

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF ALABAMA
 (SOUTHERN DIVISION)**

**DAVID PHILLIPS, ROBIN L.)
 BROWNING as the EXECUTOR of the)
 ESTATE OF DIANE BROWNING,)
 MARY E. CARRARA, and WENDY)
 CALMA, individually and on behalf of)
 the class of persons described herein,)**

Plaintiffs,

v.

) Civil Action No.: 2:16-cv-00837-JEO

HOBBY LOBBY STORES, INC.,)

Defendant.)

FOURTH AMENDED CLASS ACTION COMPLAINT

Plaintiffs David Phillips, Robin Browning, Mary E. Carrara, and Wendy Calma (“Plaintiffs”) state the following as their Fourth Amended Class Action Complaint against Defendant Hobby Lobby Stores, Inc. (“Defendant” or “Hobby Lobby”).

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to its diversity jurisdiction under the Class Action Fairness Act. 28 U.S.C. §1332. There is complete diversity between named Plaintiffs and Defendant in the action, and diversity between

all but Oklahoma class members. This is a class action case where there are more than 100 class members, and the amount in controversy exceeds \$5,000,000.00. Jurisdiction is proper under 28 U.S.C. § 1332 (d).

2. Venue is proper in this Court under 28 U.S.C. §1391 because this is the judicial district in which a substantial part of the events or omissions giving rise to the claims occurred.

II. PARTIES

3. David Phillips is a resident of Shelby County, and is over the age of nineteen (19) years. Mr. Phillips suffered an ascertainable loss and/or monetary damages as a result of the Defendant's unlawful conduct.

4. Robin Browning is the duly appointed Executor of the Estate of Diane Browning. Robin Browning is a resident of Walker County, Alabama, and the Estate of Diane Browning is open in Walker County, Alabama. Robin Browning is over the age of nineteen (19) years. Ms. Browning suffered an ascertainable loss and/or monetary damages as a result of the Defendant's unlawful conduct.

5. Mary E. Carrara is a resident of Peoria County, Illinois, and is over the age of nineteen (19) years. Mrs. Carrara suffered an ascertainable loss and/or monetary damages as a result of Defendant's unlawful conduct.

6. Wendy Calma is a resident of Cobb County, Georgia, and is over the age of nineteen (19) years. Ms. Calma suffered an ascertainable loss and/or monetary damages as a result of Defendant's unlawful conduct.

7. Hobby Lobby Stores, Inc. ("Hobby Lobby") is an Oklahoma Corporation, organized under the laws of the State of Oklahoma, with its principal place of business in Oklahoma City, Oklahoma.

III. NATURE OF CLASS ACTION

8. Hobby Lobby operates, on information and belief, over seven hundred retail stores nationwide, primarily selling arts, crafts, frames, small pieces of furniture and other similar merchandise. Hobby Lobby's merchandise is available for purchase online or in its stores. Through its online presence, Hobby Lobby sells and ships merchandise to all fifty states, Puerto Rico and the District of Columbia.

9. Common law and state consumer protection laws in Alabama, Georgia and Illinois prohibit deceptive advertising and trade practices. By advertising discounts that were not actually provided to its customers, Hobby Lobby violated common law of all fifty (50) states by breaching the contract described below, and the consumer protection laws of Alabama, Georgia and Illinois as described below. Plaintiffs bring this action against Defendant Hobby Lobby for engaging in a systemic scheme of falsely advertising merchandise discounts and "never-ending" sales.

10. In violation of such laws, Hobby Lobby misleads its customers regarding the “regular” price on much of its merchandise. Hobby Lobby’s “regular” price is an artificially inflated price at which the merchandise has never been sold by Hobby Lobby. Rather, it is a fiction created by Hobby Lobby. In further violation of the law, Hobby Lobby offers percentage discount coupons and takes these percentage discount coupons from its artificially inflated price (the “regular” price for which the merchandise never sells) rather than its everyday “regular” sales price. Hobby Lobby systemically refuses to give the advertised percentage discount coupon from the price at which the merchandise “always” sells. Hobby Lobby’s discount scheme operates identically for online and in store purchases.

11. At all times pertinent to this action, Hobby Lobby was utilizing this false and deceptive scheme. Further, Hobby Lobby continues to engage in this unlawful conduct.

12. By advertising and purporting to offer discounts that were and are not actually provided to its customers, Hobby Lobby violated the common law and the various state consumer protection laws of Alabama, Georgia and Illinois as outlined below.

13. Plaintiffs bring this action against Hobby Lobby seeking, *inter alia*, to stop this unlawful practice, recover overcharges paid by customers, and obtain the actual discounts that were denied to the customers.

IV. FACTUAL ALLEGATIONS

A. The Facts Relating to Diane Browning's Hobby Lobby Purchases.

14. On April 2, 2016, Ms. Browning was shopping at Hobby Lobby for craft items, and decided that she would consider buying a chest of drawers.

15. Ms. Browning was told by another customer at the store that she could get 40% off of the purchase price by downloading a coupon onto her phone.

16. Ms. Browning did download the coupon, which stated that she would get 40% off of "one item at regular price only."

17. The small chest was marked as "Always 30% off," at a price of \$202.99. Because the item was marked as "Always" 30% off," Ms. Browning thought that she would get 40% off of that price, for a final price of \$121.80.

18. Ms. Browning did not receive a price of \$121.80 at the register when she went to check out. Instead, the 40% discount was taken off of a "Regular" price of \$289.99, making the price paid by Ms. Browning \$173.99.

19. The "Regular" price was on the item. However, Hobby Lobby's own information shows that this price is anything but "Regular." The ticket said "Furniture always 30% off." Simply put, the "Regular" price is the price at which an item is "regularly" sold. In this case, \$202.99, not an artificial price that does not correspond to any sale of the item made by Hobby Lobby.

20. The above-referenced scheme is not unique to this particular item. Rather, many items are "always" on sale, but coupon discounts are taken from a price the item never sells at, which is most definitely not the regular price referenced in the coupon. Moreover, this scenario plays out, not only for 40% off coupons downloaded onto smart phones, but also for 40% off coupons printed from Hobby Lobby's website, and brought into the store, or clipped from advertisements and other printed sales circulars. The operational language is identical.

B. The Facts Relating to Mr. Phillips' Purchase.

21. Mr. Phillips was also affected by this scheme. On October 23, 2015, Mr. Phillips made a purchase of a museum glass at the Doug Baker Boulevard Hobby Lobby location in Shelby County, Alabama. He used the same 40% off coupon that Ms. Browning did.

22. The museum glass that Mr. Phillips purchased was marked "Always 30% off," and the museum glass indeed, was never sold for a price other than \$91.00.

23. However, instead of getting 40% off of the \$91.00 price, for a total of \$54.60, Mr. Phillips was "given" 40% off of a largely fictional price of \$130.00, and paid \$78.00.

C. The Facts Relating to Mrs. Carrara's Purchases.

24. Mrs. Carrara went to the Hobby Lobby Store in Peoria, Illinois on North University Street on several occasions in 2016. She would always bring in the Hobby Lobby coupon printed in the local newspaper entitling her to 40% off of one item at regular price.

25. The same basic fact pattern outlined above for plaintiffs Phillips and Browning presented itself in the case of Mrs. Carrara. Mrs. Carrara would bring an item up to the register that had an "Always X% Off" tag, and also another, higher, price listed at which the item was "never" sold at.

26. Instead of the 40% discount, which was good for "one item at regular price", being applied to the "Always" price, it was applied to a higher, "never" price, which means that the items did not receive a 40% discount from the "regular" price.

27. Mrs. Carrara made Hobby Lobby purchases from Hobby Lobby on the following dates in 2016: January 14, May 16, July 18, July 21, August 1, August 26, and September 9. She used a debit card for the purchases, but does not have the receipts to set forth the actual amounts like Ms. Browning and Mr. Phillips. However,

on one or more of these occasions she purchased items that were marked “Always X%off” but received her discount from a higher “never” price. Additionally, she did the same thing in 2015 on several occasions.

D. The Facts Relating to Ms. Calma’s Purchase

28. Ms. Calma was also affected by this scheme. On December 10, 2016, Ms. Calma was shopping at the Hobby Lobby location in Cartersville, Georgia. She purchased an item of furniture that had a price marked on it as “Always 30% off” at \$27.99. The merchandise also had a price tag at \$39.99.

29. Ms. Calma, like Browning, Phillips, and Carrara, used a coupon that said it was good for 40% off one item at regular price. However, when she presented the item and coupon at the register, instead of getting 40% off of the \$27.99 price that the item was always sold at, she got 40% off of a fictional price of \$39.99, a price at which the item is never sold at. So instead of paying \$16.95 for the item, she paid \$23.99 for the item, resulting in \$7.20 in damages.

E. The Scope of Hobby Lobby’s Scheme.

30. Hobby Lobby cannot claim that it does not know that advertising "permanent" or "never ending" sales is not misleading. In 2014, it agreed to pay civil penalties in an action brought by the State of New York’s Attorney General over "never ending" sales.

31. Hobby Lobby operates over 700 locations throughout the country. The policies regarding the items permanently on sale, and the 40% off coupons relating to never actually used prices, emanate from Hobby Lobby's corporate offices. These policies, referenced above, are uniform throughout the country and apply to all stores and internet sales and shipments.

32. Hobby Lobby's unlawful conduct was utilized for the purpose of attracting customers to its stores with the promise of discounts that did not ever exist. Hobby Lobby kept its policies secret, thereby allowing its customers to unknowingly pay more than the purported discount price. Hobby Lobby's scheme was designed to avoid detection and to conceal the deception from its customers. By its very nature, Hobby Lobby's deceptive practices were self-concealing.

33. Plaintiffs have suffered an ascertainable loss and/or monetary damages as a result of Hobby Lobby's unlawful conduct.

34. Plaintiffs Browning and Phillips have provided Hobby Lobby with a written demand for relief reasonably describing the foregoing unfair and deceptive practices that caused them to suffer injury, and Hobby Lobby has failed to respond to Plaintiffs' demand.

CLASS ALLEGATIONS

35. Plaintiffs bring this case as a class action in conformity with the 11th Circuit's opinion in Lisk v. Lumber One Wood Preserving, 792 F.3d 1331 (11th Cir. 2015), which held that Rule 23 class actions are maintainable for substantive claims under the Alabama and Georgia Deceptive Trade Practices Act.

36. Class Definition: Pursuant to Fed.R.Civ.P. 23(b)(1), (2) and (3), Plaintiffs bring this action on behalf of themselves and all others similarly situated, as members of the proposed Plaintiff Class and Subclasses:

- a. National Breach of Contract Class: Representatives Browning, Carrara, Phillips, and Calma are the representatives for this class. The class is defined as all persons within the applicable statute of limitations period who purchased goods with a coupon at a Hobby Lobby in the United States, or over the internet at www.hobbylobby.com, that were marked as "always on sale", or on internet purchases where the "regular" price was always stricken through and never charged, but in any case where a price higher than the "sale" price was never charged for the goods, and the coupon discount was taken off of that higher price.
- b. Alabama Deceptive Trade Practices Act Subclass: Representatives Browning and Phillips are the representatives for this class. The class is defined as all persons within the applicable statute of limitations period who purchased goods with a coupon at a Hobby Lobby in Alabama, or from Alabama over the internet at www.hobbylobby.com, that were marked as "always on sale", or on internet purchases where

the “regular” price was always stricken through and never charged, but in any case where a price higher than the “sale” price was never charged for the goods, and the coupon discount was taken off of that higher price.

- c. Illinois Consumer Fraud and Deceptive Trade Practices Act Subclass: Representative Carrara is the representative for this subclass. This class is defined as all persons within the applicable statute of limitations period who purchased goods with a coupon at a Hobby Lobby in Illinois, or from Illinois over the internet at www.hobbylobby.com, that were marked as “always on sale”, or on internet purchases where the “regular” price was always stricken through and never charged, but in any case where a price higher than the “sale” price was never charged for the goods, and the coupon discount was taken off of that higher price.

- d. Georgia Fair Business Practices and Uniform Deceptive Trade Practices Act: Representative Calma is the representative for this class. This class is defined as all persons within the applicable statute of limitations period who purchased goods with a coupon at a Hobby Lobby Store in Georgia, or over the internet through www.hobbylobby.com that were marked as “always on sale”, or on internet purchases where the “regular” prices was always stricken through and never charged, but in any case where the higher price was never charged for the goods, and the discount was taken off of that higher price.

37. Numerosity: The members of each class and subclass are so numerous that their individual joinder would be impracticable in that: (a) the Class includes at least hundreds of individual members; (b) the precise number of Class members and

their identities are unknown to Plaintiffs, but are well known to Hobby Lobby, and can easily be determined through discovery; (c) it would be impractical and a waste of judicial resources for each of the at least hundreds of individual class members to be individually represented in separate actions; and (d) the relatively small amount of damages suffered by the class members does not make it economically feasible for those class members to file individual actions.

38. Commonality/Predominance: Common questions of law and fact predominate over any questions affecting only individual class members. These common legal and factual questions include, but are not limited to, the following:

- a. Whether Hobby Lobby's practices violated the Deceptive Trade Practices Act of Alabama.
- b. Whether Hobby Lobby's practices violated the Deceptive Consumer Fraud and Deceptive Trade Practices Act of Illinois.
- c. Whether Hobby Lobby's practices violated the Georgia Fair Business Practices and Uniform Deceptive Trade Practices Act.
- d. Whether Hobby Lobby took coupon discounts which were supposed to be taken off of regular prices, off of prices that were never used but were simply marked on items as a never used "regular" price.
- e. Whether Plaintiffs are entitled to damages under Alabama and Illinois statutes referenced above.

- f. Whether Hobby Lobby has breached the contracts between it and the class members by the practices described herein.

39. Typicality: Plaintiffs are typical of the claims of the class members and each subclass. Plaintiffs and all class members have been injured by the same wrongful practices engaged in by Hobby Lobby. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the class and subclass members, and are based on the same legal theories for the class and each subclass.

40. Adequacy: Plaintiffs will fully and adequately assert and protect the interests of the class. Plaintiffs and each subclass have counsel experienced in class actions and complex mass tort litigation. Neither Plaintiffs nor their counsel have interests contrary to or conflicting with the interests of the class or subclasses.

41. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims by each of the class and subclass members is economically unfeasible and impractical. While the aggregate amount of the damages suffered by the class and subclasses is in the millions of dollars, the individual damages suffered by each as a result of the wrongful conduct by Hobby Lobby are too small to warrant the expense of individual lawsuits. Even if the individual damages were sufficient to warrant

individual lawsuits, the court system would be unreasonably burdened by the number of cases that would be filed.

42. Plaintiff does not anticipate any difficulties in the management of this litigation management of this litigation.

COUNT I

(Class Claim for Breach of Contract)

43. Plaintiffs incorporate by reference, as if fully set forth herein, the factual allegations contained in paragraphs 1 through 34 above.

44. This claim is brought by representatives Browning, Carrara, Phillips, and Calma on behalf of the National Breach of Contract Class.

45. Plaintiffs and class members entered into contracts with Hobby Lobby when they manifested their acceptance of Hobby Lobby's offer by presenting goods at the Hobby Lobby registers, along with their coupons.

46. Hobby Lobby breached the contract by charging Plaintiffs and the class members a discount off of another, irrelevant, higher, price, as opposed to the regular price of the item.

47. Plaintiffs and the class members have been damaged in an amount calculated as the difference between the price they paid taken off of an illusory, higher, price, and 40% off of the price items were regularly, or "always" sold at.

WHEREFORE, Plaintiffs and the class demand damages in an amount to be determined by struck jury.

COUNT II
(Class Claim Under the Alabama Deceptive Trade Practices Act)

48. Plaintiffs incorporate by reference, as if fully set out herein, the factual allegations contained in paragraphs 1 through 34 above. However, the factual allegations relating specifically to Mrs. Carrara's transactions, paragraphs 24 through 27, and Ms. Calma's transaction, paragraphs 28 and 29, do not apply here.

49. This claim is brought by representatives Browning and Phillips on behalf of the Alabama Deceptive trade Practices Subclass.

50. The Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-1 (1975) *et seq.* sets forth certain actions that are considered to be deceptive, and the remedies for violating those provisions.

51. Ala. Code § 8-19-5 (11) (1975) states that it is unlawful to mak[e] a false or misleading statement of fact concerning the reasons for, existence of, or amounts of, price reductions.

52. The Alabama Deceptive Trade Practices Act provides for a civil action where the commission of acts described by Ala. Code § 8-19-5 "causes monetary damage to a consumer". Ala Code § 8-19-10 (a) (1975).

53. Ms. Browning should have gotten forty percent (40%) off of the "Always" price, because that is the regular price of the goods. As such, she has been injured in the amount of \$52.19. Similarly, Mr. Phillips should have gotten 40% off of the "Always" price. He has been injured in the amount of \$23.40.

54. It is not just the items that Ms. Browning and Mr. Phillips purchased that employ this scheme. Hobby Lobby employs the "coupon" and "permanent sale" schemes on many items, and has throughout the class period. Exactly which items have been sold in this fashion are readily ascertainable from Hobby Lobby's records.

55. Plaintiffs have provided Hobby Lobby with their written demand for relief reasonably describing the foregoing unfair and deceptive practice that caused them to suffer injury, and Hobby Lobby has failed to respond to Plaintiffs' demand.

56. As a result of Hobby Lobby's unlawful conduct, Plaintiffs and class members have suffered damage, and will likely suffer additional injury if Defendant's conduct continues.

WHEREFORE, Plaintiffs, on behalf of themselves, and the class described above, demand damages, including statutory damages where applicable (to be trebled or otherwise increased as permitted by the respective jurisdiction's applicable law), costs, attorney's fees and such other and additional relief deemed appropriate by this court.

COUNT III
**(Class Claim under the Illinois Consumer Fraud and
Deceptive Trade Practices Acts)**

57. Plaintiff Mary Carrara incorporates by reference, as if fully set forth herein, paragraphs 1 through 34, above. However, the facts relating specifically to the Browning and Phillips transactions and those relating to the Calma transaction, do not apply here.

58. This claim is brought by Representative Carrara on behalf of the Illinois Consumer Fraud and Deceptive Trade Practices Act Subclass. The Illinois Consumer Fraud and Deceptive Trade Practices Act is contained at 815 Ill. Comp. Stat. 505/1 (2016) *et. seq.*

59. The Illinois Consumer Fraud Act states that “methods of unfair competition or deceptive acts or practices ... in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived, or damaged thereby ...” 815 ILCS 505/2.

60. The same code section specifically enumerates as an unfair or deceptive act, “any practice described in Section 2 of the ‘Uniform Deceptive Trade Practices Act.’” 815 ILCS 505/2.

61. Section 2 of the Uniform Deceptive Trade Practices Act catalogues a number of practices as deceptive, following the Uniform Deceptive trade Practices

Act. 815 ILCS 510/2. Included in the list of deceptive trade practices is a person making “false or misleading statements of fact concerning the reasons for, existence of, or amounts price reductions.” 815 ILCS 510/2(a)(11). This language mimics the language in the Alabama Act, as well it should when both are patterned after the model act.

62. Like Ms. Browning and Mr. Phillips, Mrs. Carrara should have gotten 40% off of the “Always” price that is the “regular” price of the goods, instead of 40% off of the “never” price, which cannot be considered the “regular” price of the goods. Because Hobby Lobby represents that customers will get 40% off of the “regular” price of the goods, but in reality gives the 40% discount off of a price at which the goods are never sold, it has made a false or misleading statement regarding the reasons, existence of, or amount of its 40% coupon savings and the “Always” price. A discount off of an illusory price is no discount at all.

63. Neither the Illinois Consumer Fraud Act, or the Illinois Deceptive Trade Practices Act require reliance, deception, or damages for a breach to have occurred.

- The Consumer Fraud Act states that actions violating the Uniform Deceptive Trade Practices Act are unlawful “whether any person has in fact been misled, deceived, or damaged thereby.” 815 ILCS 505/2.
- Similarly, the Uniform Deceptive Trade Practices Act states that, “In order to prevail in an action under

this Act, a plaintiff need not prove competition between the parties or actual confusion or misunderstanding.” 815 ILCS 510/2(b).

Remedies Under the Illinois Act

64. The Illinois Consumer and Deceptive Trade Practices Acts provide two remedies, by statute, and Mrs. Carrara, on behalf of the Illinois Consumer Fraud and Deceptive Trade Practices Act Subclass requests the following:

- a. Damages: Pursuant to 815 ILCS 505/10a Mrs. Carrara and the subclass she represents have suffered damages as a result of violations fo the Consumer Fraud Act. Those damages are the difference between the 40% discount off of the “Always” price that they should have received, and the 40% discount off of the “never”, largely fictional price that they actually did receive. That remedy is provided under 815 ILCS 505/10a.
- b. Injunctive Relief: The Illinois statutory scheme specifically provides for injunctive relief. The Code states that in an action commenced under the “Action for actual damages” section, the court “may grant injunctive relief where appropriate ...” 815 ILCS 505/10a(c). Moreover, 815 ILCS 510/3 states that, “A person likely to be damaged by a deceptive trade practice of another may be granted injunctive relief upon terms that the court considers reasonable. Proof of monetary damages, loss of profit or intent to deceive is not required.”

65. Mrs. Carrara was likely to be damaged by the violations of the Deceptive Trade Practices Act, and then was damaged.

66. Pursuant to those grants of authority for injunctive relief under the above-referenced sections, Mrs. Carrara, on behalf of the subclass she represents, requests that Hobby Lobby be enjoined from: (a) advertising prices that are a percentage discount off of another price when the goods are never actually sold at that price; and (b) applying discount coupons from a price at which the goods are never sold at.

67. Plaintiffs also demand, under the Illinois Consumer Fraud and Deceptive Trade Practices Acts, the costs of this action, and a reasonable attorneys' fee.

COUNT IV

(Class Claim under the Georgia Fair Business Practices and Uniform Deceptive Trade Practices Acts)

68. Plaintiff Wendy Calma incorporates by reference, as if fully set forth herein, paragraphs 1 through 34, above. However, the facts specifically relating to the Phillips, Browning, and Carrara transactions do not apply here.

69. This claim is brought by Representative Calma on behalf of the Georgia Fair Business Practices and Uniform Deceptive Trade Practices Acts. The Georgia Fair Business Practices Act is contained at O.C.G.A. § 10-1-390 et seq., and the Georgia Uniform Deceptive Trade Practices Act is contained at O.C.G.A. § 10-1-370 et seq.

70. The Georgia Fair Business Practices Act declares as unlawful, “Making false or misleading statements concerning the reasons for, existence of, or amounts of price reductions.” U.C.G.A. § 10-1-393(b)(11). Similarly, the Georgia Uniform Deceptive Trade Practices Act states that a person engages in a deceptive trade practice when he, “Makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.” O.C.G.A. § 10-1-372(a)(11).

71. Like Browning, Phillips, and Cararra, Ms. Calma should have gotten 40% off of the “Always” price that is most certainly the “regular” price of the goods, instead of 40% off of the “never” price. Because Hobby Lobby represents that customers will get 40% off of the “regular” prices of the goods, but in reality gives a 40% discount off of a price at which the goods are never sold, it has made a false or misleading statement regarding the reason, existence of, or amount of its 40% coupon savings **and** the “Always” price. A discount off of an illusory price is no discount at all.

72. Ms. Calma should have gotten 40% off of the \$27.99 “Always” price for her goods, not 40% off of the \$39.99 “never” price of the goods. As stated above, she has been damaged in the amount of \$7.20.

73. The Georgia Uniform Deceptive Trade Practices Act specifically states that a complainant “need not prove ... actual confusion or understanding.” O.C.G.A. § 10-1-372 (b).

**Remedies Under the
Georgia Uniform Deceptive Trade Practices Act**

74. The Georgia Uniform Deceptive Trade Practices Act provides that, “A person likely to be damaged by a deceptive trade practice of another may be granted an injunction against it under the principles of equity and on terms that the Court considers reasonable. Proof of monetary damage, loss of profits, or intent to deceive is not required.” O.C.G.A. § 10-1-373.

75. Ms. Calma is not only likely to be injured by the deceptive practices outlined herein, but she was injured thereby. As such, she is entitled to an injunction:

- a. enjoining Hobby Lobby from advertising a discount from a price that merchandise is never sold at; and
- b. enjoining Hobby Lobby from computing discounts from prices at which good are never sold.

76. In addition to the injunction referenced above, under the O.C.G.A. § 10-1-373(b), Ms. Calma is entitled to the costs of this action, and a reasonable attorney’s fee because Hobby Lobby “willfully engaged in the trade practice knowing it to be deceptive” by undertaking the practices described herein it knew were a misrepresentation of the true facts, and also where it was aware of the wrongfulness

of the conduct due to the civil penalties it agreed to as the result of the New York attorney general action referenced above.

Remedies Under the Georgia Fair Business Practices Act

77. In addition to the injunctive relief under the Georgia Uniform Deceptive Trade Practices Act, the Georgia Fair Business Practices Act (“FBPA”) provides for a civil remedy for “Any person who suffers injury or damages” as a result of a violation of the practices enumerated in the Fair Business Practices Act. O.C.G.A § 10-1-399(a).

78. The FBPA provides for injunctive relief, and for actual damages. The act also provides for exemplary damages in cases where the violations are intentional, O.C.G.A. § 10-1-399(a).

79. Plaintiff demands, on behalf of the class, the injunctive relief referenced in paragraph 75 above.

80. Plaintiff demands actual damages of \$7.20 for herself, individually, and for the class calculated as the difference between the 40% discount calculation off of the “Always” price, and the 40% discount calculation off of the “never” price. This amount is due to be determined by struck jury.

81. Additionally, pursuant to O.C.G.A. § 10-1-399(a), Plaintiff demands exemplary damages because the violations were and are intentional. Hobby Lobby

intentionally promulgated the policies, and it knew full well that it never sold the items at the “never” price. Moreover, it knew these specific acts were deceptive when it agreed to pay the civil penalty in New York in 2014.

82. O.C.G.A § 10-1-399(b) requires that at least 30 days prior to filing an action under this section, a written demand for relief must be made, identifying the claimant, reasonably describing the unfair or deceptive act or practice, and the injury suffered.

83 This requirement, in this case, is not required for two reasons:

- a. On May 19, 2016, Diane Browning and David Phillips put Hobby Lobby on notice of these practices, and demanded relief, “on behalf of themselves and also on behalf of all Hobby Lobby customers in the United States ...” Ms. Calma is a part of that group, and as such has made the required notice.
- b. Secondly, demand would be futile. The notice section is in place so that one in violation of the Act can make a written tender to the claimant. Hobby Lobby has steadfastly refused to tender any monies

to Browning, Phillips, or Carrara in this action, despite being served with a demand prior to the institution of a Deceptive Trade Practices Act claim against it, and has now been involved in litigation over this issue for six (6) months. Hobby Lobby, through its actions, has shown that notice would be futile.

- c. Because Ms. Calma did not make her purchase until December 10, 2016, it would have been impossible for her to make the required notice, and then to be amended into this action as a plaintiff prior to the Court's January 3, 2016, deadline for adding parties to this action. Forcing Ms. Calma to wait for a tender that Hobby Lobby has demonstrated will not come would only lead to a multiplicity of actions. All parties are best served by having these claims handled in one action.
- d. Finally, Ms. Calma did make the required notice and demand by letter dated December 30, 2016. Ms.

Calma will gladly allow Hobby Lobby to exercise its options prior to the requiring it to answer in this case.

WHEREFORE, all plaintiffs reiterate all demands for relief stated herein, plus any other necessary and available relief under law and equity under the common law and statutory provisions cited herein.

**PLAINTIFF DEMANDS TRIAL BY STRUCK JURY ON
ALL ISSUES SO TRIABLE.**

Respectfully Submitted,

/s/ Brian M. Clark

Brian M. Clark

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Fourth Amended Complaint has been electronically filed with the Clerk of the Court using the CM/ECF system has been served on the following CM/ECF participant on this 3rd Day of January, 2017.

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s/ Brian M. Clark
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