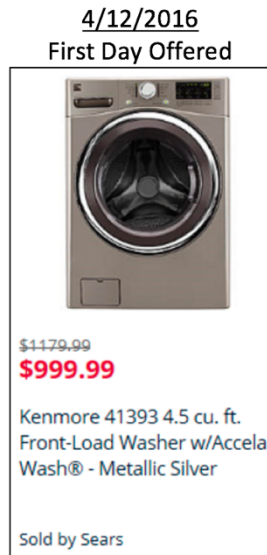
29. However, the purported “regular” price of \$25 was a false reference price. As the screenshot and price history chart above shows, while the website consistently showed a purported “regular” price of \$25 for the item, Sears continued to offer the item for sale at a lower price.

30. As the screenshot and price history chart immediately below shows, Sears also advertised the same item with false “limited time” offers. On November 22, 2016, Sears offered the item at a “sale” price of \$15, touting a 40% discount from the false reference price of \$25, and further stating that the \$15 “sale” price would only last through that day. However, on the next day (November 23), Sears’ price for the item was further lowered to \$12.50, a supposed 50% discount from the same false reference price. While Sears advertised this \$12.50 “sale” price as lasting only through that day, Sears again lowered the price even further the next day (November 24), this time to \$10, a supposed 60% discount from the same false reference price. Bongo Junior's Crochet Lace Mini Crossbody Purse
Item #: 088VA87085412P



31. Another example is the “Kenmore 41393 4.5 cu. ft. Front-Load Washer w/Accela Wash® - Metallic Silver,” another Sears in-house product, which Sears first offered for sale online on April 12, 2016, as shown in the screenshot below:

Kenmore 41393 4.5 cu. ft. Front-Load Washer w/Accela Wash® - Metallic Silver
Item #: 02641393000P



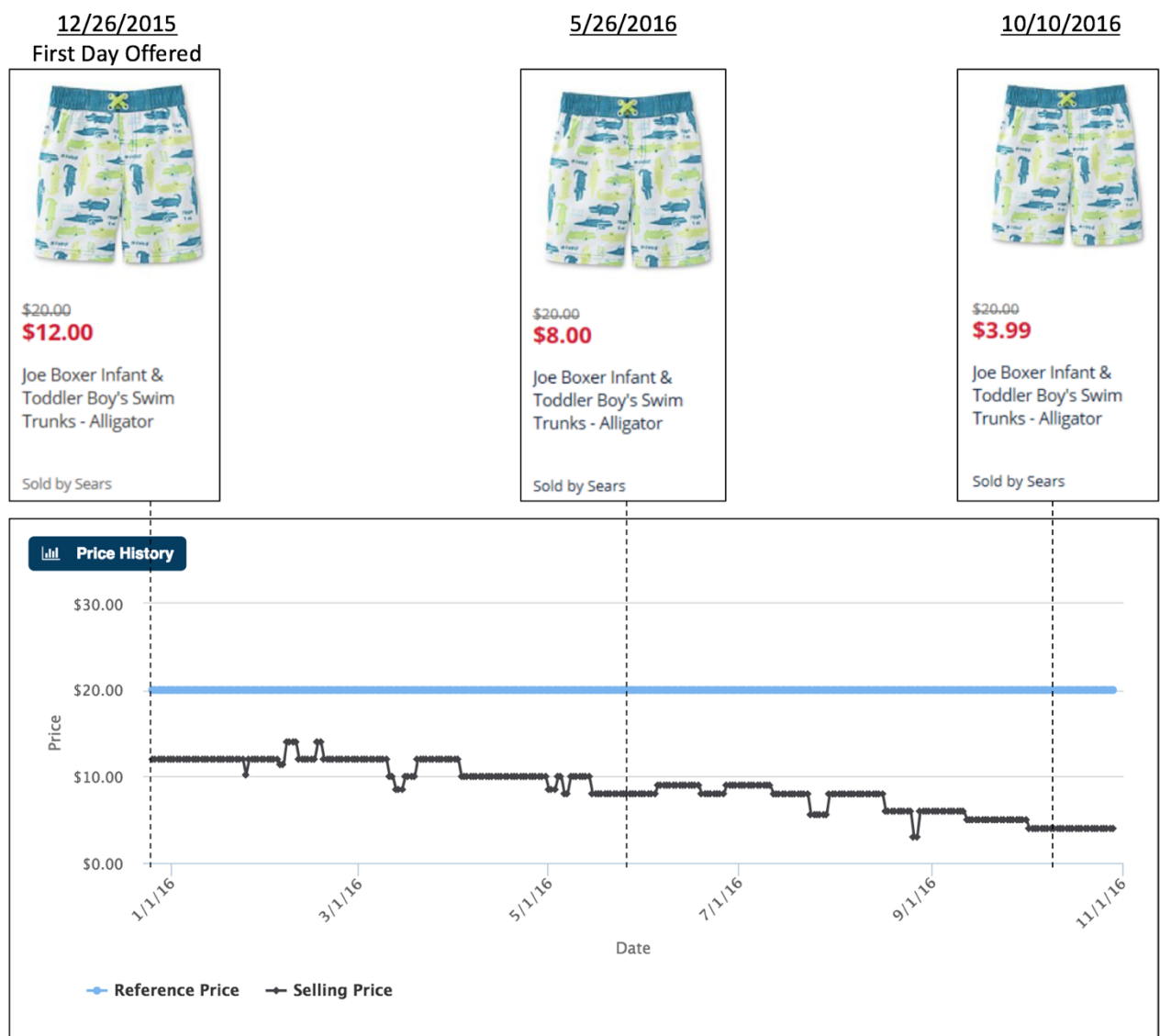
32. On the first day Sears offered this item for sale online, the website showed a “regular” price of \$1,179.99 and a “sale” price of \$999.99.

33. However, the purported “regular” price of \$1,179.99 was a false reference price. As the screenshot and price history chart above shows, Sears did not offer the item for sale online for more than \$999.99, even though the website consistently showed a purported “regular”

price of \$1,179.99 for the item. In fact, as time went on, the item had a series of different false discounts. On October 1, 2016, for example, Sears offered the item at a “sale” price of \$649.99, falsely advertising a discount from the \$1,179.99 false reference price.

34. A third example is the “Joe Boxer Infant & Toddler Boy’s Swim Trunks – Alligator,” another Sears in-house product exclusively offered by Sears and/or its affiliates. Sears first offered this product for sale online on December 26, 2015, as shown in the screenshot below:

Joe Boxer Infant & Toddler Boy's Swim Trunks – Alligator
Item #: 040VA87038312P




1 35. On the first day Sears offered this item for sale online, the website showed
2 a “regular” price of \$20 and a “sale” price of \$12.

3 36. However, the purported “regular” price of \$20 was a false reference price.
4 As the screenshot and price history chart above shows, Sears did not offer the item for sale for the
5 purported “regular” price of \$20. In fact, as time went on, the price of the item actually decreased
6 through additional false discounts. On May 26, 2016, for example, Sears offered the item at a
7 “sale” price of \$8, falsely advertising a discount from the \$20 false reference price. Later, on
8 October 10, 2016, Sears offered the item at a “sale” price of \$3.99, falsely advertising an even
9 larger discount from the \$20 false reference price.

10 37. For the fourth example, on February 6, 2016, Sears first offered for sale
11 online a “Sealy Posturepedic Lynnvview Firm King Mattress,” a product exclusively offered by
12 Sears and/or its affiliates, as shown in the screenshot below:

Sealy Posturepedic Lynnview Firm King Mattress

Item #: 08216254000P

<u>2/6/2016</u> First Day Offered	<u>2/29/2016</u>	<u>3/1/2016</u> \$200 Ref. Price Increase	<u>3/2/2016</u> \$90 Selling Price Increase
			
\$1879.99 \$755.99	\$1879.99 \$805.49	\$2079.99 \$805.49	\$2079.99 \$895.49
Sealy Posturepedic Lynnview Firm King Mattress	Sealy Posturepedic Lynnview Firm King Mattress	Sealy Posturepedic Lynnview Firm King Mattress	Sealy Posturepedic Lynnview Firm King Mattress
Sold by Sears	Sold by Sears	Sold by Sears	Sold by Sears



38. On the first day Sears offered this item for sale online, the website reflected a “regular” price of \$1,879.99 and a “sale” price of \$755.99.

39. However, the purported “regular” price of \$1,879.99 was a false reference price. As reflected in the screenshot and price history chart above, Sears did not offer the item for sale online for more than \$1,000. On February 29, 2016, the “sale” price increased to \$805.49, while the purported “regular” price remained at \$1,879.99. Then, on March 1, 2016, the “sale” price remained the same (\$805.49), but the purported “regular” price increased to \$2,079.99. The following day, March 2, 2016, the “sale” price increased again to \$895.49 (from the previous

1 day's "sale" price of \$805.49), while the purported "regular" price remained at \$2,079.99. As
2 with the \$1,879.99 price, the \$2,079.99 price was a false reference price.

3 **VIII. ENFORCEMENT AUTHORITY**

4 (Business & Professions Code §§ 17200, *et seq.* and 17500, *et seq.*)

5 40. Business and Professions Code section 17200 defines "unfair competition"
6 as "any unlawful, unfair or fraudulent business act or practice," and "any act prohibited by
7 Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and
8 Professions Code."

9 41. Pursuant to Business and Professions Code sections 17206 and 17536, any
10 person who engages, has engaged, or proposes to engage in unfair competition or false
11 advertising shall be liable for a civil penalty not to exceed \$2,500 for each violation.

12 42. Pursuant to Business and Professions Code section 17206.1, in addition to
13 any liability for a civil penalty pursuant to section 17206, any person who engages, has engaged,
14 or proposes to engage in unfair competition against senior citizens or disabled persons may be
15 liable for a civil penalty not to exceed \$2,500 for each violation.

16 43. Pursuant to Business and Professions Code sections 17203 and 17535, any
17 person who engages, has engaged, or proposes to engage in unfair competition or false
18 advertising may be enjoined in any court of competent jurisdiction, and the court may make such
19 orders or judgments to prevent the use of any practice which constitutes unfair competition or
20 false advertising, or as may be necessary to restore to any person in interest any money or
21 property which may have been acquired by means of such unfair competition or false advertising.

22 44. Pursuant to Business and Professions Code sections 17205 and 17534.5,
23 the remedies or penalties provided for violation of the Unfair Competition Law and False
24 Advertising Law are cumulative to each other and to the remedies or penalties available under all
25 other laws of the state.

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF UNFAIR COMPETITION LAW (“UCL”)**

3 **AGAINST ALL DEFENDANTS**

4 (Business & Professions Code §§ 17200, *et seq.*)

5 45. The People incorporate by reference all preceding allegations as though
6 fully set forth herein.

7 46. Defendants Sears and Does 1 through 10, and each of them, have violated
8 (and continue to violate) the UCL by engaging in the following **unlawful** business acts and
9 practices:

10 a. Advertising merchandise (sold by Sears) with a listed former price even
11 though the purported former price was not the prevailing market price within the three-month
12 period immediately preceding the publication of those advertisements, in violation of Business
13 and Professions Code section 17501; and

14 b. Making false or misleading statements of fact concerning the reasons for,
15 existence of, or amounts of price reductions as to the merchandise sold by Sears, in violation of
16 Civil Code section 1770(a)(13).

17 47. Defendants Sears and Does 1 through 10, and each of them, have violated
18 (and continue to violate) the UCL by engaging in the following **unfair** business acts and
19 practices:

20 a. Engaging in false reference pricing in connection with the merchandise that
21 Sears sold (and continues to sell) such that California consumers (who could not have reasonably
22 avoided such predatory schemes) are substantially injured, something that serves no benefit to
23 consumers or competition; and

24 b. Engaging in false reference pricing in connection with the merchandise that
25 Sears sold (and continues to sell) such that Defendants gain an unfair advantage over lawfully-
26 competing retailers.

27 48. Defendants Sears and Does 1 through 10, and each of them, have violated
28 (and continue to violate) the UCL by engaging in the following **fraudulent** business acts and

1 practices: using misrepresentations, deception, and/or concealment of material information in
2 connection with the reference prices of merchandise that Sears sold (and continues to sell), such
3 that California consumers and other members of the public in California are likely to be deceived.

4 **SECOND CAUSE OF ACTION**

5 **VIOLATION OF FALSE ADVERTISING LAW (“FAL”)**

6 **AGAINST ALL DEFENDANTS**

7 (Business & Professions Code §§ 17500, *et seq.*)

8 49. The People incorporate by reference all preceding allegations as though
9 fully set forth herein.

10 50. The FAL prohibits unfair, deceptive, untrue, and misleading advertising in
11 connection with the disposal of personal property (among other things), including, but not limited
12 to, false statements as to worth, value, and former price.

13 51. Defendants Sears and Does 1 through 10, and each of them, have
14 committed acts of untrue and misleading advertising by engaging in false price referencing as to
15 the merchandise that Sears sold (and continues to sell). In addition, said Defendants made such
16 untrue or misleading advertisements with the intent to dispose of said merchandise.

17 52. The false reference pricing that is the subject of this Complaint was (and
18 continues to be) likely to deceive members of the public.

19 **PRAYER FOR RELIEF**

20 Wherefore, the People pray that:

21 1. Pursuant to Business and Professions Code sections 17203, 17204, and
22 17535, in addition to the equitable powers of this Court, Defendant Sears and Does 1 through 10,
23 inclusive, together with their officers, directors, employees, servants, agents, representatives,
24 contractors, partners, and associates, and all persons acting on behalf or in concert with them, be
25 enjoined from engaging in the unlawful, unfair, and fraudulent business acts and practices, and
26 false advertising, as described in this Complaint in violation of the UCL and the FAL;

27 2. Pursuant to Business and Professions Code sections 17206 and 17536, all
28 Defendants be assessed a civil penalty in the amount of \$2,500 for each violation of the UCL and

1 the FAL;

2 3. Pursuant to Business and Professions Code section 17206.1, all Defendants
3 be assessed an additional civil penalty in the amount of \$2,500 for each violation of the UCL
4 against senior citizens or disabled persons;

5 4. The People recover the costs of this action; and

6 5. The People be granted such other and further relief as the Court may deem
7 to be just and proper.

8 Respectfully submitted,

9 Dated: December 7, 2016

OFFICE OF THE LOS ANGELES CITY ATTORNEY

10
11 By: 

MICHAEL N. FEUER

Attorneys for Plaintiff,

THE PEOPLE OF THE STATE OF CALIFORNIA

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