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8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF MERCED

11
12 23CV-02082

13 MARCHE MEEKS, on behalf of himself and
others similarly situated,

Case No.

14 Plaintiff,

CLASS ACTION COMPLAINT FOR:

15 v.

16 THE SHERWIN-WILLIAMS COMPANY,
17 an Ohio corporation,

18 Defendants.

- (1) Violation of California Business & Professions Code section 17200, *et seq.* (Unfair Competition Law)
- (2) Violation of California Business & Professions Code section 17500, *et seq.* (False Advertising Law)
- (3) Violation of California's Consumers Legal Remedies Act, California Civil Code section 1750, *et seq.*
- (4) Intentional Misrepresentation
- (5) Negligent Misrepresentation
- (6) Breach of Contract
- (7) Unjust Enrichment

DEMAND FOR JURY TRIAL

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1 Plaintiff Marche Meeks (hereinafter, "Plaintiff"), on behalf of himself and all others
2 similarly situated, complains of Defendant The Sherwin-Williams Company, an Ohio corporation,
3 ("Defendant" or "Sherwin-Williams"), as follows:

4 **NATURE OF ACTION**

5 1. This class action arises from Defendant's false advertising of prices on its
6 merchandise and shelf tags at its stores and online in California.

7 2. Defendant is a manufacturer and retailer of paint. Defendant sells a wide variety of
8 paint and related items at its retail stores and online throughout California.

9 3. Defendant advertises the price of its merchandise on shelf tags or displays
10 immediately adjacent to the merchandise, or on the merchandise itself.

11 4. Beginning in the fall of 2021, Defendant began to add a "Supply Chain Surcharge"
12 of 4% to certain items purchased by customers in Defendant's California stores and online while in
13 California. However, Sherwin-Williams did not include this surcharge in the price of each item
14 reflected on the shelf tags or displays or on the items themselves.

15 5. Instead, the surcharge was surreptitiously added at the point of sale, after the customer
16 had already invested time and effort in selecting a product and waiting to purchase it. Moreover,
17 the customer was not informed of the surcharge at the time of sale; rather, the surcharge was
18 embedded as an extra charge along with the item price and taxes.

19 6. In fact, Defendant's explanation is slipped into the bottom of the receipt, below the
20 transaction data: "[E]ffective through 12-31-21, a 4% Supply Chain Surcharge has been added to
21 all applicable items purchased."

22 7. California prohibits this type of false advertising. It is unlawful for a person, at the
23 time of sale, to "charge an amount greater than the price . . . that is then advertised, posted, marked,
24 displayed, or quoted for that commodity" and to "[c]harge an amount greater than the lowest price
25 posted on the commodity itself or on a shelf tag that corresponds to the commodity, notwithstanding
26 any limitation of the time period for which the posted price is in effect." Cal. Bus. & Prof. Code §
27 12024.2(a)(1), (2).

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1 8. Under Cal. Bus. & Prof. Code § 12024.2, each item of merchandise sold in
2 Defendant's stores is a "commodity."

3 9. California's Consumer Legal Remedies Act (CLRA) also prohibits such false
4 advertising: "The unfair methods of competition and unfair or deceptive acts or practices
5 undertaken by any person in a transaction intended to result or that results in the sale or lease of
6 goods or services to any consumer are unlawful: ... Advertising goods or services with intent not to
7 sell them as advertised. ... Advertising that a product is being offered at a specific price plus a
8 specific percentage of that price unless (A) the total price is set forth in the advertisement, which
9 may include, but is not limited to, shelf tags, displays, and media advertising, in a size larger than
10 any other price in that advertisement, and (B) the specific price plus a specific percentage of that
11 price represents a markup from the seller's costs or from the wholesale price of the product." Cal.
12 Civ. Code § 1770(a)(9), (20).

13 10. Sherwin-Williams knows or should reasonably know that charging customers more
14 than the price posted on its shelf tags for merchandise is deceptive and misleading. Defendant
15 concealed from Plaintiff and the putative class the fact that the merchandise was not offered for sale
16 at the stated retail price. In fact, Sherwin-Williams' customers *never* see anything other than the
17 posted price, as the shelf tags do not show the price of the merchandise with the amount of the
18 Supply Chain Surcharge included, as required under California law. Defendant had a duty to
19 disclose the actual prices for the subject merchandise rather than falsely posting prices and then
20 burying a 4% surcharge on customers' receipts.

21 11. The facts regarding the surcharge that Defendant misrepresented or failed to disclose
22 are material facts that a reasonable person would have relied on when making his or her decision to
23 purchase Defendant's merchandise. Plaintiff relied on Defendant's representations that the price
24 posted on the merchandise reflected the actual price of the product which he or she would pay (less
25 any applicable discounts).

26 12. Plaintiff and others similarly situated reasonably and justifiably relied to their
27 detriment on Defendant's lack of disclosure and concealment of the "Supply Chain Surcharge" until
28 they received their receipts following purchase and had already paid for the merchandise and the

1 surcharge.

2 13. Defendant intentionally concealed and failed to disclose the truth about the prices at
3 which it sold its merchandise. Defendant charged 4% more for the merchandise it sold than the
4 actual prices posted on or near the items in its stores. Yet Defendant did not change the posted
5 prices to reflect the price increase but snuck in the 4% price increase at the time of purchase and did
6 not disclose this increase until customers received their receipt after payment.

7 14. Through its false and deceptive marketing, advertising and pricing scheme,
8 Defendant has violated California law prohibiting misrepresenting posted prices and not charging
9 the posted price. Defendant violated California’s Business & Professions Code sections 12024.2,
10 17200, *et seq.*, 17500, *et seq.*, and California’s Consumers Legal Remedies Act, California Civil
11 Code sections 1750, *et seq.*, and its conduct as alleged herein constitutes intentional or, alternatively,
12 negligent misrepresentation, breach of contract, or unjust enrichment.

13 15. Defendant ceased applying the Supply Chain Surcharge on California purchases as
14 of February 1, 2022.

15 16. Plaintiff, individually and on behalf of all others similarly situated, seeks damages,
16 restitution, and interest to remedy the harm suffered as a result of Defendant’s false pricing practices,
17 as well as declaratory and injunctive relief.

18 **PARTIES**

19 17. Defendant Sherwin-Williams is an Ohio corporation with its principal place of
20 business in Ohio. At all relevant times the foregoing Defendant was engaged in commercial
21 transactions throughout the State of California.

22 18. At all times mentioned herein Plaintiff was and is a resident of the State of California,
23 where he purchased merchandise from Defendant’s retail store.

24 19. Venue as to Defendant is proper in this judicial district pursuant to Code of Civil
25 Procedure section 395.5 because, *inter alia*, the obligations or liabilities at issue in this action arose
26 in part in the County of Merced, State of California.

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1 **FACTUAL BACKGROUND**

2 20. Defendant manufactures paint and operates retail stores where it sells the paint and
3 related items to the public. Defendant posts the price of each item of merchandise on its store
4 shelves directly on the item with a label or on a shelf tag immediately adjacent to each item.
5 Customers understand the price reflected on the shelf tag or display to be the price that they will pay
6 for the product. When customers bring the merchandise to the register, they anticipate paying no
7 more than the posted price for the item plus any applicable sales tax.

8 21. Toward the end of 2021, Defendant purportedly experienced increased logistics costs
9 in its supply chain and increased costs for raw materials and their transport. Defendant chose to
10 pass these supposed increased costs onto its customers. Typically, a pass through of costs is
11 reflected in higher prices for goods or services. While higher prices for products are burdensome
12 to consumers, consumers at least can evaluate whether to purchase the product given the increased
13 price and know that they are paying no more than the price advertised for the merchandise.

14 22. Sherwin-Williams took a different tack. Defendant chose to keep its posted prices
15 the same to induce customers to purchase its merchandise. Defendant lulled its customers into
16 falsely thinking they were paying the same prices as before, the prices posted on the items and shelf
17 tags in Defendant’s stores. In fact, customers were being hit with higher prices but in a concealed,
18 surreptitious manner. The higher price was called a “Supply Chain Surcharge” and slipped
19 inconspicuously onto the bottom of customers’ receipts after they had completed their purchases.

20 23. In Plaintiff’s case, on October 21, 2021, he purchased Problock primer from a
21 Sherwin-Williams store in California. The shelves where the paint was located bore a price of \$8.49.
22 However, at the register, Plaintiff was charged a “Supply Chain Surcharge” of 4% of the purchase
23 price; the surcharge is reflected on his receipt below the retail price and sale discount and above the
24 subtotal before sales tax.

25 24. Defendant’s prices are clearly displayed on shelf tags throughout the store and
26 directly adjacent to the merchandise. These shelf tags reflect the retail price of the item; this is the
27 price the consumer expects to pay at the register. Nowhere on or near its shelf tags did Sherwin-
28 Williams disclose the Supply Chain Surcharge, nor was the surcharge added to the total price of the

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1 product.

2 25. In this way, Defendant tricked consumers into believing they were paying a lower
3 price for its merchandise than consumers actually were paying. The Supply Chain Surcharge was a
4 hidden charge that consumers were unaware of until they saw their receipt after checking out. Then
5 it is too late – they have completed the transaction, paid the surreptitiously hidden price, and own
6 the item. Consumers were thus deprived of the opportunity to make an informed choice whether to
7 purchase Defendant’s merchandise or not.

8 26. Defendant’s advertising misled Plaintiff to believe that he would pay the price
9 displayed on the shelf tag immediately below the product he chose, and that there would not be any
10 hidden surcharge added to the price of his product. Plaintiff made his decision to purchase the
11 product based on the shelf tag price and the lack of disclosure of the surcharge or its inclusion into
12 the shelf tag price deprived Plaintiff of evaluating his prospective purchase based on the true cost
13 of the product.

14 27. Defendant’s practice violates California Business & Profession Code § 12024.2,
15 which specifically prohibits charging a higher price than what is advertised on shelf tags:

16 (a) It is unlawful for any person, at the time of the sale of a commodity, to do
17 any of the following.

18 (1) Charge an amount greater than the price . . . that is then advertised,
19 posted, marked, displayed, or quoted for that commodity.

20 (2) Charge an amount greater than the lowest price posted on the commodity
21 itself or on a shelf tag that corresponds to the commodity, notwithstanding
any limitation of the time period for which the posted price is in effect.

22 28. Defendant’s practice also violates the CLRA, California Civil Code § 1770, which
23 expressly provides:

24 (a) The unfair methods of competition and unfair or deceptive acts or practices undertaken
25 by any person in a transaction intended to result or that results in the sale or lease of
goods or services to any consumer are unlawful: ...

26 (9) Advertising goods or services with intent not to sell them as advertised. ...

27 (20) Advertising that a product is being offered at a specific price plus a specific
28 percentage of that price unless (A) the total price is set forth in the
advertisement, which may include, but is not limited to, shelf tags, displays,

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and media advertising, in a size larger than any other price in that advertisement, and (B) the specific price plus a specific percentage of that price represents a markup from the seller’s costs or from the wholesale price of the product.

29. Defendant’s practice also violates California Business & profession Code §§ 17200, *et seq.*, and 17500, *et seq.*, as described further hereinbelow.

30. Defendant ceased applying the Supply Chain Surcharge on California purchases as of February 1, 2022.

CLASS ALLEGATIONS

31. Plaintiff brings this action as a class action pursuant to California Code of Civil Procedure section 382 on behalf of the following class:

All persons who purchased products from a California Sherwin-Williams store, or who purchased products online while in California, between September 20, 2021 and January 31, 2022 and were charged a 4% supply-chain surcharge; persons purchasing on a commercial account shall be excluded from the class.

32. Members of the class, as described above, will be referred to as “class members.” Excluded from the class are (1) Defendant, any entity or division in which either Defendant has a controlling interest, and their legal representatives, officers, directors, assigns, and successors, (2) the judge to whom this case is assigned and the judge’s staff and members of their immediate families, and (3) Plaintiff’s counsel, its staff, and members of their immediate families. Plaintiff reserves the right to amend the above class and to add subclasses as appropriate based on investigation, discovery, and the specific theories of liability.

33. This action has been brought and may properly be maintained as a class action under California Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the class is easily ascertainable.

A. Numerosity

34. Although the precise number of class members has not been determined at this time, Plaintiff is informed and believes that the class members are so numerous that joinder is impracticable and that the disposition of their claims in a class action will provide substantial benefits to the parties and the Court.

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B. Common Questions Predominate

35. There are questions of law and fact common to the class that predominate over any questions affecting only individual putative class members. Thus, proof of a common set of facts will establish the right of each class member to recovery. These common questions of law and fact include but are not limited to:

- a. Whether Defendant violated California Business & Professions Code § 12024.2 by charging a higher price than the price displayed on shelf tags;
- b. Whether Defendant violated California’s Consumer Legal Remedies Act, Civil Code § 1770(a)(9), (20), by falsely advertising a lower price than Defendant actually charged customers due to the hidden inclusion of a surcharge;
- c. Whether Defendant violated the FAL by falsely representing a price on its merchandise when in fact it was applying a surcharge to the price;
- d. Whether Defendant violated the UCL’s fraudulent prong because Defendant’s advertisements misled customers into believing they would pay a lower price than that actually charged;
- e. Whether Defendant violated the UCL’s unfair prong because consumers did not receive the price they were promised on the shelf tags for the items but a higher price due to the hidden inclusion of a surcharge;
- f. Whether Defendant violated the UCL’s unlawful prong because its advertising practices constitute false advertising under the FAL and constitute violations of California Civil Code § 1770 (a)(9) and (a)(20) and Business and Professions Code § 12024.2;
- g. Whether Defendant violated California Civil Code § 1770(a)(9) of the CLRA by advertising goods with the intent not to sell them as advertised because Defendant posted a price that it intended not to sell the merchandise at because it planned to add a surcharge;

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- 1 h. Whether Defendant violated California Civil Code § 1770(a)(20) of the CLRA by
- 2 selling products at a specific price plus a specific percentage of that price without
- 3 setting forth the total price on shelf tags or displays;
- 4 i. Whether Defendant's conduct in charging a 4% Supply Chain Surcharge
- 5 constituted a breach of contract with its customers regarding the price to be paid
- 6 for merchandise sold by Defendant; and
- 7 j. Whether Defendant was unjustly enriched by obtaining money from its customers
- 8 by charging a 4% Supply Chain Surcharge on its merchandise.

9 **C. Typicality**

10 36. Plaintiff's claims are typical of the claims of the putative class members because
11 Plaintiff purchased merchandise from Defendant's store advertised with a shelf tag or display that
12 did not disclose the total purchase price of the unit inclusive of the Supply Chain Surcharge. In this
13 way, Plaintiff and each class member sustained similar injuries arising out of Defendant's conduct
14 in violation of law. The injuries of each class member were caused directly by Defendant's wrongful
15 conduct. In addition, the factual underpinning of Defendant's misconduct is common to all putative
16 class members and represents a common thread of misconduct resulting in injury to all class
17 members. Plaintiff's claims arise from the same practices and course of conduct that give rise to
18 the claims of the class members and are based on the same legal theories.

19 **D. Adequacy**

20 37. Plaintiff will fairly and adequately represent and protect the interests of the class.
21 Counsel who represent Plaintiff and putative class members are experienced and competent in
22 litigating class actions.

23 **E. Superiority of Class Action**

24 38. A class action is superior to other available means for the fair and efficient
25 adjudication of this controversy. Individual joinder of putative class members is not practicable,
26 and questions of law and fact common to putative class members predominate over any questions
27 affecting only individual putative class members. Each putative class member has been damaged
28 and is entitled to recovery as a result of the violations alleged herein. Moreover, because the

1 damages suffered by individual members of the class may be relatively small, the expense and
2 burden of individual litigation would make it difficult or impossible for individual members of the
3 class to redress the wrongs done to them, while an important public interest will be served by
4 addressing the matter as a class action. Class action treatment will allow those persons similarly
5 situated to litigate their claims in the manner that is most efficient and economical for the parties
6 and the judicial system. Plaintiff is unaware of any difficulties in managing this case that should
7 preclude class action.

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW,**

10 **BUS. & PROF. CODE § 17200, *et seq.* (THE “UCL”)**

11 39. Plaintiff hereby incorporates by reference the allegations contained in this
12 Complaint.

13 40. California’s Unfair Competition Law (“UCL”), California Business & Professions
14 Code sections 17200, *et seq.*, protects both consumers and competitors by promoting fair
15 competition in commercial markets for goods and services. The UCL prohibits any unlawful, unfair,
16 or fraudulent business act or practice. A business practice need only meet one of the three criteria
17 to be considered unfair competition.

18 41. The UCL defines unfair business competition to include any “unlawful, unfair or
19 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal
20 Bus. & Prof. Code § 17200.

21 42. A business act or practice is “unfair” under the Unfair Competition Law if the
22 reasons, justifications, and motives of the alleged wrongdoer are outweighed by the gravity of the
23 harm to the alleged victims.

24 43. Defendant violated the unfair prong of the UCL by advertising prices for its products
25 on shelf tags and displays that do not include the Supply Chain Surcharge and do not inform
26 customers about the Supply Chain Surcharge, leading customers to believe that they are paying one
27 price for the products but then actually charging them an undisclosed, higher price.

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1 44. The gravity of the harm to members of the putative class resulting from these unfair
2 acts and practices outweighs the reasons, justifications, or motives of Defendant. Although
3 Defendant contends that a Supply Chain Surcharge was necessary to offset logistical costs,
4 Defendant did not update its shelf tags or displays to reflect the increased price of each product,
5 thereby leading customers to believe that they would pay a lower price for such products. Through
6 its unfair acts and practices, Defendant improperly obtained money from Plaintiff and the putative
7 class. Plaintiff requests that Defendant restore this money to Plaintiff and all class members.

8 45. A business act or practice is “fraudulent” under the UCL if it is likely to deceive
9 members of the consuming public.

10 46. Defendant’s posting falsely low prices on its shelf tags is fraudulent within the
11 meaning of the UCL because it has deceived Plaintiff and the general public into believing that
12 Defendant is offering merchandise for sale at a retail price at which Defendant does not actually
13 intend to sell the merchandise because of a hidden surcharge. As a result, purchasers, including
14 Plaintiff, have reasonably perceived that they would pay the shelf tag price (less any applicable
15 discounts) when in fact they will pay 4% more for the merchandise due to the surcharge.

16 47. In deciding to purchase merchandise from Defendant, Plaintiff relied on Defendant’s
17 misleading and deceptive representations regarding the validity of its shelf tag prices. These
18 representations played a substantial role in Plaintiff’s decision to purchase merchandise from
19 Defendant, and Plaintiff would not have made this purchase from Defendant in the absence of
20 Defendant’s misrepresentations.

21 48. As a result of the foregoing conduct, Defendant has been unjustly enriched at the
22 expense of Plaintiff and the putative class. Defendant has been unjustly enriched by obtaining
23 revenues and profits that it would not otherwise have obtained absent its false, misleading, and
24 deceptive conduct.

25 49. Through its fraudulent acts and practices, Defendant has improperly obtained money
26 from Plaintiff and the putative class. Plaintiff requests that this Court order Defendant to restore
27 this money to Plaintiff and the putative class and to enjoin Defendant from continuing to violate the
28 UCL.

1 50. An unlawful business practice is anything that can properly be called a business
2 practice and that at the same time is forbidden by law. A business act or practice is “unlawful”
3 under the UCL if it violates any other law.

4 51. California law also prohibits Defendant’s pricing practices. Under Cal. Bus. & Prof.
5 Code § 12024.2(a)(1), (2), it is unlawful for a person, at the time of sale, to “charge an amount
6 greater than the price . . . that is then advertised, posted, marked, displayed, or quoted for that
7 commodity” and to “[c]harge an amount greater than the lowest price posted on the commodity
8 itself or on a shelf tag that corresponds to the commodity, notwithstanding any limitation of the
9 time period for which the posted price is in effect.” Under Cal. Bus. & Prof. Code § 12024.2, each
10 item of merchandise sold in Defendant’s stores is a “commodity.”

11 52. Defendant’s conduct is also unlawful under the CLRA, which prohibits a business
12 from “[a]dvertising goods or services with intent not to sell them as advertised,” Cal. Civil Code §
13 1770(a)(9), and from “[a]dvertising that a product is being offered at a specific price plus a specific
14 percentage of that price unless (A) the total price is set forth in the advertisement, which may
15 include, but is not limited to, shelf tags, displays, and media advertising, in a size larger than any
16 other price in that advertisement, and (B) the specific price plus a specific percentage of that price
17 represents a markup from the seller’s costs or from the wholesale price of the product” Cal. Civ.
18 Code § 1770(a)(20).

19 53. Defendant’s advertising of its merchandise with shelf tags that display a price lower
20 than what Defendant actually charges due to a hidden surcharge also violates Cal. Bus. & Prof. Code
21 § 17500, which outlaws untrue or misleading advertising, as described in greater detail hereinbelow.

22 54. As a result, Defendant has been unjustly enriched at the expense of Plaintiff and
23 members of the proposed Class. Defendant has been unjustly enriched by obtaining revenues and
24 profits that it would not otherwise have obtained as a result of its false, deceptive, and misleading
25 conduct.

26 55. Pursuant to California Business & Professions Code section 17203, Plaintiff seeks
27 equitable relief, including money unlawfully obtained from Plaintiff and the putative class and an
28 order enjoining Defendant from engaging in the unfair, fraudulent, and unlawful conduct described

1 above.

2 **SECOND CAUSE OF ACTION**

3 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW,**

4 **BUS. & PROF. CODE § 17500, *et seq.* (THE "FAL")**

5 56. Plaintiff hereby incorporates by reference the allegations contained in this
6 Complaint.

7 57. The California False Advertising Law prohibits unfair, deceptive, untrue, or
8 misleading advertising, including but not limited to making any statements as part of a plan or
9 scheme with the intent not to sell goods or services at the advertised price.

10 58. As alleged above, Defendant places prices on its shelf tags immediately below or
11 adjacent to items on its store shelves. But these were not the prices at which Defendant intended to
12 or did sell its merchandise; rather, the actual prices are 4% higher than the shelf tag price. This is
13 because Defendant surreptitiously included a 4% "Supply Chain Surcharge" on each item of
14 merchandise purchased in its stores at the point of sale.

15 59. Defendant's practice was unfair, deceptive, and misleading to consumers, who think
16 they are paying the price reflected on the shelf tag or display.

17 60. Through its unfair, deceptive, and misleading acts and practices, Defendant has
18 improperly obtained money from Plaintiff and the putative class. Plaintiff respectfully requests that
19 the Court restore these funds to Plaintiff and the putative class and enjoin Defendant's continuing
20 violations of the FAL to prevent further irreparable harm to consumers.

21 **THIRD CAUSE OF ACTION**

22 **VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT,**

23 **CAL. CIVIL CODE § 1750, *et seq.* (THE "CLRA")**

24 61. Plaintiff hereby incorporates by reference the allegations contained in this
25 Complaint.

26 62. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
27 California Civil Code § 1750, *et seq.* (the "CLRA").

28 63. Plaintiff and each member of the putative class are "consumers" within the meaning

1 of Civil Code § 1761(d).

2 64. Defendant's sale of merchandise at its stores constitutes "transactions" within the
3 meaning of Civil Code § 1761(e).

4 65. The merchandise purchased by Plaintiff and the putative class are "goods" within the
5 meaning of Civil Code § 1761(a).

6 66. Defendant has engaged in unfair methods of competition and unfair and/or deceptive
7 acts or practices against Plaintiff and the putative class in violation of the CLRA by falsely
8 representing that consumers, including Plaintiff, would pay the price reflected on the shelf tags or
9 displays or on merchandise sold on Defendant's store shelves when in fact a 4% "Supply Chain
10 Surcharge" would be added to the price of each item at the point of sale, in violation of Cal. Civ.
11 Code sections 1770(a)(9) (prohibiting "[a]dvertising goods or services with intent not to sell them
12 as advertised"), and 1770(a)(20) (prohibiting "[a]dvertising that a product is being offered at a
13 specific price plus a specific percentage of that price unless (A) the total price is set forth in the
14 advertisement, which may include, but is not limited to, shelf tags, displays, and media advertising,
15 in a size larger than any other price in that advertisement, and (B) the specific price plus a specific
16 percentage of that price represents a markup from the seller's costs or from the wholesale price of
17 the product").

18 67. As a result of these acts and practices, Plaintiff and the putative class were damaged
19 in that Defendant's unlawful and misleading acts and practices impacted the decisions of Plaintiff
20 and the putative class to purchase products from Defendant's stores. Had Defendant's shelf tag
21 prices and prices on merchandise been accurate and without any surcharge added to the price,
22 Plaintiff and the putative class would have obtained a greater benefit than the one actually received.

23 68. Pursuant to Civil Code section 1782, on April 7, 2022, Plaintiff sent Defendant a
24 letter, by certified mail, in which he outlined the foregoing violations of the CLRA and requested
25 that Defendant remedy these violations as to Plaintiff and the putative class. Defendant did not
26 agree to correct, repair, replace, or otherwise rectify the violations alleged herein within thirty (30)
27 calendar days after Defendant's receipt of Plaintiff's letter. Consequently, pursuant to Civil Code
28 section 1782(d), Plaintiff seeks damages, including actual, statutory, and punitive damages.

1 and/or concealment of material facts known to Defendant with the intent to cause injury to the
2 purchasers of its items.

3 78. As a proximate result of Defendant's intentional misrepresentations, Plaintiff and
4 members of the putative class suffered an ascertainable loss and are entitled to relief and
5 compensatory and punitive damages, in an amount to be determined at trial.

6 **FIFTH CAUSE OF ACTION**

7 **NEGLIGENT MISREPRESENTATION**

8 79. Plaintiff hereby incorporates by reference the allegations contained in this
9 Complaint. Plaintiff pleads this cause of action in the alternative to the foregoing cause of action.

10 80. Defendant has made material misrepresentations of fact concerning the prices at
11 which it would sell the merchandise in its stores. In particular, Defendant negligently
12 misrepresented the prices reflected on its shelf tags or displays or on the merchandise itself as being
13 lower than the actual amount customers would pay at the point of sale. As described hereinabove,
14 Defendant did not include the 4% Supply Chain Surcharge in the advertised prices.

15 81. Defendant had no reasonable grounds for believing that its misrepresentations were
16 true.

17 82. Defendant either knew or should have known that Plaintiff and members of the
18 putative class would rely on the false representations and purchase Defendant's items.

19 83. Defendant's false representations of the actual price of its merchandise is objectively
20 material to reasonable consumers, and therefore reliance upon such representations may be
21 presumed as a matter of law.

22 84. Plaintiff and members of the putative class reasonably relied to their detriment on
23 Defendant's false representations, which caused them to purchase items from Defendant and/or pay
24 for purchased items.

25 85. As a proximate result of Defendant's negligent misrepresentations, Plaintiff and
26 members of the putative class have been damaged, in an amount to be determined at the time of
27 trial.

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1 Plaintiff and putative class members.

2 108. Plaintiff and the putative class are therefore entitled to restitution of the
3 supply-chain surcharge paid to Defendant which Defendant has unjustly retained.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, on behalf of himself and on behalf of the other members of the
6 putative class, prays as follows:

7 A. For an order certifying that this action is properly brought and may be maintained as
8 a class action, that Plaintiff be appointed the class representative, and that Plaintiff's counsel be
9 appointed counsel for the class;

10 B. For a declaration that Defendant's practices violate the UCL, FAL, and CLRA, and
11 constitute intentional or, in the alternative, negligent misrepresentation, and that they constitute a
12 breach of contract and unjust enrichment;

13 C. For an award of actual and compensatory damages according to proof against
14 Defendant;

15 D. For an award of appropriate equitable relief, including but not limited to an injunction
16 forbidding Defendant from engaging in the conduct described in this Complaint, and restitution;

17 E. For an award of punitive damages;

18 F. For an order awarding reasonable attorneys' fees and the costs of suit herein,
19 including an award of attorneys' fees and costs pursuant to California Code of Civil Procedure
20 section 1021.5 and California Civil Code section 1780(e);

21 G. For an award of pre- and post-judgment interest; and

22 H. For such other and further relief as may be deemed necessary or appropriate.

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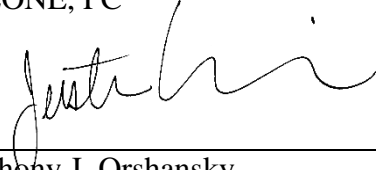
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JURY DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

DATED: June 14, 2023

COUNSELONE, PC



Anthony J. Orshansky
Alexandria R. Kachadoorian
Justin Kachadoorian
*Attorneys for Plaintiff Marche Meeks and
the Putative Class*