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10
11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA
13

14 CHRISITINA CHASE, on behalf of
15 herself and all others similarly situated,
16 Plaintiff,

17 v.

18 HOBBY LOBBY STORES, INC., an
19 Oklahoma corporation, and DOES 1
20 through 50, inclusive,
21 Defendant.

Case No.: '17CV0881 GPC BLM

CLASS ACTION COMPLAINT

1. **Violation of California's Unfair Competition Laws ("UCL"); California Business & Professions Code Sections 17200, et seq.;**
2. **Violation of California's False Advertising Laws ("FAL"); California Business & Professions Code Sections 17500, et seq.;**
3. **Violations of California Consumer Legal Remedies Act ("CLRA"); California Civil Code Sections 1750, et seq.**

[DEMAND FOR JURY TRIAL]

1 Plaintiff CHRISTINA CHASE brings this action on behalf of herself and all others
2 similarly situated against Defendant HOBBY LOBBY STORES, INC. (“Hobby Lobby”),
3 and states:

4 **I. NATURE OF ACTION**

5 1. “If everyone is getting a deal, is anyone really getting a deal?”¹ This class
6 action targets Hobby Lobby’s unlawful, unfair, and fraudulent business practice of
7 advertising fictitious prices and corresponding phantom discounts on their Hobby Lobby
8 branded and/or trademarked lines of merchandise. This practice of false reference pricing
9 occurs where a retailer fabricates a fake regular, original, and/or former reference price,
10 and then offers an item for sale at a deep “discounted” price. The result is a sham price
11 disparity that misleads consumers into believing they are receiving a good deal and induces
12 them into making a purchase. Retailers drastically benefit from employing a false
13 reference-pricing scheme and experience increased sales.

14 2. The California legislature prohibits this misleading practice. The law
15 recognizes the reality that consumers often purchase merchandise marketed as being “on
16 sale” purely because the proffered discount seemed too good to pass up. Accordingly,
17 retailers have an incentive to lie to customers and advertise false sales. The resulting harm
18 is tangible—the bargain hunter’s expectations about the product she purchased is that it
19 has a higher perceived value and she may not have purchased the product but for the false
20 savings.

21 3. Hobby Lobby utilizes a false and misleading reference price in the marketing
22 and selling of Hobby Lobby branded and/or trademarked merchandise at its retail stores.
23 Hobby Lobby advertises its merchandise for sale by attaching a price tag on the item that
24

25
26 ¹ David Streitfeld, *It’s Discounted, but is it a Deal? How List Prices Lost Their Meaning*,
27 New York Times, [https://www.nytimes.com/2016/03/06/technology/its-discounted-but-](https://www.nytimes.com/2016/03/06/technology/its-discounted-but-is-it-a-deal-how-list-prices-lost-their-meaning.html)
28 [is-it-a-deal-how-list-prices-lost-their-meaning.html](https://www.nytimes.com/2016/03/06/technology/its-discounted-but-is-it-a-deal-how-list-prices-lost-their-meaning.html), (March 6, 2016), last accessed April
28, 2017.

1 sets forth a fictitious “Marked” price. *See e.g.* Exhibit A. The “Marked” price is then
2 substantially discounted from a “__% OFF” price depicted on corresponding price placards
3 adjacent to the respective items. *See e.g.* Exhibit B. The “__% OFF” price represents the
4 percentage of the savings the customer is purportedly saving off the “Marked” reference
5 price by purchasing the product.

6 4. However, the “Marked” price is a total fiction. The only stores in which the
7 Hobby Lobby branded and/or trademarked merchandise is actually sold is at the Hobby
8 Lobby retail stores. Thus, the only market price for the Hobby Lobby branded and/or
9 trademarked merchandise is the price at which the merchandise is sold in the Hobby Lobby
10 retail stores, since Hobby Lobby is the only “market” for Hobby Lobby branded and/or
11 trademarked merchandise.

12 5. The Hobby Lobby branded and/or trademarked merchandise is never offered
13 for sale, nor actually sold, at the represented “Marked” price. Thus, the “Marked” price is
14 false and is used exclusively to induce consumers into believing that the merchandise was
15 once sold at the “Marked” price and from which the false and discount and corresponding
16 “__% OFF” price is derived. Hobby Lobby’s deceptive pricing scheme has the effect of
17 tricking consumers into believing they are receiving a significant deal by purchasing
18 merchandise at a steep discount, when in reality, consumers are paying for merchandise at
19 its regular or original retail price.

20 6. The advertised discounts are fictitious because the regular or original
21 reference price, or “Marked” price, do not represent a *bona fide* price at which Hobby
22 Lobby previously sold a substantial quantity of the merchandise for a reasonable period of
23 time as required by the Federal Trade Commission (“FTC”). In addition, the represented
24 “Marked” price was not the prevailing market retail price within the three months
25 immediately preceding the publication of the advertised former “Market” price, as required
26 by California law.

27 7. Through its false and misleading marketing, advertising, and pricing scheme,
28 Hobby Lobby violated and continues to violate, California and federal law prohibiting

1 advertising goods for sale as discounted from former prices that are false, and prohibiting
2 misleading statements about the existence and amount of price reductions. Specifically,
3 Hobby Lobby violated and continues to violate: California's Unfair Competition Law,
4 Business and Professions Code §§ 17200, *et seq.* (the "UCL"); California's False
5 Advertising Law, Business and Professions Code §§ 17500, *et seq.* (the "FAL"); the
6 California Consumer Legal Remedies Act, Civil Code §§ 1750, *et seq.* (the "CLRA"); and
7 the Federal Trade Commission Act ("FTCA"), which prohibits "unfair or deceptive acts or
8 practices in or affecting commerce" (15 U.S.C. § 45(a)(1)) and false advertisements (15
9 U.S.C. § 52(a)).

10 8. Plaintiff brings this action on behalf of herself and other similarly situated
11 consumers who have purchased one or more Hobby Lobby branded and/or trademarked
12 merchandise at Defendant's Hobby Lobby retail stores that were deceptively represented
13 as discounted from false former "Marked" prices. Plaintiff seeks to halt the dissemination
14 of this false, misleading, and deceptive pricing scheme, to correct the false and misleading
15 perception it has created in consumer's minds, and to obtain redress for those who have
16 purchased merchandise tainted by this deceptive pricing scheme. Plaintiff also seeks to
17 enjoin Hobby Lobby from using false and misleading misrepresentations regarding retail
18 price comparisons in their labeling and advertising permanently. Further, Plaintiff seeks
19 to obtain damages, restitution, and other appropriate relief in the amount by which Hobby
20 Lobby was unjustly enriched as a result of its sales of merchandise offered at a false
21 discount.

22 9. Finally, Plaintiff seeks reasonable attorneys' fees pursuant to California Code
23 of Civil Procedure § 1021.5, as this lawsuit seeks the enforcement of an important right
24 affecting the public interest and satisfies the statutory requirements for an award of
25 attorneys' fees.

26 II. JURISDICTION AND VENUE

27 10. This Court has original jurisdiction of this Action pursuant to the Class Action
28 Fairness Act, 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interests and

1 costs, exceeds the sum or value of \$5,000,000 and at least some members of the proposed
2 Class have a different citizenship from Hobby Lobby.

3 11. The Southern District of California has personal jurisdiction over the
4 defendant named in this action because Hobby Lobby is a corporation or other business
5 entity authorized to conduct and does conduct business in the State of California. Hobby
6 Lobby is registered with the California Secretary of State to do sufficient business with
7 sufficient minimum contacts in California, and/or otherwise intentionally avails itself of
8 the California market through the ownership and operation of over 50 retail stores within
9 the State of California and over 750 retail stores nationwide.

10 12. Venue is proper under 28 U.S.C. § 1391(b)(2) because Hobby Lobby transacts
11 substantial business in this District. A substantial part of the events giving rise to Plaintiff's
12 claims arose here.

13 **III. PARTIES**

14 **Plaintiff**

15 13. Christina Chase resides in San Diego, California. Ms. Chase, in reliance on
16 Hobby Lobby's false and deceptive advertising, marketing, and "discount" pricing
17 schemes, purchased a 5" x 7" Green Tree Gallery Shadow Box Display Case Photo Frame
18 for approximately \$8.99 on or around March 1, 2017 at a Hobby Lobby retail store located
19 at 8810 Grossmont Boulevard, La Mesa, California 91942. She also purchased a Master's
20 Touch Fine Art Studio Oil, Acrylic & Watercolor Chisel Blender for approximately \$2.34
21 that same day. Ms. Chase went to the Hobby Lobby store to look for a picture frame for
22 her home and for art supplies.

23 14. Ms. Chase first walked down an aisle lined with photo frames and selected a
24 black wooden 5" x 7" Green Tree Gallery Shadow Box Display Case Photo Frame (the
25 "picture frame"). The back of the picture frame had a white price tag sticker with black
26 print, approximately 2" x 1 1/2" in size (attached hereto as Exhibit A). The price tag on
27 the picture frame listed the "Marked" price as "\$17.99." Among the other picture frames,
28 and prominently displayed upon a shelf in the picture frame aisle, was a white placard with

1 red and black print, approximately 8" x 11" in size. The placard advertised "Photo Frames
2 50% OFF the Marked price" in bold print (attached hereto as Exhibit B).

3 15. After examining the price tag, in particular the "Marked" price as \$17.99, Ms.
4 Chase believed the picture frame had previously been sold for \$17.99 at Hobby Lobby.
5 When she examined the representation on the placard, displaying the discounted sale
6 percentage of "50% OFF the Marked price," or \$8.99, Ms. Chase reasonably believed she
7 was purchasing a picture frame that had a value significantly higher than the \$8.99 purchase
8 price. In short, Ms. Chase believed she was getting a good deal.

9 16. However, this product was never offered for sale or sold at the \$17.99 price,
10 nor was it offered for sale or sold at that price within the 90-day period immediately
11 preceding Ms. Chase's purchase. Therefore, Ms. Chase was damaged by her purchase of
12 the picture frame.

13 17. Next, Ms. Chase walked to the art supplies section of the store and selected a
14 Master's Touch Fine Art Studio Oil, Acrylic & Watercolor, Golden Taklon Chisel Blender,
15 Series 7050 Size 4 (the "paintbrush"). The back of the paintbrush had a white price tag
16 sticker with black print, approximately 2" x 1 1/2" in size. The price tag on the paintbrush
17 listed the "Marked" price as "\$4.69" (attached hereto as Exhibit C). Among the other art
18 supply items, and prominently displayed upon a shelf in the art supply aisle, was a white
19 placard with red and black print, approximately 8" x 11" in size. The placard advertised
20 "Art Supplies 50% OFF the Marked price" in bold print.

21 18. After examining the price tag, in particular the "Marked" price as \$4.69, Ms.
22 Chase believed the paintbrush had previously been sold for \$4.69 at Hobby Lobby. When
23 she examined the representation on the placard, displaying the discounted sale percentage
24 of "50% OFF the Marked price," or \$2.34, Ms. Chase reasonably believed she was
25 purchasing a paintbrush that had a value significantly higher than the \$2.34 purchase price.
26 In short, Ms. Chase believed she was getting a good deal.

27 19. However, this product was also never offered for sale or sold at the \$4.69
28 price, nor was it offered for sale or sold at that price within the 90-day period immediately

1 preceding Ms. Chase's purchase. Therefore, Ms. Chase was damaged by her purchase of
2 the paintbrush.

3 **Defendant**

4 20. Plaintiff is informed and believes, and upon such information and belief
5 alleges, Defendant Hobby Lobby Stores, Inc. is a privately held, Oklahoma corporation
6 with its principal place of business in Oklahoma City, Oklahoma. Defendant operates
7 Hobby Lobby retail stores and the hobbylobby.com website, and advertises, markets, and
8 distributes, and/or sells home décor, arts, crafts, hobby supplies, and other accessories in
9 California and throughout the United States.

10 21. Plaintiff does not know the true names or capacities of the persons or entities
11 sued herein as DOES 1-50 inclusive, and therefore sues such Defendants by such fictitious
12 names. Plaintiff is informed and believes, and upon such information and belief alleges,
13 that each of the DOE Defendants is in some manner legally responsible for the damages
14 suffered by Plaintiff and the Class members, as alleged herein. Plaintiff will amend this
15 Complaint to set forth the true names and capacities of these Defendants when they have
16 been ascertained, along with appropriate charging allegations, as may be necessary.

17 **IV. FACTUAL BACKGROUND**

18 **The Fraudulent Sale Discounting Scheme**

19 22. Hobby Lobby is the largest privately owned arts-and-crafts retailer in the
20 world, operating approximately 750 stores in the United States and over 50 stores in
21 California, and earning approximately \$4 billion in revenue in 2015. Hobby Lobby sells
22 merchandise including home décor, picture framing, decorative accessories, woodcrafts,
23 jewelry making, fabrics, floral, party and wedding supplies, holidays, and arts. Hobby
24 Lobby directly markets its merchandise to consumers in the State of California and
25 throughout the United States via its in-store advertisements and its e-commerce website
26 (www.hobbylobby.com). Hobby Lobby sells a variety of merchandise from its own brand
27 and/or trademark, as well as from various manufacturers. This case involves only the
28

1 Hobby Lobby branded and/or trademarked products sold by Hobby Lobby at its retail
2 stores.

3 23. The Hobby Lobby branded and/or trademarked products sold in the Hobby
4 Lobby retail stores are exclusively sold at Hobby Lobby and they are not sold anywhere
5 else. Thus, there is no other market for the Hobby Lobby branded and/or trademarked
6 products sold at Hobby Lobby other than at Defendant's Hobby Lobby retail stores.

7 24. Hobby Lobby engages in a scheme to defraud its customers by perpetually
8 discounting its merchandise in its retail stores. Hobby Lobby consistently advertises its
9 merchandise with a regular "Marked" price and a corresponding "__% OFF" sale price.
10 The "Marked" price conveys to the customer the purported regular price of the item. The
11 "__% OFF" sale price conveys to the customer a deeply discounted price at which the item
12 is presently being offered for sale. The two prices (the "Marked" price and the "__% OFF"
13 price) are conveyed to consumers on the price tags and the corresponding price placards,
14 respectively. The price tags are white stickers with black lettering and approximately 2" x
15 1 1/2" in size. *See e.g.* Exhibit A. The price placards are primarily white with black and red
16 print and approximately 8" x 11" in size. *See e.g.* Exhibit B.

17 25. Additionally, Hobby Lobby continuously advertises its fictitious discounts
18 using in-store flyers. Upon entering the store, consumers are confronted with a 5'-tall
19 metal stand that displays a large white informational advertisement depicting images of
20 various items and listing the purported "__% OFF" discounts for each corresponding item
21 offered in the store. Immediately underneath the large informational advertisement is a
22 small receptacle maintaining a stack of 8" x 11" paper flyers depicting the same
23 advertisement and the "__% OFF" discounts described above. The in-store flyers depict
24 the "__% OFF" discounts Hobby Lobby offers at any given week. An example of the in-
25 store flyer is attached hereto as Exhibit D.

26 26. However, at no time is the Hobby Lobby merchandise ever offered for sale
27 anywhere at the "Marked" price. The "Marked" price is merely a false reference price,
28 which Hobby Lobby utilizes to deceptively manufacture a deeply discounted sale price

1 referred to as the “__% OFF” price on the merchandise sold at the Hobby Lobby retail
2 stores during the class period.

3 27. This practice is not accidental. Rather, this practice is a fraudulent scheme
4 intended to deceive consumers into: 1) making purchases they otherwise would not have
5 made; and/or 2) paying substantially more for merchandise consumers believed was
6 heavily discounted and thus, worth more than its actual value.

7 28. Retailers, including Hobby Lobby, understand that consumers are susceptible
8 to a good bargain, and therefore, Hobby Lobby has a substantial interest in lying in order
9 to generate sales. A product’s “regular” or “original” price matters to consumers because
10 it serves as a baseline upon which consumers perceive a product’s value. In this case,
11 Hobby Lobby has marked its merchandise with a “Marked” price, which it intends to be
12 the equivalent of a “regular” or “original” price. The regular and/or original price conveys
13 to consumers, including Ms. Chase, “the product’s worth and the prestige that ownership
14 of the product conveys.” *See Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1106 (9th Cir. 2013)
15 (citing Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative*
16 *or Deceptive?*, 11 J. Pub. Pol’y & Mktg. 52, 55 (Spring 1992) (“By creating an impression
17 of savings, the presence of a higher reference price enhances subjects’ perceived value and
18 willingness to buy the product.”); *id.* at 56 (“[E]mpirical studies indicate that as discount
19 size increases, consumers’ perceptions of value and their willingness to buy the product
20 increase, while their intention to search for a lower price decreases.”).

21 29. Hobby Lobby’s pricing advertisements uniformly include both the false
22 regular or original price (the “Marked” price) with a corresponding discount price (“__%
23 OFF” price) displayed on pricing placards adjacent to the products. This uniform scheme
24 intends to and does provide misinformation to the customer. This misinformation
25 communicates to consumers, including Ms. Chase, that the Hobby Lobby products have a
26 greater value than the advertised “__% OFF” sale price.

1 30. As the Ninth Circuit recognizes, “[m]isinformation about a product’s ‘normal’
 2 price is . . . significant to many consumers in the same way as a false product label would
 3 be.” *See Hinojos*, 718 F.3d at 1106.

4 **Plaintiff’s Investigation**

5 31. Plaintiff’s investigation of Hobby Lobby revealed that Hobby Lobby’s
 6 branded and/or trademarked merchandise is priced uniformly. That is, Hobby Lobby
 7 merchandise sold at Hobby Lobby bears a price tag with a false “Marked” price and the
 8 corresponding price placard bears a substantially discounted “__% OFF” sale price.
 9 Plaintiff’s investigation confirmed that Hobby Lobby’s photo frames and paintbrushes
 10 were priced with false “Marked” prices and corresponding “__% OFF” price in the 90-day
 11 period immediately preceding Plaintiff’s purchase of her picture frame and paintbrush.

12 32. Plaintiff’s investigation cataloged the pricing practices at three Hobby Lobby
 13 retail stores in San Diego County, including: 40 North Avenue, Chula Vista, California
 14 91910 (“Chula Vista”), 8810 Grossmont Boulevard, La Mesa, California 91942 (“La
 15 Mesa”), and 553 Grand Avenue, San Marcos, California 92078 (“San Marcos”). The false
 16 “Marked” price and corresponding purported “__% OFF” pricing scheme was both
 17 uniform and identical at all stores investigated. For example, Plaintiff’s investigation
 18 revealed the following items were continuously discounted at the stores indicated in the
 19 time periods indicated:

20

Item	“Marked” Price	“__% OFF” Price	Continuously discounted from (at least)	Discounted Through	Stores Observed	Photo Exhibit
All Hobby Lobby Branded and/or Trademarked Photo Frames		50% Off	January 13, 2017	Present	Chula Vista La Mesa San Marcos	

21
22
23
24
25
26
27

1	<u>Frames:</u>	\$17.99	50% Off	November 30, 2016	At least March 1, 2017	Chula Vista La Mesa San Marcos	A
2	Green Tree						
3	Gallery						
4	Black						
5	Wooden 5" x						
6	7" Shadow						
7	Box Display						
8	Case						
9	<u>Frames:</u>	\$14.99	50% Off	January 13, 2017	Present	Chula Vista La Mesa San Marcos	E
10	Green Tree						
11	Gallery						
12	Black 5" x						
13	7" Photo						
14	Frame						
15	<u>Art Supplies:</u>	\$4.69	50% Off	November 30, 2016	At least March 1, 2017	Chula Vista La Mesa San Marcos	C
16	Master's						
17	Touch Fine						
18	Art Studio						
19	Oil, Acrylic						
20	&						
21	Watercolor,						
22	Golden						
23	Taklon						
24	Chisel						
25	Blender,						
26	Series 7050						
27	Size 4						
28	<u>Home</u>	\$39.99	50% Off	January 24, 2017	Present	Chula Vista La Mesa San Marcos	F
29	<u>Décor:</u>						
30	White						
31	Wooden						
32	Lettered						
33	Cut-Out						
34	All Hobby		30% Off	January 13, 2017	Present	Chula Vista La Mesa	
35	Lobby						
36	Branded						
37	and/or						

1	Trademarked Furniture					San Marcos	
2							
3	<u>Furniture:</u> Small White Barstool with Wooden Legs	\$49.99	30% Off	February 2, 2017	Present	Chula Vista La Mesa San Marcos	G
4							
5							
6							
7							
8	<u>Furniture:</u> Large White Barstool with Wooden Legs	\$119.99	30% Off	January 13, 2017	Present	Chula Vista La Mesa San Marcos	H
9							
10							
11							
12							
13	<u>Furniture:</u> Multi- Colored Liberty Drawers Chest	\$427.99	30% Off	At least September 29, 2016	Present	La Mesa	I
14							
15							
16							
17	<u>Floral:</u> Floral Stems Assorted Variety	\$9.99	50% Off	September 28, 2016	At least March 1, 2017	Chula Vista La Mesa San Marcos	J
18							
19							
20							
21	<u>Fabric:</u> Home Décor Fabrics	\$16.99/yard	30% Off	January 13, 2017	Present	Chula Vista La Mesa San Marcos	K
22							
23							
24	<u>Furniture:</u> Gold Sequined Dress Mannequin	\$99.99	30% Off	At least September 29, 2016	Present	Chula Vista La Mesa San Marcos	L
25							
26							
27							
28							

1 33. The fraudulent pricing scheme applies to all Hobby Lobby branded and/or
2 trademarked merchandise offered on sale at every Hobby Lobby retail store, including the
3 picture frame and paintbrush purchased by Ms. Chase on March 1, 2017. By way of
4 example, all items in the above referenced chart were offered at a “__% OFF” price
5 substantially less than their “Marked” price for every day Plaintiff’s investigation was
6 conducted and for well over 90 days at a time.

7 34. In fact, as the date of this filing, all Hobby Lobby branded and/or trademarked
8 merchandise offered for sale at the Hobby Lobby retail stores that Plaintiff’s counsel
9 investigated, including the picture frame and paintbrush Ms. Chase purchased, remained
10 on sale at the “__% OFF” discounted prices.

11 **Plaintiff and the Class Are Injured by Hobby Lobby’s Deceptive Pricing Scheme**

12 35. The “Marked” price listed and advertised on Hobby Lobby’s products are fake
13 reference prices, utilized only to perpetuate Hobby Lobby’s fake-discount scheme.

14 36. Hobby Lobby knows that its comparative price advertising is false, deceptive,
15 misleading, and unlawful under California, federal, and other state laws.

16 37. Hobby Lobby fraudulently concealed from and intentionally failed to disclose
17 to Plaintiff and other members of the Class the truth about its advertised discount prices
18 and former reference prices.

19 38. At all relevant times, Hobby Lobby has been under a duty to Plaintiff and the
20 Class to disclose the truth about its false discounts.

21 39. Plaintiff relied upon Hobby Lobby’s artificially inflated “Marked” price and
22 false discounts when purchasing the picture frame and paintbrush from Hobby Lobby.
23 Plaintiff would not have made such purchase but for Hobby Lobby’s representations
24 regarding the false “Marked” price and the fictitious sales price of the merchandise.
25 Plaintiff may in the future shop at Hobby Lobby’s retail stores.

26 40. Plaintiff and the Class reasonably and justifiably acted and relied on the
27 substantial price differences that Hobby Lobby advertised, and made purchases believing
28 that they were receiving a substantial discount on an item of greater value than it actually

1 was. Plaintiff, like other Class members, was lured in, relied on, and was damaged by the
2 deceptive pricing scheme that Hobby Lobby carried out.

3 41. Hobby Lobby intentionally concealed and failed to disclose material facts
4 regarding the truth about false former price advertising in order to provoke Plaintiff and
5 the Class to purchase merchandise in its Hobby Lobby retail stores.

6 **V. CLASS ALLEGATIONS**

7 42. Plaintiff brings this action on behalf of herself and all other similarly situated
8 Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil
9 Procedure and seeks certification of the following Class against Hobby Lobby for
10 violations of California state laws:

11 All persons who, within the State of California, from May 1, 2013 through the
12 present (the "Class Period"), purchased from Hobby Lobby one or more
13 Hobby Lobby branded and/or trademarked products at discounts from the
14 advertised "Marked" price and who have not received a refund or credit for
their purchase(s).

15 Excluded from the Class are Hobby Lobby, as well as its officers, employees, agents,
16 or affiliates, and any judge who presides over this action, as well as all past and present
17 employees, officers, and directors of Hobby Lobby. Plaintiff reserves the right to expand,
18 limit, modify, or amend this class definition, including the addition of one or more
19 subclasses, in connection with her motion for class certification, or at any other time, based
20 upon, *inter alia*, changing circumstances and/or new facts obtained during discovery.

21 43. **Numerosity:** The class members are so numerous that joinder of all members
22 is impracticable. Plaintiff is informed and believes that the proposed Class contains
23 hundreds of thousands of individuals who have been damaged by Hobby Lobby's conduct
24 as alleged herein. The precise number of Class members is unknown to Plaintiff.

25 44. **Existence and Predominance of Common Questions of Law and Fact:** This
26 action involves common questions of law and fact, which predominate over any questions
27 affecting individual Class members. These common legal and factual questions include,
28 but are not limited to, the following:

- 1 a. Whether, during the Class Period, Hobby Lobby used false “Marked”
2 price labels and falsely advertised price discounts on its branded and/or
3 trademarked products sold in its Hobby Lobby retail stores;
- 4 b. Whether, during the Class Period, the “Marked” prices advertised by
5 Hobby Lobby were the prevailing market prices for the respective
6 Hobby Lobby branded and/or trademarked merchandise during the
7 three months preceding the dissemination and/or publication of the
8 advertised former prices;
- 9 c. Whether Hobby Lobby’s alleged conduct constitutes violations of the
10 laws asserted;
- 11 d. Whether Hobby Lobby engaged in unfair, unlawful, and/or fraudulent
12 business practices under the laws asserted;
- 13 e. Whether Hobby Lobby 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; and
- 16 g. Whether an injunction is necessary to prevent Hobby Lobby from
17 continuing to use false, misleading, or illegal price comparison.

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

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

27 47. **Superiority:** The nature of this action and the nature of the laws available to
28 Plaintiff and the Class make the use of the class action format a particularly efficient and

1 appropriate procedure to afford relief to her and the Class for the wrongs alleged. The
2 damages or other financial detriment suffered by individual Class members is relatively
3 modest compared to the burden and expense that would be entailed by individual litigation
4 of their claims against Hobby Lobby. It would thus be virtually impossible for Plaintiff
5 and Class members, on an individual basis, to obtain effective redress for the wrongs done
6 to them. Absent the class action, Class members and the general public would not likely
7 recover, or would not likely have the chance to recover, damages or restitution, and Hobby
8 Lobby will be permitted to retain the proceeds of its fraudulent and deceptive misdeeds.

9 48. All Class members, including Plaintiff, were exposed to one or more of Hobby
10 Lobby's misrepresentations or omissions of material fact claiming that former "Marked"
11 prices were in fact *bona fide*. Due to the scope and extent of Hobby Lobby's consistent
12 false "discount" price advertising scheme, disseminated in a years-long campaign to
13 California consumers, it can be reasonably inferred that such misrepresentations or
14 omissions of material fact were uniformly made to all members of the Class. In addition,
15 it can be reasonably presumed that all Class members, including Plaintiff, affirmatively
16 acted in response to the representations contained in Hobby Lobby's false advertising
17 scheme when she purchased her picture frame and paintbrush at the Hobby Lobby retail
18 store.

19 49. Hobby Lobby keeps extensive computerized records of its customers through,
20 *inter alia*, customer loyalty programs and general marketing programs. Hobby Lobby as
21 one or more databases through which a significant majority of Class members may be
22 identified and ascertained, and it maintains contact information, including email and home
23 addresses, through which notice of this action could be disseminated in accordance with
24 due process requirements.

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1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Violation of California's Unfair Competition Law ("UCL")**
4 **California Business & Professions Code Section 17200, et seq.**

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

7 51. The UCL defines "unfair business competition" to include any "unlawful,
8 unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or
9 misleading" advertising. Cal. Bus. & Prof. Code § 17200.

10 52. The UCL imposes strict liability. Plaintiff need not prove that Hobby Lobby
11 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—
12 but only that such practices occurred.

13 ***"Unfair" Prong***

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

19 54. Hobby Lobby's actions constitute "unfair" business practices because, as
20 alleged above, Hobby Lobby engaged in misleading and deceptive price comparison
21 advertising that represented false "Marked" prices and corresponding deeply discounted
22 " % OFF" prices. The " % OFF" prices were nothing more than fabricated "regular"
23 prices leading to phantom markdowns. Hobby Lobby's acts and practices offended an
24 established public policy of transparency in pricing, and engaged in immoral, unethical,
25 oppressive, and unscrupulous activities that are substantially injurious to consumers.

26 55. The harm to Plaintiff and Class members outweighs the utility of Hobby
27 Lobby's practices. There were reasonably available alternatives to further Hobby Lobby's
28 legitimate business interests other than the misleading and deceptive conduct described
herein.

1 ***“Fraudulent” Prong***

2 56. A business act or practice is “fraudulent” under the UCL if it is likely to
3 deceive members of the consuming public.

4 57. Hobby Lobby’s acts and practices alleged above constitute fraudulent
5 business acts or practices as they have deceived Plaintiff and are highly likely to deceive
6 members of the consuming public. Plaintiff relied on Hobby Lobby’s fraudulent and
7 deceptive representations regarding its “Marked” prices for products which Hobby Lobby
8 sells exclusively at its Hobby Lobby retail stores. These misrepresentations played a
9 substantial role in Plaintiff’s decision to purchase those products at steep discounts, and
10 Plaintiff would not have purchased those products without Hobby Lobby’s
11 misrepresentations.

12 58. A business act or practice is “unlawful” under the UCL if it violates any other
13 law or regulation.

14 ***“Unlawful” Prong***

15 59. Hobby Lobby’s acts and practices alleged above constitute unlawful business
16 acts or practices as they have violated state and federal law in connection with their
17 deceptive pricing scheme. The Federal Trade Commissions Act (“FTCA”) prohibits
18 “unfair or deceptive acts or practices in or affecting commerce” (15 U.S.C. § 45(a)(1)) and
19 prohibits the dissemination of any false advertisements. 15 U.S.C. § 52(a). Under the
20 Federal Trade Commission, false former pricing schemes, similar to the ones implemented
21 by Hobby Lobby, are described as deceptive practices that would violate the FTCA:

22 (a) One of the most commonly used forms of bargain advertising is to offer a
23 reduction from the advertiser’s own former price for an article. If the
24 former priced is the actual, bona fide price at which the article was offered
25 to the public on a regular basis for a reasonably substantial period of time,
26 it provides a legitimate basis for the advertising of a price comparison.
27 Where the former price is genuine, the bargain being advertised is a true
28 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 a subsequent offer of a large
reduction—the “bargain” being advertised is a false one; the purchaser

1 is not receiving the unusual value he expects. In such a case, the “reduced”
2 price is, in reality, probably just the seller’s regular price.

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

10 16 C.F.R. § 233.1(a) and (b) (emphasis added).

11 60. In addition to federal law, California law also expressly prohibits false former
12 pricing schemes. California’s False Advertising Law, Bus. & Prof. Code § 17501,
13 (“FAL”), entitled “*Worth or value; statements as to former price,*” states:

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

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

23 Cal. Bus. & Prof. Code § 17501(emphasis added).

24 61. As detailed in Plaintiff’s Third Cause of Action below, the Consumer Legal
25 Remedies Act, Cal. Civ. Code § 1770(a)(9), (“CLRA”), prohibits a business from
26 “[a]dvertising goods or services with intent not to sell them as advertised,” and subsection
27 (a)(13) prohibits a business from “[m]aking false or misleading statements of fact
28 concerning reasons for, existence of, or amounts of price reductions.”

62. The violation of any law constitutes an “unlawful” business practice under the
UCL.

1 (Emphasis added).

2 69. The “intent” required by Section 17500 is the intent to dispose of property,
3 and not the intent to mislead the public in the disposition of such property.

4 70. Similarly, this section provides that “no price shall be advertised as a former
5 price of any advertised thing, unless the alleged former prices was the prevailing market
6 price . . . within three months next immediately preceding the publication of the
7 advertisement or unless the date when the alleged former price did prevail is clearly,
8 exactly, and conspicuously stated in the advertisement.” Cal. Bus. & Prof. Code § 17501.

9 71. Hobby Lobby’s routine of advertising discounted prices from false “Marked”
10 prices, which were never the prevailing market prices of those products and were materially
11 greater than the true prevailing prices, was an unfair, untrue, and misleading practice. This
12 deceptive marketing practice gave consumers the false impression that the products were
13 regularly sold on the market for a substantially higher price than they actually were;
14 therefore, leading to the false impression that the Hobby Lobby products were worth more
15 than they actually were.

16 72. Hobby Lobby misled consumers by making untrue and misleading statements
17 and failing to disclose what is required as stated in the Code alleged above.

18 73. As a direct and proximate result of Hobby Lobby’s misleading and false
19 advertisements, Plaintiff and the Class have suffered injury in fact and have lost money.
20 As such, Plaintiff requests that this Court order Hobby Lobby to restore this money to
21 Plaintiff and all Class members, and to enjoin Hobby Lobby from continuing these unfair
22 practices in violation of the UCL in the future. Otherwise, Plaintiff, Class members, and
23 the broader public will be irreparably harmed and/or denied an effective and complete
24 remedy.

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1 **THIRD CAUSE OF ACTION**

2 **Violation of California's Consumers Legal Remedies Act ("CLRA"),**
3 **California Civil Code Section 1750, *et seq.***

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

6 75. This cause of action is brought pursuant to the CLRA, Cal. Civ. Code § 1750,
7 *et seq.* Plaintiff and each member of the proposed Class are "consumers" as defined by
8 Cal. Civ. Code § 1761(d). Hobby Lobby's sale of their merchandise to Plaintiff and the
9 Class were "transactions" within the meaning of Cal. Civ. Code § 1761(e). The products
10 purchased by Plaintiff and the Class are "goods" within the meaning of Cal. Civ. Code §
11 1761(a).

12 76. Hobby Lobby violated and continues to violate the CLRA by engaging in the
13 following practices proscribed by Cal. Civ. Code § 1770(a) in transactions with Plaintiff
14 and the Class which were intended to result in, and did result in, the sale of Hobby Lobby
15 products:

- 16 a. Advertising goods or services with intent not to sell them as advertised;
17 (a)(9);
- 18 b. Making false or misleading statements of fact concerning reasons for,
19 existence of, or amounts of price reductions; (a)(13).

20 77. Pursuant to Section 1782(a) of the CLRA, on May 1, 2017, Plaintiff's counsel
21 notified Hobby Lobby in writing by certified mail of the particular violations of § 1770 of
22 the CLRA and demanded that it rectify the problems associated with the actions detailed
23 above and give notice to all affected consumers of Hobby Lobby's intent to act.

24 78. If Hobby Lobby fails to respond to Plaintiff's letter, fails to agree to rectify
25 the problems associated with the actions detailed above, or fails to give notice to all affected
26 consumers within 30 days of the date of written notice, as proscribed by Section 1782,
27 Plaintiff will move to amend her Complaint to pursue claims for actual, punitive, and
28 statutory damages, as appropriate against Hobby Lobby. As to this cause of action at this
time, Plaintiff seeks only injunctive relief.

1 **VII. PRAYER FOR RELIEF**

2 79. Wherefore, Plaintiff, on behalf of herself and all other members of the Class,
3 requests that this Court award relief against Hobby Lobby as follows:

- 4 a. An order certifying the Class and designating Christina Chase as the
5 Class Representative and her counsel as Class Counsel;
- 6 b. Awarding Plaintiff and the proposed Class members damages;
- 7 c. Awarding restitution and disgorgement of all profits and unjust
8 enrichment that Hobby Lobby retained from Plaintiff and the Class
9 members as a result of its unlawful, unfair, and fraudulent business
10 practices described herein;
- 11 d. Awarding declaratory and injunctive relief as permitted by law or
12 equity, including: enjoining Hobby Lobby from continuing the
13 unlawful practices as set forth herein, and directing Hobby Lobby to
14 identify, with Court supervision, victims of its misconduct and pay
15 them all money they are required to pay;
- 16 e. Order Hobby Lobby to engage in a corrective advertising campaign;
- 17 f. Awarding attorneys' fees and costs; and
- 18 g. For such other and further relief as the Court may deem necessary or
19 appropriate.

20 **VIII. DEMAND FOR JURY TRIAL**

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

22
23 Dated: May 1, 2017

**CARLSON LYNCH SWEET
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/s/ Todd D. Carpenter

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