

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

SHELBY CLINE, CRYSTAL JILLSON,
CARMEN PEREZ, and CASSAUNDRA
MAXWELL, each individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

TORRID LLC,

Defendant.

Case No.

**CONSOLIDATED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

OREGON UNLAWFUL TRADE
PRACTICES ACT
CALIFORNIA FALSE ADVERTISING
LAW
CALIFORNIA CONSUMER LEGAL
REMEDIES ACT
CALIFORNIA UNFAIR COMPETITION
LAW
WASHINGTON CONSUMER
PROTECTION ACT

Claim for: \$10 million
Fee authority: ORS 21.160(1)(e)
Not subject to mandatory arbitration

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1.

Advertised “sale” prices are important to consumers. Consumers are more likely to purchase an item if they know that they are getting a good deal. Further, if consumers think that a sale will end soon, they are likely to buy now, rather than wait, comparison shop, and buy something else.

2.

While there is nothing wrong with a legitimate sale, a fake one—that is, one with made-up regular or former prices (known as “reference prices”), made-up discounts, and made-up expirations—is deceptive and illegal. This case is about false and misleading reference prices, discounts, and sales.

3.

As the Federal Trade Commission advises in its *Guides Against Deceptive Pricing*, it is deceptive to make up “an artificial, inflated price ... for the purpose of enabling the subsequent offer of a large reduction” off that price. 16 C.F.R. § 233.1.

4.

In addition, Oregon’s Unlawful Trade Practices Act (UTPA) expressly prohibits businesses from making “false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions,” O.R.S. § 646.608(j); “false or misleading representations of fact concerning the offering price of, or the person’s cost for real estate, goods or services,” O.R.S. § 646.608(s); representing that goods have “characteristics” that they do not have, O.R.S. § 646.608(e); advertising “goods ... with intent not to provide the real estate, goods or services as advertised,” O.R.S. § 646.608(i); and making “false or misleading statements about a ... promotion,” O.R.S. § 646.608(p).

1 5.

2 The UTPA also prohibits sellers from using misleading price comparisons to advertise
3 their products. O.R.S. § 646.608(ee).

4 6.

5 Furthermore, California's Unfair Competition Law bars unlawful, unfair, and deceptive
6 business practices. *See* Cal. Bus. & Prof. Code § 17200. Likewise, California's False Advertising
7 Law prohibits businesses from making statements they know or should know to be untrue or
8 misleading. Cal. Bus. & Prof. Code § 17500. This includes statements falsely suggesting that a
9 product is on sale, when it actually is not. Moreover, California's False Advertising Law
10 specifically provides that "[n]o price shall be advertised as a former price ... unless the alleged
11 former price was the prevailing market price ... within three months next immediately
12 preceding" the advertising. Cal. Bus. & Prof. Code § 17501.

13 7.

14 California's Consumer Legal Remedies Act prohibits "advertising goods or services with
15 the intent not to sell them as advertised" and specifically prohibits "false or misleading
16 statements of fact concerning reasons for, existence of, or amounts of price reductions." Cal.
17 Civ. Code § 1770(a)(9), (13).

18 8.

19 Likewise, Washington's consumer protection law prohibits deceptive and false
20 discounting and pricing in a materially similar manner. For example, like California's Unfair
21 Competition Law, the Washington Consumer Protection Act prohibits "[u]nfair methods of
22 competition and unfair or deceptive acts or practices." *See* Wash. Rev. Code Ann. § 19.86.020.

23 9.

24 So, as numerous courts have found, fake sales violate these laws.

10.

Defendant Torrid LLC (“Defendant” or “Torrid”) is a direct-to-consumer apparel and intimates brand in North America.¹ The company is “focused on fit and offers high quality products across a broad assortment that includes tops, bottoms, denim, dresses, intimates, activewear, footwear and accessories.”² The products at issue consist of all merchandise advertised at a discount and sold by Defendant through its e-commerce website, Torrid.com, including clothing, jeans, intimates, shoes, and accessories (the “Products”).

11.

Defendant’s website prominently advertises purportedly time-limited, sitewide or virtually sitewide, sales for the Products. These sales offer “X% off” and can be seen on the Torrid.com homepage. Representative examples of the sitewide sales are shown below.



¹ 2024 SEC Form 10-K, Torrid Holdings Inc.

² *Id.*

12.

In addition, on individual Product listing pages, Defendant advertises purported discounts off regular and former prices. These advertisements include a purported discount price alongside a strike-out of a purported regular price and/or a “% off” descriptor:

Full Length Signature Waist Premium Legging

★★★★★ 4.6 (12804) [Write A Review](#) | Item 10208892-00684

Price: ~~\$25.90~~ **\$15.54**
40% Off

13.

But these advertisements are false and misleading. Defendant routinely offers sitewide or virtually sitewide discounts off the purported regular and former prices previously charged on the website. In other words, the sales are not limited in time; instead, they routinely reset and continue to be available (albeit, in certain cases, with a different name or in different amounts). Plus, the reference prices Defendant advertises are not actually Defendant’s regular prices (the prices it usually charges) or the prevailing market prices, because Defendant’s Products are regularly available for less than those prices. The purported discounts Defendant advertises are not the true discount the customer is receiving, and are often not a discount at all, because customers can buy Defendant’s Products at the discount price during an advertised sale or using a discount code.

14.

Plaintiffs purchased Products from Defendant online on www.Torrid.com. Like Defendant’s other customers, when Plaintiffs bought the Products, Defendant advertised that a purported sale was going on, and that the Products were heavily discounted. Plaintiffs believed

1 that the Products that they purchased usually retailed for the displayed regular price. They
2 believed the reference prices were the regular and former prices charged by Defendant, in the
3 recent past and for a substantial time. They further believed that they were getting a substantial
4 discount from the regular price, that the sale would end soon, and that the Products had a market
5 value of the advertised reference prices. These reasonable beliefs are what caused them to buy
6 from Defendant. If they had known that the Products they purchased were not genuinely on sale,
7 they would not have bought them or would have paid less.

8 15.

9 But none of that was true. Defendant's published reference prices were not the true
10 regular prices or the prevailing regular prices. The purported discounts were not true discounts.
11 And the sales Defendant advertised were not really time-limited sales. Again, had Defendant
12 been truthful, Plaintiffs and other consumers would have paid less for the Products, or would not
13 have purchased them at all.

14 16.

15 Plaintiffs bring this case for themselves and the other customers who purchased Products
16 from Defendant's e-commerce website.

17 **Parties.**

18 17.

19 Plaintiff Shelby Cline is domiciled in Columbia County, Oregon.

20 18.

21 Plaintiff Crystal Jillson is domiciled in Los Angeles County, California.

22 19.

23 Plaintiff Carmen Perez is domiciled in Santa Clara County, California.

1 20.

2 Plaintiff Cassaundra Maxwell is domiciled in Snohomish County, Washington.

3 21.

4 The proposed Class includes citizens of Oregon, California, and Washington.

5 22.

6 Defendant Torrid LLC is a California limited liability. On information and belief, its sole
7 member is Torrid Holdings Inc., a Delaware corporation, which in turn is publicly traded on the
8 NYSE under the ticker CURV.

9 **Jurisdiction and Venue.**

10 23.

11 This Court has jurisdiction over Defendant under ORCP 4. Defendant does business in
12 this state. Defendant advertises and sells products to consumers in Oregon, and serves a market
13 for their products in Oregon. Due to Defendant's actions, their products have been marketed and
14 sold to consumers in Oregon and harmed consumers in Oregon. Plaintiffs' claims arise out of
15 Defendant's actions in this forum. Due to Defendant's actions, Plaintiff Cline purchased
16 Products from Defendant in Oregon, and was harmed in Oregon.

17 **Facts.**

18 **Defendant's fake sales and discounts.**

19 24.

20 Defendant makes, sells, and markets the Products. Defendant sells its Products directly
21 to consumers online, through its website, www.Torrid.com. Defendant's website creates an
22 illusion that customers are receiving a limited-time discount and that the Products' advertised
23 regular prices are higher than they truly are. Defendant does this by advertising fake limited-
24 time sales, fake regular prices, and fake discounts based on the fake regular prices.

25.

On any given date, most if not all Products on the website are represented as being discounted from a substantially higher reference price.

26.

For example, 19 randomly selected archived copies of the Torrid.com homepage were reviewed covering the January 12, 2024 and May 13, 2024 period. On 100% of these randomly selected 19 days, sitewide or virtually sitewide sales were advertised—e.g., “35% off regular price” (Jan. 12, Mar. 15), “up to 70% off everything” (Jan. 31), “30% off everything” (Feb. 3, 20), “30-50% off regular price” (Feb. 17), “40% off almost everything even new arrivals” (Mar. 26, Apr. 2), “30% off reg price + clearance” (Apr. 17), and “40% off entire site” (May 1).

Examples are shown below:



27.

An additional 21 screenshots of the Torrid.com homepage between April 1, 2023 and July 28, 2023 were randomly selected and reviewed. Again, on each of these randomly selected 21 days, sitewide or virtually sitewide sales were advertised—e.g., “50% off almost everything” (Apr. 1, May 29, Jun. 7, 9, Jul. 28), “30-60% off everything” or “30-60% off almost everything” (Apr. 4, May 16, 18, 19, Jun. 2, 4, 6, 14), “35% off regular price” (Apr. 20, 27, Jul. 14, 17), “35% off everything” (May 4), “30-50% off almost everything” (May 14, 15). Examples are shown below:



28.

Using these tactics, Defendant leads reasonable consumers to believe that they will get a discount on the Products they are purchasing if they purchase during the promotion period. In other words, Defendant leads reasonable consumers to believe that if they buy now, they will get a Product worth X at a discounted, lower price Y. This creates a sense of urgency: buy now, and

1 you will receive something worth more than you pay for it; wait, and you will pay more for the
2 same thing later.

3 29.

4 Based on Defendant's advertisements, reasonable consumers reasonably believe that the
5 reference prices are Defendant's regular prices (that is, the prices at which the Products
6 ordinarily or typically retail for), and their former prices (that is, the price at which the goods
7 were consistently offered for sale before the limited-time offer went into effect). In other words,
8 reasonable consumers believe that the reference prices Defendant advertises represent the
9 amount that consumers usually have to pay for Defendant's goods, formerly had to pay for
10 Defendant's goods, before the limited-time sale began, and will again have to pay for
11 Defendant's goods when the sale ends. Said differently, reasonable consumers reasonably
12 believe that, prior to the supposed sale, consumers had to pay the reference price to get the item
13 and did not have the opportunity to get a discount from that reference price.

14 30.

15 Reasonable consumers also believe that the reference prices that Defendant advertises
16 represent the true market value of the Products, and that they are the prevailing prices for those
17 Products. Additionally, reasonable consumers believe that they are receiving reductions from
18 Defendant's regular prices, and the market value of the Products, in the amounts advertised.
19 Said differently, reasonable consumers reasonably interpret Defendant's advertisements to mean
20 that, if they buy now, they will receive a price reduction from the price at which Defendant
21 ordinarily sells its Products and a price reduction from the Products' market value. In truth,
22 however, Defendant routinely offers purported reductions off the reference prices it advertises on
23 the website, and ordinarily sells its Products on the website at prices lower than the listed regular
24 prices.

1 31.

2 Defendant's purported "regular" prices were not the prevailing prices during the 90 days
3 immediately preceding Defendant's advertisement of the purported discounts. Defendant makes,
4 and exclusively sells, its apparel Products. Defendant describes itself as follows: "We design,
5 develop and merchandise almost all of our products in-house, under the Torrid®, Torrid Curve®,
6 CURV® and Lovesick® brand names. Our products are exclusive to us, with few exceptions,
7 and provide a consistent quality and fit that we believe she cannot find elsewhere. Our product
8 development is led by a team of highly skilled designers, artists and product engineers. Our core
9 competency is our differentiated, market-leading fit that we achieve . . . [through various
10 strategies]."³

11 32.

12 Because Defendant makes and exclusively sells its Products, its own prices are the
13 prevailing market prices. And, as explained above, because Defendant consistently sells its
14 Products at a purported discount price on the website, the prevailing market prices in the last 90
15 days (and, for that matter, for any period) are consistently lower than the advertised reference
16 prices or "regular prices."

17 33.

18 Further, to the extent Defendant offers the same Products online and in its brick-and-
19 mortar stores, Defendant also regularly offers discounts at its brick-and-mortar stores—typically
20 buy-one-get-one (BOGO) deals. And the Federal Trade Commission (FTC) warns against
21 deceptive BOGO offers. 16 C.F.R. § 233.4. According to the FTC: "Literally, of course, the
22 seller is not offering anything 'free' (i.e., an unconditional gift), or 1/2 free, or for only 1¢, when
23 he makes such an offer, since the purchaser is required to purchase an article in order to receive

24 _____
³ 2024 SEC Form 10-K, Torrid Holdings Inc.

1 the ‘free’ or ‘1¢’ item. It is important, therefore, that where such a form of offer is used, care be
2 taken not to mislead the consumer.” Regardless, as explained above, the Products are regularly
3 available at a discounted price on Torrid.com.

4 34.

5 As a result, Defendant’s reference pricing and purported discount advertising is false and
6 misleading. The reference prices Defendant advertises on the website are not actually
7 Defendant’s regular prices, or the prevailing prices for the Products Defendant sells, and do not
8 represent the true market value for the Products, because Defendant’s Products are regularly
9 available for less than that. The purported discounts Defendant advertises are not the true
10 discount the customer is receiving. Nor are the purported discounts time-limited—they are
11 regularly available.

12 35.

13 By listing false and misleading reference prices and discounts on its website, Defendant
14 misleads consumers into believing that they are getting a good deal.

15 **Defendant’s advertisements are unfair, deceptive, and unlawful.**

16 36.

17 Oregon’s Unlawful Trade Practices Act (UTPA) expressly prohibits businesses from
18 making “false or misleading representations of fact concerning the reasons for, existence of, or
19 amounts of price reductions,” O.R.S. § 646.608(j); “false or misleading representations of fact
20 concerning the offering price of, or the person’s cost for real estate, goods or services,” O.R.S.
21 § 646.608(s); representing that goods have “characteristics” that they do not have, O.R.S.
22 § 646.608(e); advertising “goods ... with intent not to provide the real estate, goods or services
23 as advertised,” O.R.S. § 646.608(i); and making “false or misleading statements about a ...
24 promotion,” O.R.S. § 646.608(p).

37.

In addition, California’s Unfair Competition Law bans unlawful, unfair, and deceptive business practices. *See* Cal. Bus. & Prof. Code § 17200.

38.

California’s False Advertising Law also prohibits businesses from making statements they know or should know to be untrue or misleading. Cal. Bus. & Prof. Code § 17500. This includes statements falsely suggesting that a product is on sale, when it actually is not. Moreover, California’s False Advertising Law specifically provides that “[n]o price shall be advertised as a former price ... unless the alleged former price was the prevailing market price ... within three months next immediately preceding” the advertising. Cal. Bus. & Prof. Code § 17501.

39.

Furthermore, California’s Consumer Legal Remedies Act prohibits “advertising goods or services with the intent not to sell them as advertised” and specifically prohibits “false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.” Cal. Civ. Code § 1770(a)(9), (13).

40.

Like Oregon and California law, Washington’s Consumer Protection Law prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Wash. Rev. Code Ann. § 19.86.020. An act is unfair if “(1) it causes or is likely to cause substantial injury that (2) consumers cannot avoid and that (3) is not ‘outweighed by countervailing benefits’” to consumers or competition. *Merriman v. Am. Guarantee & Liab. Ins. Co.*, 198 Wash. App. 594, 628 (2017). And an act is deceptive if it constitutes “a

1 representation, omission or practice that is likely to mislead' a reasonable consumer." *Panag v.*
2 *Farmers Ins. Co. of Wash.*, 166 Wash. 2d 27, 50 (2009).

3 41.

4 The Federal Trade Commission's regulations prohibit false or misleading "former price
5 comparisons," for example, making up "an artificial, inflated price ... for the purpose of enabling
6 the subsequent offer of a large reduction" off that price. 16 C.F.R. § 233.1. "Other illustrations"
7 of "fictitious price comparisons" include: "An advertiser might use a price at which he never
8 offered the article at all; he might feature a price which was not used in the regular course of
9 business, or which was not used in the recent past but at some remote period in the past, without
10 making disclosure of that fact; he might use a price that was not openly offered to the public, or
11 that was not maintained for a reasonable length of time, but was immediately reduced." *Id.*

12 42.

13 Here, as described in detail above, Defendant made untrue and misleading statements
14 about their prices. Defendant advertised regular and former prices that were not true former
15 prices and were not the prevailing market prices in the three months immediately preceding the
16 advertisement.

17 43.

18 In addition, Defendant advertised goods or services with the intent not to sell them as
19 advertised, for example, by advertising goods having certain former prices and/or market values
20 without the intent to sell goods having those former prices and/or market values. Defendant
21 made false or misleading statements of fact concerning the reasons for, existence of, and
22 amounts of price reductions, including false statements regarding the existence of sitewide sales,
23 and the amounts of price reductions resulting from those sales. And Defendant engaged in
24 unlawful, unfair, and deceptive business practices.

1 44.

2 The UTPA also prohibits sellers from using misleading price comparisons to advertise
3 their products. O.R.S. § 646.608(ee) (citing O.R.S. §§ 646.883 and 646.885). Specifically, it is
4 illegal for a seller to include a price comparison in an advertisement unless “[t]he seller clearly
5 and conspicuously identifies in the advertisement the origin of the price that the seller is
6 comparing to the seller’s current price.” O.R.S. § 646.883. Use of the term “sale” is deemed to
7 identify “the origin of the price that the seller is comparing to the seller’s current price as the
8 seller’s own former price, or in the case of introductory advertisements, the seller’s future price.”
9 O.R.S. § 646.885. And, unless otherwise stated, use of the terms “discount,” “_____ percent
10 discount,” “\$_____ discount,” “_____ percent off,” and “\$_____ off” are “considered to identify
11 the origin of the price that the seller is comparing to the seller’s current price as the seller’s
12 former price, or in the case of introductory advertisements, the seller’s future price.” O.R.S. §
13 646.885.

14 45.

15 As alleged in greater detail above, Defendant uses misleading price comparisons.

16 46.

17 For example, Defendant uses strikethrough pricing without clearly and conspicuously
18 identifying in the advertisement the origin of the price that the seller is comparing to the current
19 price. As shown in the images above, Defendant uses strikethrough sale pricing without any
20 disclosures about where the strikethrough price comes from.

21 47.

22 In addition, as alleged in greater detail above, Defendant uses the words “sale,” and
23 “___% Off,” in its promotions, even when the Products are not offered at a discount as compared
24 to the seller’s former price (or in the case of introductory products, a future price). Defendant

1 also makes no disclosure indicating that the price comparisons are to something other than the
2 former or future price.

3 **Defendant's advertisements harm consumers.**

4 48.

5 Based on Defendant's advertisements, reasonable consumers would expect that the listed
6 reference prices (the prices without the advertised discounts) are regular and former prices at
7 which Defendant consistently and recently sold its Products on the website; that they are the
8 prevailing prices for the Products; and that they represent the true market value of the Products.

9 49.

10 Reasonable consumers would also expect that, if they purchase during the sale, they will
11 receive (at a discount) an item whose regular price and/or market value is the advertised non-
12 discounted price, and that they will receive the advertised discount from that regular price. For
13 example, for items that are purportedly 19% off, reasonable consumers would expect that they
14 are receiving a 19% discount as compared to the regular price, and that the items have a market
15 value of 19% more than what they are spending.

16 50.

17 As explained above, however, Plaintiffs and Class members' reasonable expectations
18 were not met. Instead of receiving Products with a market value equal to the alleged reference
19 prices, they received items worth less. In addition, instead of receiving a significant discount,
20 Plaintiffs and the Class received little or no discount. Thus, Defendant's false advertisements
21 harm consumers by depriving them of the reasonable expectations to which they are entitled.

1 51.

2 In addition, consumers are more likely to buy a product if they believe that the product is
3 on sale and that they are getting a product with a higher regular price and/or market value at a
4 substantial discount.

5 52.

6 Academic studies support a finding a deception. “By creating an impression of savings,
7 the presence of a higher reference price enhances subjects’ perceived value and willingness to
8 buy the product.”⁴ Thus, “empirical studies indicate that, as discount size increases, consumers’
9 perceptions of value and their willingness to buy the product increase, while their intention to
10 search for a lower price decreases.”⁵ [D]ecades of research support the conclusion that
11 advertised reference prices do indeed enhance consumers’ perceptions of the value of the deal.”⁶
12 Indeed, according to studies, “[c]onsumers are influenced by comparison prices even when the
13 stated reference prices are implausibly high.”⁷ “[R]esearch has shown that retailer-supplied
14 reference prices clearly enhance buyers’ perceptions of value” and “have a significant impact on
15 consumer purchasing decisions.”⁸

16 53.

17 Similarly, when consumers believe that an offer is expiring soon, the sense of urgency
18 makes them more likely to buy a product.⁹

19 ⁴ Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative or*
20 *Deceptive?*, 11 J. Pub. Pol’y & Mktg. 52, 55 (Spring 1992).

⁵ *Id.* at 56 (emphasis added).

21 ⁶ Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Believe It Or Not*,
J. of Consumer Affairs, Vol. 36, No. 2, at 287 (Winter 2002).

22 ⁷ *Id.*

23 ⁸ Praveen K. Kopalle & Joan Lindsey-Mullikin, *The Impact of External Reference Price*
On Consumer Price Expectations, 79 J. of Retailing 225 (2003).

24 ⁹ <https://cxl.com/blog/creating-urgency/> (addition of a countdown timer increased
conversion rates from 3.4%-10%); Dynamic email content leads to 400% increase in conversions

1 54.

2 Thus, Defendant's advertisements harm consumers by inducing them to make purchases
3 they otherwise would not have made, based on false information. In addition, Defendant's
4 advertisements artificially increase consumer demand for Defendant's Products. This puts
5 upward pressure on the prices that Defendant can charge for its Products. As a result, Defendant
6 can charge a price premium for its Products, that it would not be able to charge absent the
7 misrepresentations described above. So, due to Defendant's misrepresentations, Plaintiffs and
8 the Class paid more for the Products they bought than they otherwise would have.

9 **Plaintiffs were misled by Defendant's misrepresentations.**

10 ***Plaintiff Shelby Cline***

11 55.

12 In July 2023, Defendant represented on its website that a discount of "50% off" was
13 running. During the above sale, Plaintiff Cline purchased a Soho Studio Refined Crepe Blazer
14 from Defendant online. She purchased the Product from Defendant's website, www.Torrid.com,
15 while living in Columbia County, Oregon.

16 56.

17 At the time that Plaintiff Cline made her purchase, Defendant represented that the
18 Product had a regular price of \$79.98. Plaintiff Cline's order confirmation email from the order
19 represented that Plaintiff Cline's purported discounted price was \$39.99. When Plaintiff Cline
20 made the purchase, she read and relied on the representations on the website that the Product had
21 the published regular and former price, and that this was its market value, and that she was
22 receiving the advertised discount as compared to the regular price. She also relied on the

23
24 _____
for Black Friday email | Adestra (uplandsoftware.com) (400% higher conversation rate for ad with countdown timer).

1 representations that the sale was limited in time, and would end soon. She would not have made
2 the purchase, or would have paid less, if she had known that the Product was not discounted as
3 advertised, and that she was not receiving the advertised discount from the genuine regular and
4 prevailing market price.

5 ***Plaintiff Crystal Jillson***

6 57.

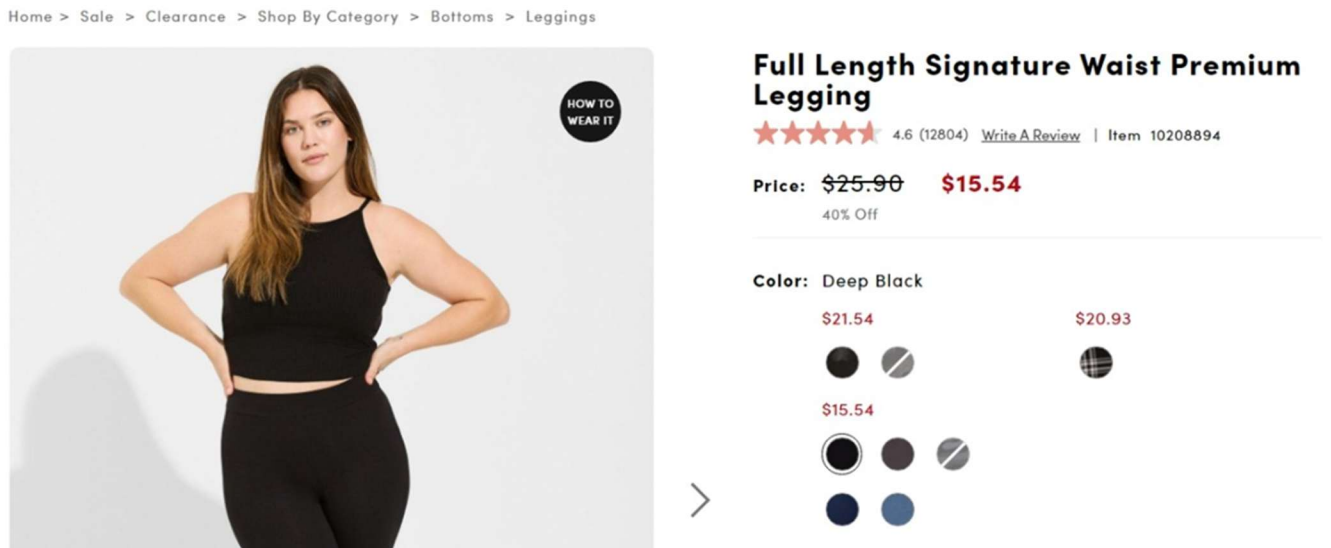
7 On January 11, 2024, Plaintiff Jillson visited the website and purchased two units of
8 Defendant's Full Length Signature Waist Premium Legging. Consistent with archived copies of
9 the website, Plaintiff Jillson saw on the listing page a former or regular price of \$25.90 per unit
10 and an adjacent sale price of approximately "45% off." She then proceeded to purchase the
11 Products with the understanding that she was receiving all advertised discounts off the former
12 and regular prices charged by Defendant.

13 58.

14 On February 28, 2024, Plaintiff Jillson visited the website and purchased two more units
15 of Defendant's Full Length Signature Waist Premium Legging. The product was still advertised
16 as having a former and regular price of \$25.90 per unit. Consistent with archived copies of the
17 website, Plaintiff Jillson saw on the listing page a former or regular price of \$25.90 per unit and
18 an adjacent sale price of approximately 45% off. She then proceeded to purchase the Products
19 with the understanding that she was receiving all advertised discounts off the former and regular
20 prices charged by Defendant.

59.

As of April 24, 2024, the Full Length Signature Waist Premium Legging was still on sale. The product was advertised as having a reference price of \$25.90 and a sale price of \$15.54 for “40% off.” A screenshot is shown below.



60.

Plaintiff Jillson thus viewed and relied on the website’s purported current and limited-time sale promotion. She relied on the above representations that the Products (1) had a former and regular price of the stated reference price, and (2) had been offered for sale on the website at the stated reference price, in the recent past, on a regular basis, for a substantial time. And she relied on the representations that the Products were truly on sale as being sold at a substantial discount for a limited time, such that the products were valued at the false reference price.

61.

The above-listed Products were not substantially marked down or discounted, and any discount she was receiving had been grossly exaggerated. For at least the 90-day period prior to

1 Plaintiff's purchase, and months and years more, Defendant very rarely, if ever, offered any of
2 the discounted items sold on its website at the reference prices.

3 62.

4 Plaintiff Jillson would not have purchased the items at the advertised prices, or would not
5 have paid as much as she did, had Defendant been truthful. Plaintiff was persuaded to make her
6 purchases because of the misleading sale based on false reference prices.

7 ***Plaintiff Carmen Perez***

8 63.

9 On June 19, 2023, Plaintiff Perez visited the website and purchased two units of
10 Defendant's Full Length Signature Waist Flare Pocket Legging. Consistent with archived copies
11 of the website, Plaintiff Perez saw on the listing page a former or regular price of \$39.90 per unit
12 and an adjacent sale price of approximately "50% off." She then proceeded to purchase the
13 Products with the understanding that she was receiving all advertised discounts off the former
14 and regular prices charged by Defendant.

15 64.

16 As of April 24, 2024, the Full Length Signature Waist Flare Pocket Legging was still on
17 sale. The Product was advertised as having a reference price of \$39.90 and a sale price of \$23.94
18 for "40% off." A screenshot is below.



Full Length Signature Waist Flare Pocket Legging

★★★★★ 4.4 (558) [Write A Review](#) | Item 19465622



Great choice! This is top rated.

Price: ~~\$39.90~~ **\$23.94**

40% Off

Final Sale, No Returns or Exchanges

Color: Black

\$27.93

\$23.94



\$19.79

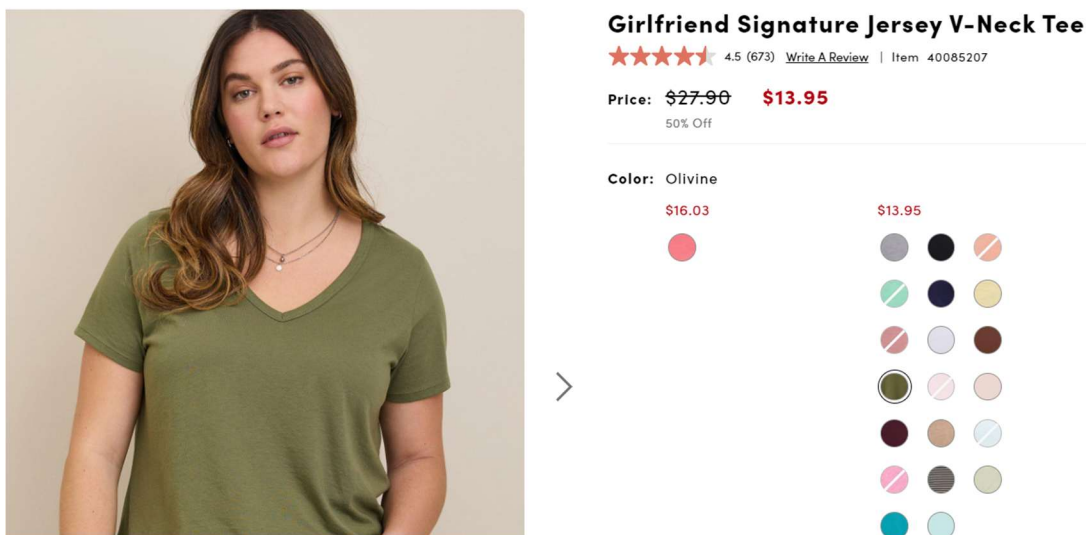


65.

In June 2023, Plaintiff Perez purchased several items of clothing from Defendant, including two units of the Girlfriend Signature Jersey V-Neck Tee. Consistent with archived copies of the website, Plaintiff Perez saw on the listing page a former or regular price of \$27.90 per unit in strikethrough text, and an adjacent sale price of approximately “35% off.” She then proceeded to purchase the Products with the understanding that she was receiving all advertised discounts off the former and regular prices charged by Defendant.

66.

As of April 24, 2024, the Girlfriend Signature Jersey V-Neck Tee was still on sale. The Product was advertised as having a reference price of \$27.90 and a sale price of \$13.95 for “50% off.” A screenshot is below.



67.

Plaintiff Perez thus viewed and relied on the website's purported current and limited-time sale promotion. She relied on the above representations that the Products (1) had a former and regular price of the stated reference price, and (2) had been offered for sale on the website at the stated reference price, in the recent past, on a regular basis, for a substantial time. And she relied on the representations that the Products were truly on sale as being sold at a substantial discount for a limited time, such that the products were valued at the false reference price.

68.

The above-listed Products were not substantially marked down or discounted, and any discount she was receiving had been grossly exaggerated. For at least the 90-day period prior to Plaintiff's purchase, and months and years more, Defendant very rarely, if ever, offered any of the discounted items sold on its website at the reference prices.

1 69.

2 Plaintiff Perez would not have purchased the items at the advertised prices, or would not
3 have paid as much as she did, had Defendant been truthful. Plaintiff was persuaded to make her
4 purchases because of the misleading sale based on false reference prices.

5 ***Plaintiff Cassandra Maxwell***

6 70.

7 Plaintiff Maxwell has purchased numerous purportedly discounted products from the
8 Torrid website (www.Torrid.com) within the past four years. She purchased these products while
9 living in Washington.

10 71.

11 Within the past four years, Plaintiff Maxwell purchased clothing items from the Torrid
12 website while the Torrid website was advertising a discount of “50% off.” At the time she made
13 these purchases, Defendant represented that the products she bought had a regular price of twice
14 the sale price, but were on sale for a discounted price of 50% off (half the sale price). Plaintiff
15 Maxwell’s order confirmations reflect this purported discount.

16 72.

17 When Plaintiff Maxwell made these purchases, she read and relied on the representations
18 on the website that the Product had the published regular and former price, and that this was its
19 market value, and that she was receiving the advertised discount as compared to the regular
20 price. She also relied on the representations that the sale was limited in time, and would end
21 soon. She would not have made the purchases, or would have paid less, if she had known that
22 the Products were not discounted as advertised, and that she was not receiving the advertised
23 discount from the genuine regular and prevailing market price.

24 * * *

1 73.

2 Despite Defendant's representations, Plaintiffs did not receive Products with regular
3 prices or market values equal to the list prices displayed for the Products they purchased. Nor
4 did they receive the advertised discounts. As explained above, Defendant's Products are
5 regularly on sale for a significant discount. And as a result, the advertised reference prices for all
6 of Defendant's Products—including the Products Plaintiffs purchased—do not reflect true
7 regular prices, and are in fact higher than the actual "regular" prices that the Products are sold for
8 on the website. In other words, the advertised discounts for all Products—including the Products
9 Plaintiffs purchased—were false and misleading, and consumers, like Plaintiffs, did not receive
10 the advertised discount off of the true regular prices.

11 74.

12 Plaintiffs face an imminent threat of future harm. Plaintiffs would purchase Defendant's
13 Products again if they could feel sure that Defendant's reference prices accurately reflected its
14 regular prices and former prices, and the market value of the Products, and that Defendant's
15 discounts were truthful. But without an injunction, Plaintiffs have no realistic way to know
16 which—if any—of Defendant's reference prices, discounts, and sales are not false or deceptive.
17 Accordingly, Plaintiffs are unable to rely on Defendant's advertising in the future, and so cannot
18 purchase the Products they would like to.

19 **No adequate remedy at law.**

20 75.

21 Plaintiffs seek damages and, in the alternative, restitution. Plaintiffs are permitted to seek
22 equitable remedies in the alternative because they have no adequate remedy at law. A legal
23 remedy is not adequate if it is not as certain as an equitable remedy. The elements of Plaintiffs'
24 equitable claims are different and do not require the same showings as Plaintiffs' legal claims.

1 For example, to prevail under the UTPA, Plaintiffs must show that Defendant engages in the
2 conduct of “trade” and “commerce” under the UTPA. In addition, Plaintiffs’ FAL claim under
3 section 17501 (an equitable claim) is predicated on a specific statutory provision, which prohibits
4 advertising merchandise using a former price if that price was not the prevailing market price
5 within the past three months. Cal. Bus. & Prof. Code § 17501. Plaintiffs may be able to prove
6 these more straightforward factual elements, and thus prevail under the FAL, while not being
7 able to prove one or more elements of their legal claims. As a second example, to obtain
8 damages under the CLRA, a plaintiff must show that they complied with the CLRA’s notice
9 requirement for damages. No such requirements exist to obtain restitution. Because a plaintiff
10 must make this additional showing to obtain damages, rather than restitution, the legal remedies
11 are more uncertain. Plaintiffs’ remedies at law are also not equally prompt or efficient as their
12 equitable ones. For example, the need to schedule a jury trial may result in delay. And a jury
13 trial will take longer, and be more expensive, than a bench trial.

14 **Class Action Allegations.**

15 76.

16 Plaintiffs bring the asserted claims on behalf of the proposed Class of: all persons who,
17 while in the states of Oregon, California, and Washington and within the applicable statute of
18 limitations period, purchased one or more Products on Defendant’s website Torrid.com.

19 77.

20 The following people are excluded from the proposed Class: (1) any Judge or Magistrate Judge
21 presiding over this action and the members of their family; (2) Defendant, Defendant’s
22 subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its
23 parents have a controlling interest and their current employees, officers and directors; (3) persons
24 who properly execute and file a timely request for exclusion from the Class; (4) persons whose

1 claims in this matter have been finally adjudicated on the merits or otherwise released; (5)
2 Plaintiffs' counsel and Defendant's counsel, and their experts and consultants; and (6) the legal
3 representatives, successors, and assigns of any such excluded persons.

4 ***Numerosity***

5 78.

6 The proposed Class contains members so numerous that separate joinder of each member
7 of the Class is impractical. There are tens or hundreds of thousands of class members.

8 79.

9 Class members can be identified through Defendant's sales records and public notice.

10 ***Commonality***

11 80.

12 There are questions of law and fact common to the proposed Class. Common questions
13 of law and fact include, without limitation:

14 (1) whether Defendant made false or misleading statements of fact in its advertisements;

15 (2) whether Defendant violated consumer protection statutes;

16 (3) damages needed to reasonably compensate Plaintiffs and the proposed Class.

17 ***Typicality & Adequacy***

18 81.

19 Plaintiffs' claims are typical of the proposed Class. Like the proposed Class, Plaintiffs
20 purchased Products advertised at a discount on Defendant's website. There are no conflicts of
21 interest between Plaintiffs and the Class.

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82.

Plaintiff Shelby Cline gave notice to Defendant of her intent to seek damages in April 2024.

83.

Plaintiff Crystal Jillson gave notice to Defendant of her intent to seek damages in April 2024.

84.

Plaintiff Carmen Perez gave notice to Defendant of her intent to seek damages in April 2024.

85.

Plaintiff Cassaundra Maxwell gave notice to Defendant of her intent to seek damages December 2024.

Superiority

86.

A class action is superior to all other available methods for the fair and efficient adjudication of this litigation because individual litigation of each claim is impractical. It would be unduly burdensome to have individual litigation of tens or hundreds of thousands of individual claims in separate lawsuits, every one of which would present the issues presented in this lawsuit.

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1 of, or the person's cost for real estate, goods or services," O.R.S. § 646.608(s);

2 91.

3 Defendant is a "person," under the UTPA, as defined by O.R.S. § 646.605(4). The
4 definition of "person" includes "unincorporated associations," and as alleged above, Defendant
5 is a limited liability company.

6 92.

7 Defendant engages in the conduct of "trade" and "commerce" under the UTPA.
8 Defendant does this by advertising, offering, and distributing, by sale, goods in a manner that
9 directly and indirectly affects people of the state of Oregon. O.R.S. § 646.605(8). Defendant
10 advertises and sells the Products in Oregon, and serves a market for its Products in Oregon. Due
11 to Defendant's actions, its Products have been marketed and sold to consumers in Oregon, and
12 harmed consumers in Oregon, including Class Members. Defendant's unlawful methods, acts
13 and practices described above were committed in the course of Defendant's business. O.R.S. §
14 646.608(1).

15 93.

16 The Products advertised, offered, and sold by Defendant are "goods" that are or may be
17 obtained primarily for personal, family or household as defined by O.R.S. § 646.605(6).
18 Members of the Class purchased the Products advertised by Defendant for personal, family, or
19 household purposes.

20 94.

21 As alleged in greater detail above, Defendant makes "false or misleading representations
22 of fact concerning the reasons for, existence of, or amounts of price reductions." O.R.S. §
23 646.608(j). Defendant does this by advertising fake sales, fake reference prices, and fake limited
24 time discounts. By advertising regular prices and supposedly time-limited discounts,

1 Defendant's website creates an illusion that consumers are receiving a discount if they buy now.
2 In truth, however, Defendant's Products are routinely on sale, and these sales persist indefinitely.
3 As a result, Defendant's reference prices are not Defendant's true prices, or former prices, or the
4 prevailing market prices for Defendant's Products. Nor are its purported price reductions true
5 price reductions. Because Defendant routinely offers sitewide or virtually sitewide discounts, as
6 well as discounts on certain items, it does not ordinarily or typically sell its Products at the
7 purported regular prices.

8 95.

9 As alleged in greater detail above, Defendant also makes "false or misleading
10 representations of fact concerning the offering price of, or the person's cost for real estate, goods
11 or services." O.R.S. § 646.608(s). As described above, Defendant's website purports to
12 advertise its Products with regular prices, and discounted "sale" prices. But Defendant's listed
13 prices are not Defendant's true prices, former prices, or prevailing market prices for those
14 Products. In addition, the purported price reductions are not true price reductions.

15 96.

16 As alleged in greater detail above, Defendant also "advertises ... goods ... with intent not
17 to provide the ... goods ... as advertised," O.R.S. § 646.608(i). Defendant advertises Products at
18 a sale price, or discount, as compared to a regular list price. But the purported discounts that
19 Defendant advertises are not the true discounts that the customer receives. In many cases, the
20 customer receives no discount at all.

21 97.

22 As alleged in greater detail above, Defendant also represents that its goods have
23 characteristics that they do not have. O.R.S. § 646.608(e). Defendant represents that the value
24 of its Products is greater than it actually is by advertising misleading discounts for the Products.

1
2 98.

3 As alleged in greater detail above, Defendant makes false and misleading statements
4 about the promotions used to publicize its Products. O.R.S. § 646.608(p). As described above,
5 Defendant advertises Products at a sale price, or discount, as compared to the regular prices. But
6 the purported discounts that Defendant advertises are not the true discounts that the customer
7 receives. In many cases, the customer receives no discount at all. In addition, as described
8 above, Defendant advertises limited-time discounts that are not in fact limited in time.

9 99.

10 The UTPA also prohibits sellers from using misleading price comparisons to advertise
11 their products. O.R.S. § 646.608(ee) (citing O.R.S. §§ 646.883 and 646.885). The UTPA
12 expressly prohibits sellers from including “a price comparison in an advertisement unless” “[t]he
13 seller clearly and conspicuously identifies in the advertisement the origin of the price that the
14 seller is comparing to the seller’s current price.” O.R.S. § 646.883. Use of term “sale” is
15 deemed to identify “the origin of the price that the seller is comparing to the seller’s current price
16 as the seller’s own former price, or in the case of introductory advertisements, the seller’s future
17 price.” O.R.S. § 646.885. And, unless otherwise stated, use of the terms “discount,” “_____”
18 “percent discount,” “\$_____ discount,” “_____ percent off,” and “\$_____ off” are “considered to
19 identify the origin of the price that the seller is comparing to the seller’s current price as the
20 seller’s former price, or in the case of introductory advertisements, the seller’s future price.”
21 O.R.S. § 646.85.

22 100.

23 As alleged in greater detail above, Defendant uses misleading price comparisons. For
24 example, Defendant uses strikethrough pricing without clearly and conspicuously identifying in

1 the advertisement the origin of the price that the seller is comparing to the current price.
2 Defendant's strikethrough pricing does not contain any disclosures at all about the origin of the
3 strikethrough price.

4 101.

5 In addition, as alleged in greater detail above, Defendant uses the words "sale" and
6 "___% Off," in its promotions, even when the Products are not offered at a discount as compared
7 to the seller's regular or former price (or in the case of introductory products, a future price).
8 Defendant also makes no disclosure indicating that the price comparisons are to something other
9 than the former or future price.

10 102.

11 Defendant's representations of regular prices, sales, and discounts on its website are
12 "advertisements" as defined by O.R.S. § 646.881(1). These representations about the prices,
13 sales, and discounts were made in connection with the sales of Defendant's Products.

14 103.

15 Defendant's use of reference prices, sitewide or virtually sitewide sales, and advertised
16 discounts are "price comparisons" as defined by O.R.S. § 646.881(2). These statements make a
17 claim that the current price is reduced as compared to a Product's typical or former price.

18 104.

19 Defendant's unlawful methods, acts and practices described above were "willful
20 violations" of O.R.S. § 646.608 because Defendant knew or should have known that its conduct
21 was a violation, as defined by O.R.S. § 646.605(10).

22 105.

23 Defendant, at all relevant times, had a duty to disclose that the discounts were not real,
24 that the sales persisted and were not limited in time, and that the regular prices were not the true

1 regular prices of the Products. Defendant had a duty because (1) Defendant had exclusive
2 knowledge of material information that was not known to members of the Class; (2) Defendant
3 concealed material information from members of the Class; and (3) Defendant made partial
4 representations which were false and misleading absent the omitted information.

5 106.

6 Defendant's misrepresentations and nondisclosures deceive and have a tendency to
7 deceive a reasonable consumer and the general public.

8 107.

9 Defendant's misrepresentations and nondisclosures are material. A reasonable person
10 would attach importance to the information and would be induced to act on the information in
11 making purchase decisions.

12 108.

13 Defendant engaged in the reckless or knowing use or employment of the unlawful
14 methods, acts or practices alleged here, which are unlawful under O.R.S. § 646.608.

15 109.

16 As a direct, substantial and/or proximate result of Defendant's conduct, members of the
17 Class suffered ascertainable losses and injury to business or property.

18 110.

19 Members of the Class would not have purchased the Products at the prices they paid, if
20 they had known that the advertised prices and discounts were false.

21 111.

22 Members of the Class paid more than they otherwise would have paid for the Products
23 they purchased from Defendant. Defendant's false pricing scheme fraudulently increased
24 demand from consumers.

112.

The Products that members of the Class purchased were not, in fact, worth as much as Defendant represented them to be worth.

113.

Plaintiffs seek: (1) the greater of statutory damages of \$200 or actual damages; (2) punitive damages; (3) appropriate equitable relief and/or restitution; and (4) attorneys' fees and costs. O.R.S. § 646.638(3); O.R.S. § 646.638(8).

114.

The unlawful acts and omissions described here are, and continue to be, part of a pattern or generalized course of conduct. Defendant's conduct is ongoing and is likely to continue and recur absent a permanent injunction. Accordingly, Plaintiffs seek an order enjoining Defendant from committing such unlawful practices. O.R.S. § 646.638(1); O.R.S. § 646.638(8)(c); O.R.S. § 646.636.

115.

The balance of the equities favors the entry of permanent injunctive relief against Defendant. Class Members, and the general public will be irreparably harmed absent the entry of permanent injunctive relief against Defendant. Class Members, and the general public lack an adequate remedy at law. A permanent injunction against Defendant is in the public's interest. Defendant's unlawful behavior is ongoing as of the date of the filing of this Complaint. If not enjoined by order of this Court, Defendant will or may continue to injure Oregon consumers through the misconduct alleged. Absent the entry of a permanent injunction, Defendant's unlawful behavior will not cease and, in the unlikely event that it voluntarily ceases, it is capable of repetition and is likely to reoccur.

116.

This action was brought “within one year after the discovery of the unlawful method, act or practice.” O.R.S. § 646.638(6).

117.

The applicable limitations period is expansive and extends back decades based on the “discovery” rule in the UTPA at O.R.S. § 646.638(6).

118.

Class Members, including Plaintiff Cline, did not know, and could not have known, that these reference prices and discount representations were false.

119.

Absent class members of the Class are still not aware, at the time of the filing of this Complaint, of Defendant’s false discount advertising scheme. By Defendant’s design, the false advertising scheme by its very nature is hidden and difficult for the typical consumer to discover without continuously examining the website daily. Consumers who shop on Defendant’s website do not know the true historical prices or sales histories of the Products that they have viewed and purchased. They do not know that the discounts offered are false, or that the false discounting practices extend to all of Defendant’s Products. Class Members have not discovered, and could not have reasonably discovered, Defendant’s fake discounting scheme.

120.

Absent class members will learn of the scheme for the very first time upon court-ordered class notice in this case.

1 **Second Cause of Action:**

2 **Violation of California's False Advertising Law ("FAL")**

3 **Cal. Bus. & Prof. Code §§ 17500 *et seq.***

4 **(By Plaintiffs and the Class)**

5 121.

6 Plaintiffs incorporate each and every factual allegation set forth above.

7 122.

8 Plaintiffs bring this cause of action on behalf of themselves and members of the Class.

9 123.

10 Defendant has violated sections 17500 and 17501 of the California Business and
11 Professions Code.

12 124.

13 Defendant has violated, and continues to violate, section 17500 of the Business and
14 Professions Code by disseminating untrue and misleading advertisements to Class Members.

15 125.

16 As alleged more fully above, Defendant advertises former and regular prices on its
17 website along with discounts. Defendant does this, for example, by crossing out a higher price
18 (e.g., \$44) and displaying it next to the discount price. Reasonable consumers would understand
19 prices denoted as "regular" prices from which time-limited discounts are calculated to denote
20 "former" prices, i.e., the prices that Defendant regularly charged before the time-limited discount
21 went into effect, in the recent past and for a substantial time. Reasonable consumers also expect
22 the Products have a market value of the reference price.

126.

The prices advertised as regular and former prices by Defendant were not the true regular or former prices of the Products. As explained above, Defendant makes and exclusively sells its Products. As a result, its own prices are the prevailing market prices. And, because Defendant consistently sells its Products at purported discount prices, the true prevailing market prices for Defendant's Products in the last 90 days are consistently lower than the purported regular and former prices Defendant advertises. Accordingly, Defendant's statements about the regular and former prices of its Products were untrue and misleading.

127.

In addition, Defendant's regular and former price advertisements did not state clearly, exactly, and conspicuously when, if ever, the former prices prevailed. Defendant's advertisements did not indicate whether or when the purported former prices were offered at all.

128.

Defendant's misrepresentations were intended to induce reliance, and Plaintiffs saw, read, and reasonably relied on the statements when purchasing Defendant's Products. Defendant's misrepresentations were a substantial factor in consumers' purchase decisions.

129.

In addition, Class-wide reliance can be inferred because Defendant's misrepresentations were material, i.e., a reasonable consumer would consider them important in deciding whether to buy the Products.

130.

Defendant's misrepresentations were a substantial factor and proximate cause in causing damages and losses to Plaintiffs and Class Members.

131.

Plaintiffs and Class Members were injured as a direct and proximate result of Defendant's conduct because (a) they would not have purchased the Products if they had known the truth, and/or (b) they overpaid for the Products because the Products were sold at a price premium due to the misrepresentation.

Third Cause of Action:

Violation of California's Consumer Legal Remedies Act ("CLRA")

Cal. Civ. Code §§ 1750 *et seq.*

(By Plaintiffs and the Class)

132.

Plaintiffs incorporate each and every factual allegation set forth above.

133.

Plaintiffs bring this cause of action on behalf of themselves and members of the Class.

134.

Class Members are "consumers," as the term is defined by California Civil Code § 1761(d).

135.

Class Members have engaged in "transactions" with Defendant as that term is defined by California Civil Code § 1761(e).

136.

The conduct alleged in this Complaint constitutes unfair methods of competition and unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was undertaken by Defendant in transactions intended to result in, and which did result in, the sale of goods to consumers.

1 137.

2 As alleged more fully above, Defendant made and disseminated untrue and misleading
3 statements of facts in its advertisements to Class Members. Defendant did this by using false
4 and misleading reference prices, i.e., regular and former prices that are not the prevailing or
5 market prices, and advertising fake discounts.

6
7 138.

8 Defendant violated, and continues to violate, section 1770(a) of the California Civil
9 Code.

10 139.

11 Defendant violated, and continues to violate, section 1770(a)(5) of the California Civil
12 Code by representing that Products offered for sale on its website have characteristics or benefits
13 that they do not have. Defendant represents that the value of its Products is greater than it
14 actually is by advertising inflated regular prices and fake discounts for the Products.

15 140.

16 Defendant violated, and continues to violate, section 1770(a)(9) of the California Civil
17 Code. Defendant violates this by advertising its Products as being offered at a discount, when in
18 fact Defendant does not intend to sell the Products at a discount.

19 141.

20 And Defendant violated, and continue to violate section 1770(a)(13) by making false or
21 misleading statements of fact concerning reasons for, existence of, or amounts of, price
22 reductions on their website, including by (1) misrepresenting the regular and prevailing market
23 price of Products on their website, (2) advertising discounts and savings that are exaggerated or
24

1 nonexistent, and (3) misrepresenting that the discounts and savings are unusually large, when in
2 fact they are regularly available.

3 142.

4 Defendant's representations were likely to deceive, and did deceive, Class Members,
5 including Plaintiffs, and reasonable consumers. Defendant knew, or should have known through
6 the exercise of reasonable care, that these statements were inaccurate and misleading.

7 143.

8 Defendant's misrepresentations were intended to induce reliance, and Plaintiffs and Class
9 Members saw, read, and reasonably relied on them when purchasing the Products. Defendant's
10 misrepresentations were a substantial factor in Plaintiffs and Class Members' purchase decisions.

11 144.

12 In addition, Class-wide reliance can be inferred because Defendant's misrepresentations
13 were material, i.e., a reasonable consumer would consider them important in deciding whether to
14 buy the Products.

15 145.

16 Defendant's misrepresentations were a substantial factor and proximate cause in causing
17 damages and losses to Plaintiffs and Class Members.

18 146.

19 Plaintiffs and Class Members were injured as a direct and proximate result of
20 Defendant's conduct because (a) they would not have purchased the Products if they had known
21 the discounts and/or regular prices were not real, (b) they overpaid for the Products because the
22 Products were sold at a price premium due to the misrepresentation, and/or (c) they received
23 Products with market values lower than the promised market values.
24

147.

Accordingly, pursuant to California Civil Code § 1780(a)(2), Plaintiffs, on behalf of themselves and all other members of the Class, seek injunctive relief.

148.

CLRA § 1782 NOTICE. On April 25, 2024, a CLRA demand letter was sent, via Certified Mail (return receipt requested), to Defendant's registered agent for service of process. It has been more than 30 days since Defendant received notice of its CLRA violations. In that time, it has not corrected the problem. Accordingly, Plaintiffs seek all monetary relief available under the CLRA, including restitution, damages (including compensatory damages, expectation damages, and punitive damages), attorneys' fees, and all other forms of monetary relief available.

Fourth Cause of Action:

Violation of California's Unfair Competition Law ("UCL")

Cal. Bus. & Prof. Code §§ 17200 et seq

(By Plaintiffs and the Class)

149.

Plaintiffs incorporate each and every factual allegation set forth above.

150.

Plaintiffs bring this cause of action on behalf of themselves and members of the Class.

151.

Defendant has violated California's Unfair Competition Law (UCL) by engaging in unlawful, fraudulent, and unfair conduct (i.e., violating each of the three prongs of the UCL).

1 ***The Unlawful Prong***

2 152.

3 Defendant engaged in unlawful conduct by violating the CLRA and FAL, as alleged
4 above and incorporated here. In addition, Defendant engaged in unlawful conduct by violating
5 the Federal Trade Commission Act (“FTCA”). The FTCA prohibits “unfair or deceptive acts or
6 practices in or affecting commerce” and prohibits the dissemination of false advertisements. 15
7 U.S.C. § 45(a)(1). As the FTC’s regulations make clear, Defendant’s false pricing schemes
8 violate the FTCA. 16 C.F.R. § 233.1, § 233.2.

9 ***The Deceptive Prong***

10 153.

11 As alleged in detail above, Defendant’s representations that its Products were on sale,
12 that the sale was limited in time, that the Products had a specific regular price, that the customers
13 were receiving discounts, and that the Products were valued in the marketplace at the reference
14 price, were false and misleading.

15 154.

16 Defendant’s representations were misleading to Plaintiffs and other reasonable
17 consumers.

18 155.

19 Class members, including Plaintiffs, relied upon Defendant’s misleading representations
20 and omissions, as detailed above.

21 ***The Unfair Prong***

22 156.

23 As alleged in detail above, Defendant committed “unfair” acts by falsely advertising that
24 its Products were on sale, that the sale was limited in time, that the Products had a specific

1 regular price, that the customers were receiving discounts, and that the Products were valued in
2 the marketplace at the reference price.

3 157.

4 Defendant violated established public policy by violating the CLRA, the FAL, and the
5 FTCA, as alleged above and incorporated here. The unfairness of this practice is tethered to a
6 legislatively declared policy (that of the CLRA and FAL).

7 158.

8 The harm to Plaintiffs and Class Members greatly outweighs the public utility of
9 Defendant's conduct. There is no public utility to misrepresenting the price of a consumer
10 product. This injury was not outweighed by any countervailing benefits to consumers or
11 competition. Misleading consumer products only injure healthy competition and harm
12 consumers.

13 159.

14 Class Members could not have reasonably avoided this injury. As alleged above,
15 Defendant's representations were deceptive to reasonable consumers like Plaintiffs.

16 160.

17 Defendant's conduct, as alleged above, was immoral, unethical, oppressive,
18 unscrupulous, and substantially injurious to consumers.

19 * * *

20 161.

21 For all prongs, Defendant's representations were intended to induce reliance, and
22 Plaintiffs saw, read, and reasonably relied on them when purchasing the Products. Defendant's
23 representations were a substantial factor in consumers' purchase decisions.

1 162.

2 In addition, Class-wide reliance can be inferred because Defendant's representations
3 were material, i.e., a reasonable consumer would consider them important in deciding whether to
4 buy the Products.

5 163.

6 Defendant's representations were a substantial factor and proximate cause in causing
7 damages and losses to Plaintiffs and Class Members.

8 164.

9 Plaintiffs and Class Members were injured as a direct and proximate result of
10 Defendant's conduct because (a) they would not have purchased the Products if they had known
11 that they were not discounted, and/or (b) they overpaid for the Products because the Products
12 were sold at the regular price and not at a discount.

13 **Fifth Cause of Action:**

14 **Violation of Washington's Consumer Protection Act: RCW Chapter 19.86**

15 **(By Plaintiffs and the Class)**

16 165.

17 Plaintiffs incorporate each and every factual allegation set forth above.

18 166.

19 Plaintiffs bring this cause of action on behalf of themselves and members of the Class.

20 167.

21 Defendant has violated the Washington Consumer Protection Act (CPA), RCW Chapter
22 19.86. This statute is materially similar to California and Oregon law in that it prohibits unfair,
23 unconscionable, and/or deceptive acts or practices in the course of trade or commerce or in
24

1 connection with the sale of goods or services to consumers. Defendant’s misleading ads violate
2 Washington law for the same reasons they violate Oregon and California law.

3 168.

4 Section 19.86.020 of the CPA states, “[u]nfair methods of competition and unfair or
5 deceptive acts or practices in the conduct of any trade or commerce are hereby declared
6 unlawful.” RCW § 19.86.020.

7 169.

8 Under the CPA, “[p]rivate rights of action may ... be maintained for recovery of actual
9 damages, costs, and a reasonable attorney’s fee. A private plaintiff may be eligible for treble
10 damages,” and “may obtain injunctive relief, even if the injunction would not directly affect the
11 individual’s own rights.” Washington Pattern Jury Instruction Civil No. 310.00 (Consumer
12 Protection Act—Introduction) (internal citations omitted); RCW § 1986.090.

13 170.

14 Defendant engages in the conduct of trade or commerce within the meaning of the CPA.
15 Defendant does this by selling the Products in a manner that directly and indirectly affects people
16 of the state of Washington.

17 171.

18 As alleged more fully above, Defendant made and disseminated untrue and misleading
19 statements of facts in its advertisements to members of the Class, constituting acts of unfair
20 methods of competition and/or unfair or deceptive acts or practices.

21 Unfair Acts or Practices

22 172.

23 As alleged in detail above, Defendant committed “unfair” acts by falsely advertising that
24 its Products were on sale, that the sale was limited in time, that the Products had higher regular

1 prices, and market values and that customers were receiving discounts, when none of this was
2 true. This caused members of the Class to make purchases they otherwise would not have made,
3 pay more for their purchases, and deprived them of their expectancy interest in receiving the
4 Products as advertised.

5 173.

6 The harm to members of the Class greatly outweighs the public utility of Defendant's
7 conduct. There is no public utility to misrepresenting the price of a consumer product. The
8 Class's injury was not outweighed by any countervailing benefits to consumers or competition.
9 Misleading consumer products only injure healthy competition and harm consumers.

10 Deceptive Acts or Practices

11 174.

12 As alleged in detail above, Defendant's representations that its Products were on sale,
13 that the sale was limited in time, that the Products had a specific regular price, former price, and
14 market value, and that the customers were receiving discounts, were false and misleading.

15 175.

16 Defendant's representations were likely to deceive, and did deceive, members of the
17 Class. Defendant knew, or should have known through the exercise of reasonable care, that
18 these statements were inaccurate and misleading.

19 176.

20 Defendant intended that Class Members rely on these representations, and Class
21 Members read and reasonably relied on them.
22
23
24

177.

In addition, Class-wide reliance can be inferred because Defendant's misrepresentations were material, i.e., a reasonable consumer would consider them important in deciding whether to buy the Products.

178.

Defendant's misrepresentations were a substantial factor and proximate cause in causing damages and losses to Class Members.

179.

Members of the Class were injured as a direct and proximate result of Defendant's conduct because (a) they would not have purchased the Products if they had known the truth, (b) they overpaid for the Products because the Products were sold at a price premium due to the misrepresentation, and/or (c) they did not receive the discounts they were promised, and received Products with market values lower than the promised market values.

180.

Defendant's acts or omissions are injurious to the public interest because these practices were committed in the course of Defendant's business and were committed repeatedly before and after members of the Class purchased Defendant's Products. They are part of a pattern of unfair and deceptive advertisements. These actions have injured other persons, and, if continued, have the capacity to injure additional persons.

Sixth Cause of Action:

Unjust Enrichment

(By Plaintiffs and the Class)

181.

Plaintiffs incorporate each and every factual allegation set forth above.

182.

As alleged in detail above, Defendant's false and misleading advertising caused Plaintiffs and the Class to purchase the Products and to pay a price premium for these Products.

183.

In this way, Defendant received a direct and unjust benefit, at Plaintiffs' expense.

184.

(In the alternative only), due to Defendant's misrepresentations, any of its contracts with Plaintiffs are void or voidable.

185.

Plaintiffs and the Class seek restitution, and in the alternative, rescission.

Seventh Cause of Action:

Negligent Misrepresentation

(By Plaintiffs and the Class)

186.

Plaintiffs incorporate each and every factual allegation set forth above.

187.

Plaintiffs bring this cause of action on behalf of themselves and members of the Class.

188.

As alleged more fully above, Defendant made false representations and material omissions of fact to Plaintiffs and Class members concerning the existence and/or nature of the discounts and savings advertised on its website.

189.

These representations were false.

1 190.

2 When Defendant made these misrepresentations, it knew or should have known that they
3 were false. Defendant had no reasonable grounds for believing that these representations were
4 true when made.

5 191.

6 Defendant intended that Plaintiffs and Class Members rely on these representations, and
7 Plaintiffs and Class Members read and reasonably relied on them.

8 192.

9 In addition, Class-wide reliance can be inferred because Defendant's misrepresentations
10 were material, i.e., a reasonable consumer would consider them important in deciding whether to
11 buy the Products.

12 193.

13 Defendant's misrepresentations were a substantial factor and proximate cause in causing
14 damages and losses to Plaintiffs and Class Members.

15 194.

16 Plaintiffs and the Class were injured as a direct and proximate result of Defendant's
17 conduct because (a) they would not have purchased the Products if they had known that the
18 representations were false, and/or (b) they overpaid for the Products because the Products were
19 sold at a price premium due to the misrepresentation.

20 **Eighth Cause of Action:**

21 **Intentional Misrepresentation**

22 **(By Plaintiffs and the Class)**

23 195.

24 Plaintiffs incorporate each and every factual allegation set forth above.

1 196.

2 Plaintiffs bring this cause of action on behalf of themselves and members of the Class.

3 197.

4 As alleged more fully above, Defendant made false representations and material
5 omissions of fact to Plaintiffs and Class Members concerning the existence and/or nature of the
6 discounts and savings advertised on its website.

7 198.

8 These representations were false.

9 199.

10 When Defendant made these misrepresentations, it knew that they were false at the time
11 that it made them and/or acted recklessly in making the misrepresentations.

12 200.

13 Defendant intended that Plaintiffs and Class Members rely on these representations and
14 Plaintiffs and Class members read and reasonably relied on them.

15 201.

16 In addition, Class-wide reliance can be inferred because Defendant's misrepresentations
17 were material, i.e., a reasonable consumer would consider them important in deciding whether to
18 buy the Products.

19 202.

20 Defendant's misrepresentations were a substantial factor and proximate cause in causing
21 damages and losses to Plaintiffs and Class Members.

22 203.

23 Plaintiffs and the Class were injured as a direct and proximate result of Defendant's
24 conduct because (a) they would not have purchased the Products if they had known that the

1 representations were false, and/or (b) they overpaid for the Products because the Products were
2 sold at a price premium due to the misrepresentation.

3 **Demand For Jury Trial.**

4 204.

5 Plaintiffs demand the right to a jury trial on all claims so triable.

6 **Relief.**

7 205.

8 Plaintiffs seek the following relief for themselves and the proposed Class:

- 9 • An order certifying the asserted claims, or issues raised, as a class action;
 - 10 • A judgment in favor of Plaintiffs and the proposed Class;
 - 11 • Damages, statutory damages, treble damages, and punitive damages where
12 applicable;
 - 13 • Restitution;
 - 14 • Rescission;
 - 15 • Disgorgement, and other just equitable relief;
 - 16 • Pre- and post-judgment interest;
 - 17 • An injunction prohibiting Defendant's deceptive conduct, as allowed by law;
 - 18 • Reasonable attorneys' fees and costs, as allowed by law;
 - 19 • Any additional relief that the Court deems reasonable and just.
- 20
21
22
23
24

1 Dated: February 18, 2025

Respectfully submitted,

2
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