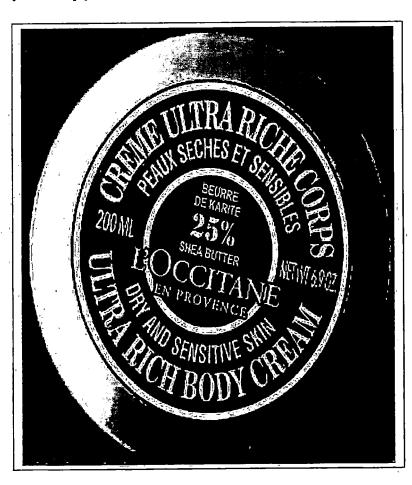
1 2 3 4 5 6	PACIFIC TRIAL ATTORNEYS A Professional Corporation Scott J. Ferrell, Bar No. 202091 sferrell@pacifictrialattorneys.com 4100 Newport Place Drive, Ste. 800 Newport Beach, CA 92660 Tel: (949) 706-6464 Fax: (949) 706-6469 Attorneys for Plaintiff	ELECTRONICALLY FILED Superior Court of California, 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 TH	IE STATE OF CALIFORNIA
9	FOR THE COUNTY OF SAN DIEGO	
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11	BONNIE REYES, individually and on behalf of all others similarly situated,	Case No. 37-2022-00052098-CU-MT-CTL
12	Plaintiff,	CLASS ACTION COMPLAINT
13	v.	1. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW,
14	L'OCCITANE INC., a New York corporation,	BUSINESS AND PROFESSIONS CODE § 17200, et seq.
15	and DOES 1 through 25, inclusive,	2. FALSE AND MISLEADING ADVERTISING IN VIOLATION OF
16	Defendants.	BUSINESS AND PROFESSIONS CODE § 17500, et seq.
17		3. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES
18		ACT, CIVIL CODE § 1750, et. seq.
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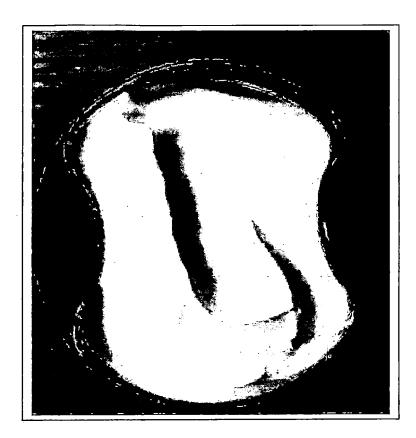
COMPLAINT

INTRODUCTION

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.



- 2 -COMPLAINT



- 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.

- 5. Plaintiff and consumers have thus suffered injuries in fact caused by the false, unfair, deceptive, unlawful, and misleading practices set forth herein.
- 6. Several California courts have found that cases involving nearly identical claims are meritorious and appropriate for class treatment. See, e.g., Winkelbauer v. Orgain Mgmt. et. al, Case No. 20STCV44583 (L.A.S.C. May 20, 2021) (defendant's demurrer to claims involving slack-filled protein powder products overruled); Merry, et al. v. International Coffee & Tea, LLC dba The Coffee Bean, Case No. CIVDS1920749 (San Bernardino Superior Court Jan. 27, 2020) (defendant's demurrer to slack-filled powder container claims overruled); Tsuchiyama v. Taste of Nature, Inc., Case No. BC651252 (L.A.S.C. Feb. 28, 2018) (defendant's motion for judgment on the pleadings involving slack-filled Cookie Dough Bites® candy box claims denied and nationwide settlement subsequently certified through Missouri court); Thomas v. Nestle USA, Inc., Cal. Sup. Case No. BC649863 (April 29, 2020) (certifying as a class action, over opposition, slack-fill claims brought under California consumer protection laws).

PARTIES

- 7. Plaintiff is, and at all times relevant hereto was, a citizen of California. She purchased Defendant's 6.9-ounce size Ultra Rich Body Cream for Dry and Sensitive Skin for personal use in 2022. She paid a premium price for the Product. In making her purchase, Plaintiff relied upon the opaque packaging, including the size of the container and product label, which was prepared and approved by Defendant and its agents, and disseminated state and nationwide, as well as designed to encourage consumers like Plaintiff to purchase the Product. Plaintiff understood the size of the container and product label to indicate that the amount of lotion contained therein was commensurate with the size of the container, and she would not have purchased the Product, or would not have paid a price premium for the Product, had she known that the size of the container and product label were false and misleading.
- 8. Defendant L'Occitane Inc. is a New York corporation with its principal place of business located in New York, New York. Defendant, directly and through its agents, conducts business nationwide. Defendant has substantial contacts with and receives substantial benefits and income from and through the State of California. Defendant is the owner, manufacturer, and

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

- 9. At all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and/or scope of said agency and/or employment with the full knowledge and consent of each of the Defendants. Each of the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each of the other Defendants (L'Occitane Inc. and DOE Defendants will hereafter collectively be referred to as "Defendants").
- 10. The true names and capacities of the Defendants sued herein as DOES 1 through 25, inclusive, are currently unknown to Plaintiff, who therefore sue such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.
- 11. In committing the wrongful acts alleged herein, Defendant planned and participated in and furthered a common scheme by means of false, misleading, deceptive, and fraudulent representations to induce members of the public to purchase the Products. Defendant participated in the making of such representations in that it did disseminate or cause to be disseminated said misrepresentations.
- 12. Defendant, upon becoming involved with the manufacture, advertising, and sale of the Products, knew or should have known that its advertising of the Products' packaging, specifically by representing that they were full, was false, deceptive, and misleading. Defendant affirmatively misrepresented the amount of lotion contained in the Products' packaging in order to convince the public and consumers to purchase the Products, resulting in profits of millions of dollars or more to Defendant, all to the damage and detriment of the consuming public.
- 13. Defendant has created and still perpetuates a falsehood that the Products' packaging contains an amount of cream commensurate with the size of the package, though they actually contain nonfunctional, unlawful slack-fill. As a result, Defendant's consistent and uniform advertising claims

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

JURISDICTION AND VENUE

- This Court has subject matter jurisdiction over this action. This Court has personal 14. jurisdiction over Defendant because Defendant has conducted and continues to conduct substantial business in the State of California.
- Venue is proper in this Court because Defendant conducts substantial business in this 15. County, and because a substantial portion of the misconduct alleged herein occurred in this County.

FACTUAL BACKGROUND

- The amount of product inside any product packaging is material to any consumer 16. seeking to purchase that product. The average consumer spends only 13 seconds deciding whether to make an in-store purchase1; this decision is heavily dependent on a product's packaging, including the package dimensions. Research has demonstrated that packages that seem larger are more likely to be purchased because consumers expect package size to accurately represent the quantity of the good being purchased².
- Accordingly, Defendant chose a certain size container for its Products to convey to consumers that they are receiving a certain and substantial amount of lotion product commensurate with the size of the container. Such representations constitute an express warranty regarding the Products' content.
- Slack-fill is the difference between the actual capacity of a container and the volume of 18. product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for illegitimate or unlawful reasons.
- Defendant falsely represents the quantity of product in each of the Products' opaque 19. containers through its packaging. The size of each container leads the reasonable consumer to believe

Make the Most of Your Brand's 20-Second Window, NIELSEN, Jan. 13, 2015, Randall Beard, https://www.nielsen.com/us/en/insights/article/2015/make-the-most-of-your-brands-20-secondwindown./.

P. Raghubir & A. Krishna, Vital Dimensions in Volume Perception: Can the Eye Fool the Stomach?, 36 J. MARKETING RESEARCH 313-326 (1999).

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

- 20. Even if Plaintiff and other reasonable consumers of the Products had a reasonable opportunity to review, prior to the point of sale, other representations of quantity, such as net weight or serving disclosures, they did not and would not have reasonably understood or expected such representations to translate to a quantity of lotion product meaningfully different from their expectation of an amount of skin cream commensurate with the size of the container.
- 21. Prior to the point of sale, the Products' packaging does not allow for a visual or audial confirmation of the contents of the Products. The Products' opaque packaging prevents a consumer from observing the contents before opening. Even if a reasonable consumer were to "shake" the Products before opening the container, the reasonable consumer would not be able to discern the presence of any nonfunctional slack-fill, let alone the significant amount of nonfunctional slack-fill that is present in the Products.
- 22. The other information that Defendant provides about the quantity of lotion on the labels of the Products does not enable reasonable consumers to form any meaningful understanding about how to gauge the quantity of contents of the Products as compared to the size of the container itself. For instance, the front of the Products' packaging does not have any labels that would provide Plaintiff with any meaningful insight as to the amount of lotion to be expected, such as a fill line.
- 23. Disclosures of net weight and serving sizes in ounces, pounds, or grams do not allow the reasonable consumer to make any meaningful conclusions about the quantity of skin cream contained in the Products' containers that would be different from their expectation that the quantity of beauty cream is commensurate with the size of the container.
- 24. Plaintiff would not have purchased the Product had she known that the Product contained slack-fill that serves no functional or lawful purpose.
- 25. The slack-fill in the Products does not protect the contents of the packages. In fact, because the Products consist of cream, there is no need to protect the Products with the slack-fill present.

- 26. The machines used to package the Products would not be affected if there was more cream product added. At most, a simple recalibration of the machines would be required. Upon information and belief, adjusting these machines is rather simple.
- 27. Because the packages are filled to about half of their capacity, Defendant can increase the Products' fill level significantly without affecting how the containers are sealed, or it can disclose the fill-level on the outside labeling to inform consumers of the amount of lotion actually in the container, consistent with the law.
- 28. The slack-fill present in the Products is not a result of the cream product settling during shipping and handling. Given the Products' density, shape, and composition, any settling occurs immediately at the point of fill. No measurable product settling occurs during subsequent shipping and handling.
- 29. Even if *some* product settling may occur, there is no reason why the Products' containers are over 50% empty.
- 30. The packages do not perform a specific function that necessitates the slack-fill. This safe harbor would only apply if a specific function were "inherent to the nature of the food and [] clearly communicated to consumers." The packages do not perform a function that is inherent to the nature of the product. Defendant did not communicate a specific function to consumers, making this provision inapplicable.
- 31. The Products' packaging is not reusable or of any significant value to the Products independent of its function to hold the lotion product. The Products' containers are intended to be discarded immediately after the cream product is consumed.
- 32. The slack-fill present in the Products does not accommodate required labeling, discourage pilfering, facilitate handling, or prevent tampering.
- 33. Defendant can easily increase the quantity of lotion in each container (or, alternatively, decrease the size of the containers) significantly.

CLASS ACTION ALLEGATIONS

34. Plaintiff bring this action on her own behalf and on behalf of all other persons similarly situated. The Class which Plaintiff seeks to represent comprises:

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

- 35. Excluded from the Class are Defendant's officers, directors, and employees, and any individual who received remuneration from Defendant in connection with that individual's use or endorsement of the Products. Said definition may be further defined or amended by additional pleadings, evidentiary hearings, a class certification hearing, and orders of this Court.
- 36. The Class is comprised of many thousands of persons. The Class is so numerous that joinder of all members is impracticable and the disposition of their claims in a class action will benefit the parties and the Court.
- 37. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common questions of law and fact include, but are not limited to, the following:
 - a. The true nature and amount of product contained in each Products' packaging;
 - b. Whether the marketing, advertising, packaging, labeling, and other promotional materials for the Products are deceptive;
 - c. Whether Defendant's conduct is an unlawful business act or practice within the meaning of Business and Professions Code section 17200, et seq.;
 - d. Whether Defendant's conduct is an unfair business act or practice within the meaning of Business and Professions Code section 17200, et seq.;
 - e. Whether Defendant's advertising is untrue or misleading within the meaning of Business and Professions Code section 17500, et seq.;
 - f. Whether Defendant made false and misleading representations in its advertising and labeling of the Products;
 - g. Whether Defendant knew or should have known that the misrepresentations were false;
 - h. Whether Plaintiff and the Class paid more money for the Products than they actually received;

- i. How much more money Plaintiff and the Class paid for the Products than they actually received;
- j. Whether Defendant was unjustly enriched at the expense of Plaintiff and the Class members;
- k. Whether Defendant intentionally misrepresented the amount of lotion contained in the Products' packaging; and
- Whether Defendant negligently misrepresented the amount of lotion contained in the Products' packaging.
- 38. Plaintiff's claims are typical of the claims of the proposed Class, as the representations and omissions made by Defendant are uniform and consistent and are contained on packaging and labeling that was seen and relied on by Plaintiff and members of the Class.
- 39. Plaintiff will fairly and adequately represent and protect the interests of the proposed Class. Plaintiff has retained competent and experienced counsel in class action and other complex litigation.
- 40. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendant's false, deceptive, and misleading representations. Plaintiff purchased the Products because of the size of the containers and the Product labels, which she believed to be indicative of the amount of lotion product contained therein as commensurate with the size of the container. Plaintiff relied on Defendant's representations and would not have purchased the Products if she had known that the packaging, labeling, and advertising as described herein was false and misleading.
- 41. The Class is identifiable and readily ascertainable. Notice can be provided to such purchasers using techniques and a form of notice similar to those customarily used in class actions.
- 42. A class action is superior to other available methods for fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for the Class to prosecute their claims individually. The trial and the litigation of Plaintiff's claims are manageable. Individual litigation of the legal and factual issues raised by Defendant's conduct would increase delay and expense to all parties and the court system. The class action device

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

- 43. Defendant has acted on grounds generally applicable to the entire Class, thereby making final injunctive relief and/or corresponding declaratory relief appropriate with respect to the Class as a whole. The prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendant.
- Absent a class action, Defendant will likely retain the benefits of its wrongdoing. Because of the small size of the individual Class members' claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein. Absent a representative action, the Class members will continue to suffer losses and Defendant will be allowed to continue these violations of law and to retain the proceeds of its ill-gotten gains.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW

BUSINESS & PROFESSIONS CODE § 17200, et seq.

- 45. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs and incorporate the same as if set forth herein at length.
 - 46. Plaintiff brings this claim individually and on behalf of the Class.
- 47. The California Sherman Food, Drug, and Cosmetic Act ("Sherman Law"), Cal. Health & Safety Code Section 109875 *et seq.*, declares any food to be misbranded if it is false or misleading in any particular or if the labeling does not conform with the requirements for nutrition labeling. Cal. Health & Safety Code Sections 110660, 110665, 110670.
- 48. The Unfair Competition Law ("UCL") prohibits "any unlawful, unfair... or fraudulent business act or practice." Cal. Bus & Prof. Code § 17200.

A. "Unfair Prong"

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

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

- Defendant's actions alleged herein do not confer any benefit to consumers. 50.
- Defendant's actions alleged herein cause injuries to consumers, who do not receive a 51. quantity of product commensurate with their reasonable expectations.
- Defendant's actions alleged herein cause injuries to consumers, who do not receive a 52. level of lotion commensurate with their reasonable expectations.
- Defendant's actions alleged herein cause injuries to consumers, who end up overpaying 53. for the Products and receiving a quantity of beauty cream less than what they expected to receive.
- Consumers cannot avoid any of the injuries caused by Defendant's actions as alleged 54. herein.
- Accordingly, the injuries caused by Defendant's conduct alleged herein outweigh any 55. benefits.
- Some courts conduct a balancing test to decide if a challenged activity amounts to 56. unfair conduct under California Business & Professions Code § 17200, weighing the utility of the defendant's conduct against the gravity of the harm to the alleged victim.
- Here, Defendant's challenged conduct of has no utility and financially harms 57. purchasers. Thus, the utility of Defendant's conduct is vastly outweighed by the gravity of harm.
- The California legislature maintains a declared policy of prohibiting nonfunctional 58. slack-fill in consumer goods, as reflected in California Business & Professions Code § 12606.2 and California Health & Safety Code § 110100.
- Defendant's packaging of the Products, as alleged herein, is false, deceptive, 59. misleading, and unreasonable, and constitutes unfair conduct.
 - Defendant knew or should have known of its unfair conduct. 60.
- As alleged in the preceding paragraphs, the misrepresentations by Defendant detailed 61. above constitute an unfair business practice within the meaning of California Business & Professions Code § 17200.

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- 62. There existed reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein. Defendant could have used packaging appropriate for the amount of skin cream product contained within the Products.
- 63. All of the conduct alleged herein occurs and continues to occur in Defendant's business. Defendant's unfair conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.
- 64. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendant's unfair conduct. Plaintiff paid an unwarranted premium for this product. Specifically, Plaintiff paid for lotion she never received. Plaintiff would not have purchased the Product if she had known that the Product's packaging contained nonfunctional slack-fill.

B. "Unlawful" Prong

- 65. California Business & Professions Code § 17200, et seq., identifies violations of other laws as unlawful practices that the unfair competition law makes independently actionable.
- 66. Defendant's packaging of the Products, as alleged in the preceding paragraphs, violates California Civil Code § 1750, et. seq., California Business & Professions Code § 17500, et. seq., and 21 C.F.R § 100.100.
- 67. Defendant's packaging of the Products, as alleged herein, is false, deceptive, misleading, and unreasonable, and constitutes unlawful conduct.
 - 68. Defendant knew or should have known of its unlawful conduct.
- 69. As alleged herein, the misrepresentations by Defendant detailed above constitute an unlawful business practice within the meaning of California Business & Professions Code §17200.
- 70. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein. Defendant could have either used packaging appropriate for the amount of beauty cream product contained therein or indicated how much lotion the Products contained with a clear and conspicuous fill line.
- 71. All of the conduct alleged herein occurred and continues to occur in Defendant's business. Defendant's unlawful conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.

- 72. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendant's unlawful conduct. Plaintiff paid an unwarranted premium for this product. Specifically, Plaintiff paid for beauty cream product she never received. Plaintiff would not have purchased the Products if she had known that the packaging contained nonfunctional slack-fill.
- 73. As a result of the conduct described herein, Plaintiff and members of the Class are entitled to equitable relief as no adequate remedy at law exists.
 - (1) The applicable limitations period is four years for claims brought under the UCL, which is one year longer than the applicable statute of limitations under the FAL and CLRA. Thus, class members who purchased the Products between 3 and 4 years prior to the filing of the complaint will be barred from the Class if equitable relief were not granted under the UCL.
 - than the other causes of action asserted herein to include, for example, the overall unfair marketing scheme of underfilling the Products' packaging. Thus, Plaintiff and class members may be entitled to restitution under the UCL, while not entitled to damages under other causes of action asserted herein (e.g., the FAL requires actual or constructive knowledge of the falsity; the CLRA is limited to certain types of plaintiffs (an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes) and certain statutorily enumerated conduct).
- 74. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further entitled to prejudgment interest as a direct and proximate result of Defendant's unfair and unlawful business conduct. The amount on which interest is to be calculated is a sum certain and capable of calculation, and Plaintiff and the Class are entitled to interest in an amount according to proof.

SECOND CAUSE OF ACTION

FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS & PROFESSIONS CODE § 17500, et seq.

- 14 -

- 75. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs and incorporate the same as if set forth herein at length.
 - 76. Plaintiff brings this claim individually and on behalf of the Class.
- 77. California's False Advertising Law ("FAL"), California Business & Professions Code § 17500, et seq., makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, in any advertising device or in any other manner or means whatever, including over the Internet, any statement, concerning personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should beknown, to be untrue or misleading."
- 78. Defendant knowingly manipulated the physical dimensions of the Products' containers, or stated another way, under-filled the amount of lotion in the Products, as a means to mislead the public about the amount of beauty cream product contained in each package.
- 79. Defendant controlled the packaging of the Products. It knew or should have known, through the exercise of reasonable care, that its representations about the quantity of skin cream product contained in the Products were untrue and misleading.
- 80. Defendant's action of packaging the Products with nonfunctional slack-fill, instead of including more lotion in the container or decreasing the size of the container, is likely to deceive the general public.
- 81. Defendant's actions were false and misleading, such that the general public is and was likely to be deceived, in violation of section 17500.
- 82. Plaintiff and members of the Class are entitled to equitable relief as no adequate remedy at law exists. The scope of permissible plaintiffs under the FAL is broader than the CLRA to include, for example, individuals or entities who purchased the Products for nonpersonal, non-family, and non-household purposes. Thus, Plaintiff and class members may be entitled to restitution under the FAL, while not entitled to damages under the CLRA
- 83. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendant's false representations. Plaintiff purchased the Product in reliance upon the claims by

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

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

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT,

CALIFORNIA CIVIL CODE § 1750, et seq.

- 85. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs and incorporate the same as if set forth herein at length.
 - 86. Plaintiff brings this claim individually and on behalf of the Class.
- 87. The Consumer Legal Remedies Act ("CLRA") prohibits certain "unfair methods of competition and unfair or deceptive acts or practices" in connection with a sale of goods.
- 88. The practices described herein, specifically Defendant's packaging, advertising, and sale of the Products, were intended to result and did result in the sale of the Products to the consuming public and violated and continue to violate sections 1770(a)(2), 1770(a)(5), 1770(a)(7), and 1770(a)(9) of the CLRA by: (1) misrepresenting the approval of the Products as compliant with the Sherman Law; (2) representing the Products have characteristics and quantities that it does not have; (3) advertising and packaging the Products with intent not to sell them as advertised and packaged; and (4) representing that the Products have been supplied in accordance with a previous representation as to the quantity of lotion contained within each container, when they have not.
- 89. Defendant packaged the Products in containers that contain significant nonfunctional slack-fill and made material misrepresentations to deceive Plaintiff and the Class.
- 90. Defendant deceived Plaintiff and the Class by misrepresenting the Products as having characteristics and quantities which they do not have, e.g., that the Products are free of nonfunctional slack-fill when they are not. In doing so, Defendant intentionally misrepresented and concealed

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

- 91. Defendant deceived Plaintiff and the Class by packaging and advertising the Products with intent not to sell it as advertised and by intentionally underfilling the Products' containers and replacing beauty cream product with nonfunctional slack-fill. In doing so, Defendant intentionally misrepresented and concealed material facts from Plaintiff and the Class. Said misrepresentations and concealment were done with the intention of deceiving Plaintiff and the Class and depriving them of their legal rights and money.
- 92. Defendant deceived Plaintiff and the Class by representing that the Products were supplied in accordance with an accurate representation as to the quantity of beauty cream contained therein when they were not. Defendant presented the physical dimensions of the Products' packaging to Plaintiff and the Class before the point of purchase and gave Plaintiff and the Class a reasonable expectation that the quantity of product contained therein would be commensurate with the size of the packaging. In doing so, Defendant intentionally misrepresented and concealed material facts from Plaintiff and the Class. Said misrepresentations and concealment were done with the intention of deceiving Plaintiff and the Class and depriving them of their legal rights and money.
- 93. Defendant knew or should have known, through the exercise of reasonable care, that the Products' packaging was misleading.
- 94. Defendant's actions as described herein were done with conscious disregard of Plaintiff's rights.
- 95. Defendant's packaging of the Products was a material factor in Plaintiff's and the Class's decisions to purchase the Products. Based on Defendant's packaging of the Products, Plaintiff and the Class reasonably believed that they were getting more product than they actually received. Had they known the truth, Plaintiff and the Class would not have purchased the Products.
- 96. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendant's unfair and unlawful conduct. Specifically, Plaintiff paid for beauty cream product she never received. Plaintiff would not have purchased the Products had she known the container contained nonfunctional slack-fill.

97. Notwithstanding anything to the contrary herein and in accordance with Section 1782(d), Plaintiff currently seeks injunctive relief only under the claim for violation of the Consumer Legal Remedies Act. In accordance with California Civil Code Section 1782(a), this Complaint serves to (1) notify Defendant of the acts and practices that are unlawful under Section 1770 and of the particular violations of Section 1770; and (2) demand that Defendant correct, repair, replace, or otherwise rectify the goods or services in violation of Section 1770. In not less than 30 days, Plaintiff will amend this complaint to include a request for compensatory damages, statutory damages, restitution, and attorneys' fees under the C.L.R.A.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for judgment and relief on all causes of action as follows:

- A. An Order certifying the Class, appointing Plaintiff as class representative, and designating Plaintiff's counsel as counsel for the Class;
- B. Damages against Defendant in an amount to be determined at trial, together with preand post-judgment interest at the maximum rate allowable by law on any amounts awarded;
- C. Restitution and/or disgorgement in an amount to be determined at trial;
- D. Reasonable attorneys' fees and costs; and
- E. Any and all other relief at law or equity to which Plaintiff may be entitled under applicable law or procedure. other and further as may be just and proper.

Dated: December 29, 2022

PACIFIC TRIAL ATTORNEYS, APC

Scott. J. Ferrell

Attorneys for Plaintiff

- 18 -

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