

1 PACIFIC TRIAL ATTORNEYS  
A Professional Corporation  
2 Scott J. Ferrell, Bar No. 202091  
sferrell@pacifictrialattorneys.com  
3 4100 Newport Place Drive, Ste. 800  
Newport Beach, CA 92660  
4 Tel: (949) 706-6464  
Fax: (949) 706-6469

5 Attorneys for Plaintiff  
6  
7

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**12/29/2022** at 12:44:22 PM  
Clerk of the Superior Court  
By Brenda Ramirez, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO**

10  
11 BONNIE REYES, individually and on behalf of  
all others similarly situated,

12 Plaintiff,

13 v.

14 L'OCCITANE INC., a New York corporation,  
15 and DOES 1 through 25, inclusive,

16 Defendants.  
17  
18  
19

Case No. 37-2022-00052096-CU-MT-CTL

**CLASS ACTION COMPLAINT**

- 1. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW, BUSINESS AND PROFESSIONS CODE § 17200, *et seq.*
- 2. FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17500, *et seq.*
- 3. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE § 1750, *et. seq.*

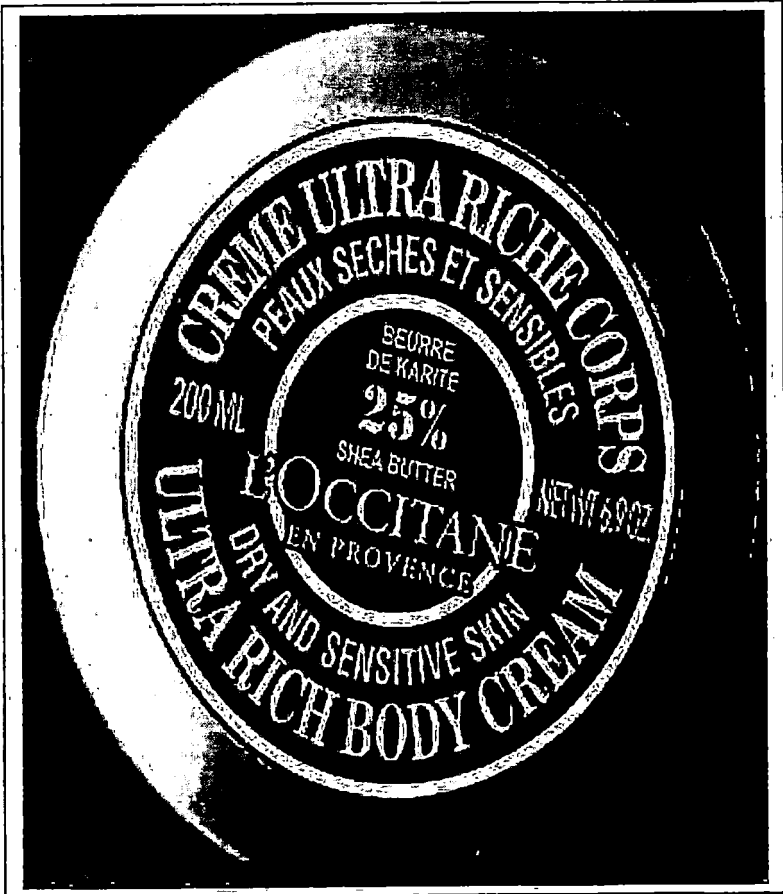
20  
21  
22  
23  
24  
25  
26  
27  
28  
**COMPLAINT**

**EXHIBIT A**

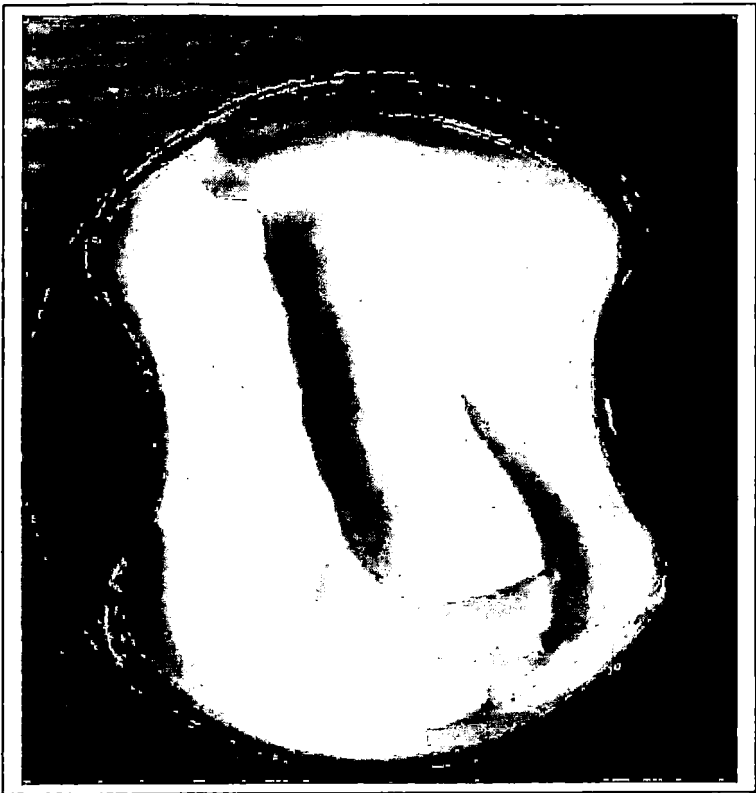
**INTRODUCTION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1. Defendant L'Occitane ("Defendant") manufactures and sells a popular line of beauty products throughout the United States (the "Products"). To increase profits at the expense of consumers and fair competition, Defendant deceptively sells the Products in oversized packaging that does not reasonably inform consumers that they are more than half empty. Defendant's slack-fill scam extends to all variations of its Products sold in opaque containers. Defendant dupes unsuspecting consumers across America to pay premium prices for empty space. Below is a true and correct image of Defendant's Ultra Rich Body Cream for Dry and Sensitive Skin, the beauty Product purchased by Plaintiff, in the opaque container evidencing the deception. The first photograph shows the Product as it appears to the purchaser, and the second photograph shows that the Product packaging is approximately 50% empty.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



2. Defendant markets the Products in a systematically misleading manner by representing them as adequately filled when, in fact, they contain an unlawful amount of empty space or “slack-fill.” Defendant underfills the Products for no lawful reason. The front of the Products’ packaging does not include any information that would reasonably apprise Plaintiff of the quantity of product relative to the size of the container, such as a fill line.

3. Defendant underfills the Products to save money (by not filling the containers) and to deceive consumers into purchasing the Products over its competitors’ products. Defendant’s slack-fill scheme not only harms consumers, but it also harms its competitors who have implemented labeling changes designed to alert consumers to the true amount of product in each container.

4. Accordingly, Defendant has violated the California Consumers Legal Remedies Act (“CLRA”), particularly California Civil Code sections 1770(a)(2), 1770(a)(5), 1770(a)(7), and 1770(a)(9). As such, Defendant has committed per se violations of the Unfair Competition Law (“UCL”), Business & Professions Code section 17200, *et seq.* and the False Advertising Law (“FAL”), Business & Professions Code section 17500, *et seq.*



1 distributor of the Products, and is the company that created and/or authorized the false, misleading,  
2 and deceptive packaging for the Products.

3 9. At all relevant times, each and every Defendant was acting as an agent and/or employee  
4 of each of the other Defendants and was acting within the course and/or scope of said agency and/or  
5 employment with the full knowledge and consent of each of the Defendants. Each of the acts and/or  
6 omissions complained of herein were alleged and made known to, and ratified by, each of the other  
7 Defendants (L'Occitane Inc. and DOE Defendants will hereafter collectively be referred to as  
8 "Defendants").

9 10. The true names and capacities of the Defendants sued herein as DOES 1 through 25,  
10 inclusive, are currently unknown to Plaintiff, who therefore sue such Defendants by fictitious names.  
11 Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged  
12 herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and  
13 capacities of the DOE Defendants when such identities become known.

14 11. In committing the wrongful acts alleged herein, Defendant planned and participated in  
15 and furthered a common scheme by means of false, misleading, deceptive, and fraudulent  
16 representations to induce members of the public to purchase the Products. Defendant participated in  
17 the making of such representations in that it did disseminate or cause to be disseminated said  
18 misrepresentations.

19 12. Defendant, upon becoming involved with the manufacture, advertising, and sale of the  
20 Products, knew or should have known that its advertising of the Products' packaging, specifically by  
21 representing that they were full, was false, deceptive, and misleading. Defendant affirmatively  
22 misrepresented the amount of lotion contained in the Products' packaging in order to convince the  
23 public and consumers to purchase the Products, resulting in profits of millions of dollars or more to  
24 Defendant, all to the damage and detriment of the consuming public.

25 13. Defendant has created and still perpetuates a falsehood that the Products' packaging  
26 contains an amount of cream commensurate with the size of the package, though they actually contain  
27 nonfunctional, unlawful slack-fill. As a result, Defendant's consistent and uniform advertising claims  
28

1 about the Products are false, misleading, and/or likely to deceive in violation of California packaging  
2 and advertising laws.

3 **JURISDICTION AND VENUE**

4 14. This Court has subject matter jurisdiction over this action. This Court has personal  
5 jurisdiction over Defendant because Defendant has conducted and continues to conduct substantial  
6 business in the State of California.

7 15. Venue is proper in this Court because Defendant conducts substantial business in this  
8 County, and because a substantial portion of the misconduct alleged herein occurred in this County.

9 **FACTUAL BACKGROUND**

10 16. The amount of product inside any product packaging is material to any consumer  
11 seeking to purchase that product. The average consumer spends only 13 seconds deciding whether to  
12 make an in-store purchase<sup>1</sup>; this decision is heavily dependent on a product's packaging, including the  
13 package dimensions. Research has demonstrated that packages that seem larger are more likely to be  
14 purchased because consumers expect package size to accurately represent the quantity of the good  
15 being purchased<sup>2</sup>.

16 17. Accordingly, Defendant chose a certain size container for its Products to convey to  
17 consumers that they are receiving a certain and substantial amount of lotion product commensurate  
18 with the size of the container. Such representations constitute an express warranty regarding the  
19 Products' content.

20 18. Slack-fill is the difference between the actual capacity of a container and the volume of  
21 product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less  
22 than its capacity for illegitimate or unlawful reasons.

23 19. Defendant falsely represents the quantity of product in each of the Products' opaque  
24 containers through its packaging. The size of each container leads the reasonable consumer to believe  
25

26  
27 <sup>1</sup> Randall Beard, *Make the Most of Your Brand's 20-Second Window*, NIELSEN, Jan. 13, 2015,  
<https://www.nielsen.com/us/en/insights/article/2015/make-the-most-of-your-brands-20-secondwindow/>.

28 <sup>2</sup> P. Raghurir & A. Krishna, *Vital Dimensions in Volume Perception: Can the Eye Fool the Stomach?*, 36 J.  
MARKETING RESEARCH 313-326 (1999).

1 he or she is purchasing a container full of beauty cream product when in reality what he or she actually  
2 receives is significantly less than what is represented by the size of the container.

3 20. Even if Plaintiff and other reasonable consumers of the Products had a reasonable  
4 opportunity to review, prior to the point of sale, other representations of quantity, such as net weight or  
5 serving disclosures, they did not and would not have reasonably understood or expected such  
6 representations to translate to a quantity of lotion product meaningfully different from their  
7 expectation of an amount of skin cream commensurate with the size of the container.

8 21. Prior to the point of sale, the Products' packaging does not allow for a visual or audial  
9 confirmation of the contents of the Products. The Products' opaque packaging prevents a consumer  
10 from observing the contents before opening. Even if a reasonable consumer were to "shake" the  
11 Products before opening the container, the reasonable consumer would not be able to discern the  
12 presence of any nonfunctional slack-fill, let alone the significant amount of nonfunctional slack-fill  
13 that is present in the Products.

14 22. The other information that Defendant provides about the quantity of lotion on the labels  
15 of the Products does not enable reasonable consumers to form any meaningful understanding about  
16 how to gauge the quantity of contents of the Products as compared to the size of the container itself.  
17 For instance, the front of the Products' packaging does not have any labels that would provide Plaintiff  
18 with any meaningful insight as to the amount of lotion to be expected, such as a fill line.

19 23. Disclosures of net weight and serving sizes in ounces, pounds, or grams do not allow  
20 the reasonable consumer to make any meaningful conclusions about the quantity of skin cream  
21 contained in the Products' containers that would be different from their expectation that the quantity of  
22 beauty cream is commensurate with the size of the container.

23 24. Plaintiff would not have purchased the Product had she known that the Product  
24 contained slack-fill that serves no functional or lawful purpose.

25 25. The slack-fill in the Products does not protect the contents of the packages. In fact,  
26 because the Products consist of cream, there is no need to protect the Products with the slack-fill  
27 present.

28





1           **All Californians who purchased any of Defendant's Products containing non-functional**  
2           **slack fill in California for personal use during the four years preceding the filing of this**  
3           **Complaint (the "Class").**

4           35. Excluded from the Class are Defendant's officers, directors, and employees, and any  
5 individual who received remuneration from Defendant in connection with that individual's use or  
6 endorsement of the Products. Said definition may be further defined or amended by additional  
7 pleadings, evidentiary hearings, a class certification hearing, and orders of this Court.

8           36. The Class is comprised of many thousands of persons. The Class is so numerous that  
9 joinder of all members is impracticable and the disposition of their claims in a class action will benefit  
10 the parties and the Court.

11           37. Common questions of law and fact exist as to all Class members and predominate over  
12 questions affecting only individual Class members. Common questions of law and fact include, but are  
13 not limited to, the following:

- 14           a. The true nature and amount of product contained in each Products' packaging;
- 15           b. Whether the marketing, advertising, packaging, labeling, and other promotional  
16 materials for the Products are deceptive;
- 17           c. Whether Defendant's conduct is an unlawful business act or practice within the  
18 meaning of Business and Professions Code section 17200, *et seq.*;
- 19           d. Whether Defendant's conduct is an unfair business act or practice within the meaning  
20 of Business and Professions Code section 17200, *et seq.*;
- 21           e. Whether Defendant's advertising is untrue or misleading within the meaning of  
22 Business and Professions Code section 17500, *et seq.*;
- 23           f. Whether Defendant made false and misleading representations in its advertising and  
24 labeling of the Products;
- 25           g. Whether Defendant knew or should have known that the misrepresentations were false;
- 26           h. Whether Plaintiff and the Class paid more money for the Products than they actually  
27 received;
- 28

- 1 i. How much more money Plaintiff and the Class paid for the Products than they actually
- 2 received;
- 3 j. Whether Defendant was unjustly enriched at the expense of Plaintiff and the Class
- 4 members;
- 5 k. Whether Defendant intentionally misrepresented the amount of lotion contained in the
- 6 Products' packaging; and
- 7 l. Whether Defendant negligently misrepresented the amount of lotion contained in the
- 8 Products' packaging.

9 38. Plaintiff's claims are typical of the claims of the proposed Class, as the representations  
10 and omissions made by Defendant are uniform and consistent and are contained on packaging and  
11 labeling that was seen and relied on by Plaintiff and members of the Class.

12 39. Plaintiff will fairly and adequately represent and protect the interests of the proposed  
13 Class. Plaintiff has retained competent and experienced counsel in class action and other complex  
14 litigation.

15 40. Plaintiff and the Class have suffered injury in fact and have lost money as a result of  
16 Defendant's false, deceptive, and misleading representations. Plaintiff purchased the Products because  
17 of the size of the containers and the Product labels, which she believed to be indicative of the amount  
18 of lotion product contained therein as commensurate with the size of the container. Plaintiff relied on  
19 Defendant's representations and would not have purchased the Products if she had known that the  
20 packaging, labeling, and advertising as described herein was false and misleading.

21 41. The Class is identifiable and readily ascertainable. Notice can be provided to such  
22 purchasers using techniques and a form of notice similar to those customarily used in class actions.

23 42. A class action is superior to other available methods for fair and efficient adjudication  
24 of this controversy. The expense and burden of individual litigation would make it impracticable or  
25 impossible for the Class to prosecute their claims individually. The trial and the litigation of Plaintiff's  
26 claims are manageable. Individual litigation of the legal and factual issues raised by Defendant's  
27 conduct would increase delay and expense to all parties and the court system. The class action device  
28

1 presents far fewer management difficulties and provides the benefits of a single, uniform adjudication,  
2 economies of scale, and comprehensive supervision by a single court.

3 43. Defendant has acted on grounds generally applicable to the entire Class, thereby  
4 making final injunctive relief and/or corresponding declaratory relief appropriate with respect to the  
5 Class as a whole. The prosecution of separate actions by individual Class members would create the  
6 risk of inconsistent or varying adjudications with respect to individual members of the Class that  
7 would establish incompatible standards of conduct for Defendant.

8 44. Absent a class action, Defendant will likely retain the benefits of its wrongdoing.  
9 Because of the small size of the individual Class members' claims, few, if any, Class members could  
10 afford to seek legal redress for the wrongs complained of herein. Absent a representative action, the  
11 Class members will continue to suffer losses and Defendant will be allowed to continue these  
12 violations of law and to retain the proceeds of its ill-gotten gains.

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

15 **BUSINESS & PROFESSIONS CODE § 17200, *et seq.***

16 45. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs and  
17 incorporate the same as if set forth herein at length.

18 46. Plaintiff brings this claim individually and on behalf of the Class.

19 47. The California Sherman Food, Drug, and Cosmetic Act ("Sherman Law"), Cal. Health  
20 & Safety Code Section 109875 *et seq.*, declares any food to be misbranded if it is false or misleading  
21 in any particular or if the labeling does not conform with the requirements for nutrition labeling. Cal.  
22 Health & Safety Code Sections 110660, 110665, 110670.

23 48. The Unfair Competition Law ("UCL") prohibits "any unlawful, unfair... or fraudulent  
24 business act or practice." Cal. Bus & Prof. Code § 17200.

25 **A. "Unfair Prong"**

26 49. Under the UCL, a challenged activity is "unfair" when "any injury it causes outweighs  
27 any benefits provided to consumers and the injury is one that the consumers themselves could not  
28

1 reasonably avoid.” *Camacho v. Auto Club of Southern California*, 142 Cal. App. 4th 1394, 1403  
2 (2006).

3 50. Defendant’s actions alleged herein do not confer any benefit to consumers.

4 51. Defendant’s actions alleged herein cause injuries to consumers, who do not receive a  
5 quantity of product commensurate with their reasonable expectations.

6 52. Defendant’s actions alleged herein cause injuries to consumers, who do not receive a  
7 level of lotion commensurate with their reasonable expectations.

8 53. Defendant’s actions alleged herein cause injuries to consumers, who end up overpaying  
9 for the Products and receiving a quantity of beauty cream less than what they expected to receive.

10 54. Consumers cannot avoid any of the injuries caused by Defendant’s actions as alleged  
11 herein.

12 55. Accordingly, the injuries caused by Defendant’s conduct alleged herein outweigh any  
13 benefits.

14 56. Some courts conduct a balancing test to decide if a challenged activity amounts to  
15 unfair conduct under California Business & Professions Code § 17200, weighing the utility of the  
16 defendant’s conduct against the gravity of the harm to the alleged victim.

17 57. Here, Defendant’s challenged conduct of has no utility and financially harms  
18 purchasers. Thus, the utility of Defendant’s conduct is vastly outweighed by the gravity of harm.

19 58. The California legislature maintains a declared policy of prohibiting nonfunctional  
20 slack-fill in consumer goods, as reflected in California Business & Professions Code § 12606.2 and  
21 California Health & Safety Code § 110100.

22 59. Defendant’s packaging of the Products, as alleged herein, is false, deceptive,  
23 misleading, and unreasonable, and constitutes unfair conduct.

24 60. Defendant knew or should have known of its unfair conduct.

25 61. As alleged in the preceding paragraphs, the misrepresentations by Defendant detailed  
26 above constitute an unfair business practice within the meaning of California Business & Professions  
27 Code § 17200.

28





1           75. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs and  
2 incorporate the same as if set forth herein at length.

3           76. Plaintiff brings this claim individually and on behalf of the Class.

4           77. California's False Advertising Law ("FAL"), California Business & Professions Code §  
5 17500, *et seq.*, makes it "unlawful for any person to make or disseminate or cause to be made or  
6 disseminated before the public in this state, in any advertising device or in any other manner or means  
7 whatever, including over the Internet, any statement, concerning personal property or services,  
8 professional or otherwise, or performance or disposition thereof, which is untrue or misleading and  
9 which is known, or which by the exercise of reasonable care should be known, to be untrue or  
10 misleading."

11           78. Defendant knowingly manipulated the physical dimensions of the Products' containers,  
12 or stated another way, under-filled the amount of lotion in the Products, as a means to mislead the  
13 public about the amount of beauty cream product contained in each package.

14           79. Defendant controlled the packaging of the Products. It knew or should have known,  
15 through the exercise of reasonable care, that its representations about the quantity of skin cream  
16 product contained in the Products were untrue and misleading.

17           80. Defendant's action of packaging the Products with nonfunctional slack-fill, instead of  
18 including more lotion in the container or decreasing the size of the container, is likely to deceive the  
19 general public.

20           81. Defendant's actions were false and misleading, such that the general public is and was  
21 likely to be deceived, in violation of section 17500.

22           82. Plaintiff and members of the Class are entitled to equitable relief as no adequate remedy  
23 at law exists. The scope of permissible plaintiffs under the FAL is broader than the CLRA to include,  
24 for example, individuals or entities who purchased the Products for nonpersonal, non-family, and non-  
25 household purposes. Thus, Plaintiff and class members may be entitled to restitution under the FAL,  
26 while not entitled to damages under the CLRA

27           83. Plaintiff and the Class have suffered injury in fact and have lost money as a result of  
28 Defendant's false representations. Plaintiff purchased the Product in reliance upon the claims by

1 Defendant that the Products were of the quantity represented by Defendant's packaging and  
2 advertising. Plaintiff would not have purchased the Product if she had known that the packaging and  
3 labeling as alleged herein were false.

4 84. Plaintiff and members of the Class also request an order requiring Defendant disgorge  
5 its ill-gotten gains and/or award full restitution of all monies wrongfully acquired by Defendant by  
6 means of such acts of false advertising, plus interests and attorneys' fees.

7 **THIRD CAUSE OF ACTION**

8 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT,**

9 **CALIFORNIA CIVIL CODE § 1750, *et seq.***

10 85. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs and  
11 incorporate the same as if set forth herein at length.

12 86. Plaintiff brings this claim individually and on behalf of the Class.

13 87. The Consumer Legal Remedies Act ("CLRA") prohibits certain "unfair methods of  
14 competition and unfair or deceptive acts or practices" in connection with a sale of goods.

15 88. The practices described herein, specifically Defendant's packaging, advertising, and  
16 sale of the Products, were intended to result and did result in the sale of the Products to the consuming  
17 public and violated and continue to violate sections 1770(a)(2), 1770(a)(5), 1770(a)(7), and 1770(a)(9)  
18 of the CLRA by: (1) misrepresenting the approval of the Products as compliant with the Sherman Law;  
19 (2) representing the Products have characteristics and quantities that it does not have; (3) advertising  
20 and packaging the Products with intent not to sell them as advertised and packaged; and (4)  
21 representing that the Products have been supplied in accordance with a previous representation as to  
22 the quantity of lotion contained within each container, when they have not.

23 89. Defendant packaged the Products in containers that contain significant nonfunctional  
24 slack-fill and made material misrepresentations to deceive Plaintiff and the Class.

25 90. Defendant deceived Plaintiff and the Class by misrepresenting the Products as having  
26 characteristics and quantities which they do not have, e.g., that the Products are free of nonfunctional  
27 slack-fill when they are not. In doing so, Defendant intentionally misrepresented and concealed  
28



1 material facts from Plaintiff and the Class. Said misrepresentations and concealment were done with  
2 the intention of deceiving Plaintiff and the Class and depriving them of their legal rights and money.

3 91. Defendant deceived Plaintiff and the Class by packaging and advertising the Products  
4 with intent not to sell it as advertised and by intentionally underfilling the Products' containers and  
5 replacing beauty cream product with nonfunctional slack-fill. In doing so, Defendant intentionally  
6 misrepresented and concealed material facts from Plaintiff and the Class. Said misrepresentations and  
7 concealment were done with the intention of deceiving Plaintiff and the Class and depriving them of  
8 their legal rights and money.

9 92. Defendant deceived Plaintiff and the Class by representing that the Products were  
10 supplied in accordance with an accurate representation as to the quantity of beauty cream contained  
11 therein when they were not. Defendant presented the physical dimensions of the Products' packaging  
12 to Plaintiff and the Class before the point of purchase and gave Plaintiff and the Class a reasonable  
13 expectation that the quantity of product contained therein would be commensurate with the size of the  
14 packaging. In doing so, Defendant intentionally misrepresented and concealed material facts from  
15 Plaintiff and the Class. Said misrepresentations and concealment were done with the intention of  
16 deceiving Plaintiff and the Class and depriving them of their legal rights and money.

17 93. Defendant knew or should have known, through the exercise of reasonable care, that  
18 the Products' packaging was misleading.

19 94. Defendant's actions as described herein were done with conscious disregard of  
20 Plaintiff's rights.

21 95. Defendant's packaging of the Products was a material factor in Plaintiff's and the  
22 Class's decisions to purchase the Products. Based on Defendant's packaging of the Products, Plaintiff  
23 and the Class reasonably believed that they were getting more product than they actually received. Had  
24 they known the truth, Plaintiff and the Class would not have purchased the Products.

25 96. Plaintiff and the Class have suffered injury in fact and have lost money as a result of  
26 Defendant's unfair and unlawful conduct. Specifically, Plaintiff paid for beauty cream product she  
27 never received. Plaintiff would not have purchased the Products had she known the container  
28 contained nonfunctional slack-fill.



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [L'Occitane Lotion Containers Are More Than Half Empty, Class Action Says](#)

---