

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

Case No.

**CONSOLIDATED CLASS ACTION
COMPLAINT**

CAMERON YATES and DANIEL
GUTIERREZ, each individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

GWD CONCEPT SP. Z O.O.,

Defendant.

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: \$3.5 million
Fee authority: ORS 21.160(1)(e)
Not subject to mandatory arbitration

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

2

3
4
5
6

7

8
9

10

11
12
13

14

15
16
17
18
19
20
21
22

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.

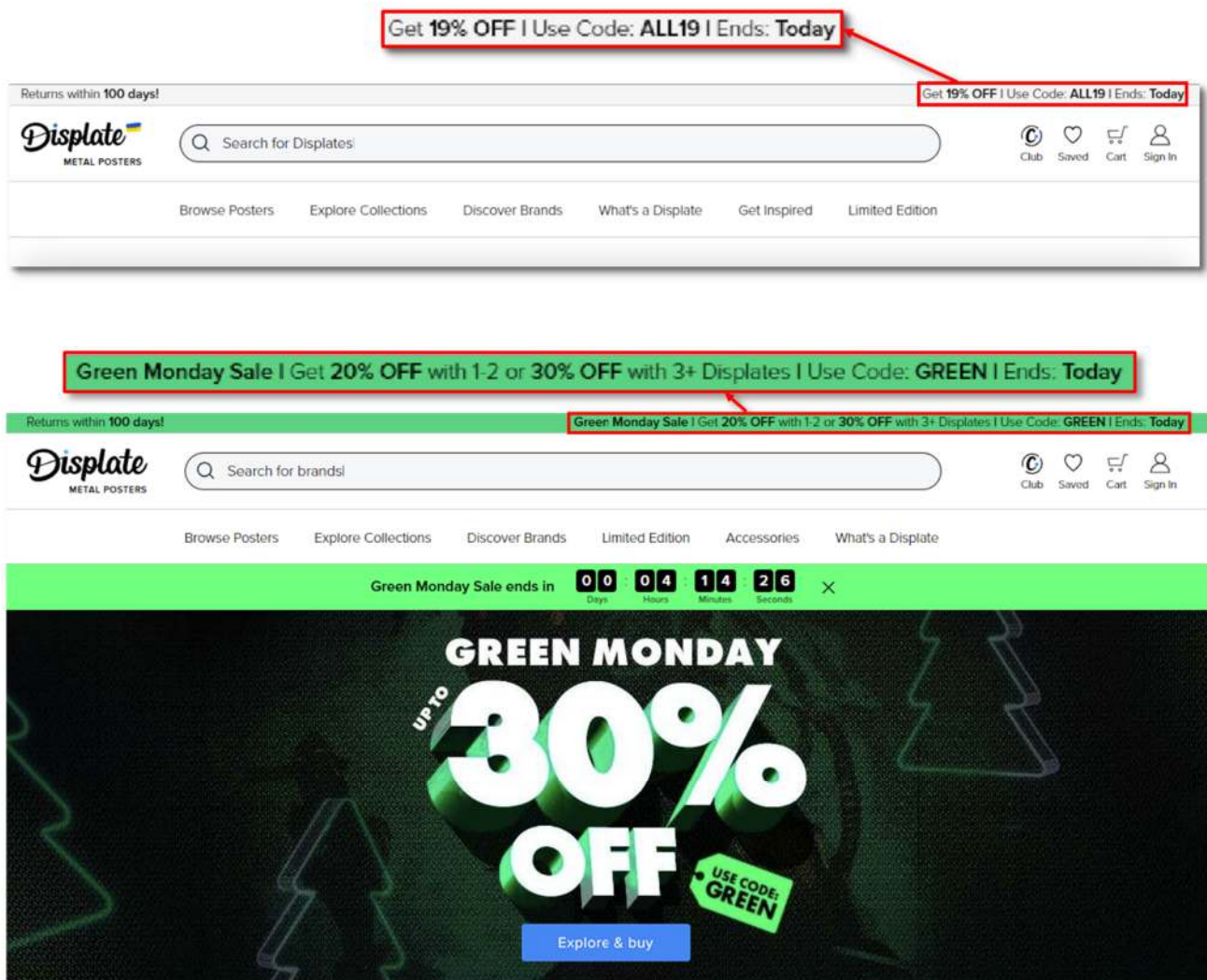
24 So, as numerous courts have found, fake sales violate these laws.

10.

Defendant GWD Concept sp. z o.o. (“Displate” or “Defendant”) makes, sells, and markets Displate posters (“Displate Products” or “Products”). The Products are sold online through Defendant’s website, www.displate.com.

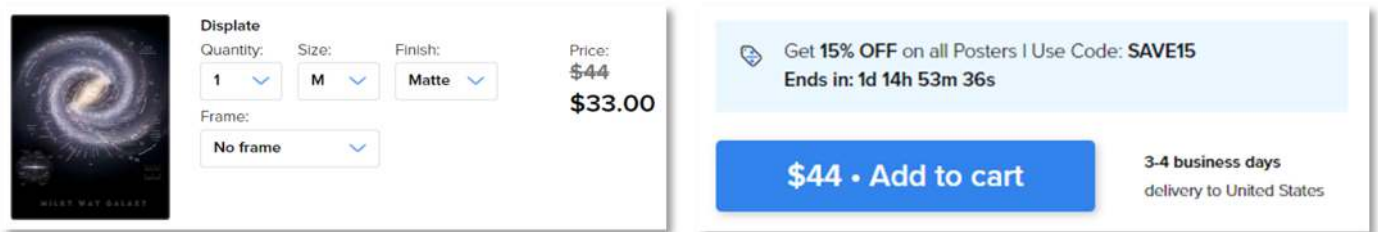
11.

Defendant’s website prominently advertises purportedly time-limited, sitewide sales for the Products. These sales offer “X% off,” and are purported to “end[]” at a certain date and time. The discounts associated with the advertised sales can be seen on a banner at the top of the website, such as “15% off order \$1k+ | TODAY ONLY.” For example:



12.

In addition, Defendant advertises purported discounts off regular prices. These advertisements include a purported discount price alongside a strike-out of a purported regular price:



13.

But these advertisements are false. Defendant routinely offers sitewide discounts off of the purported regular prices. 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). Plus, the list prices Defendant advertises are not actually Defendant's regular prices (the prices it usually charges), 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 using a discount code.

14.

Plaintiffs purchased Products from Defendant online on www.displate.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 that the Products that they purchased usually retailed for the displayed regular price. They further believed that they were getting a substantial discount from the regular price, and that the sale would end soon. These reasonable beliefs are what caused them to buy from Defendant. If

1 they had known that the Products they purchased were not on sale, they would not have bought
2 them.

3 15.

4 But none of that was true. Defendant's published list prices were not the true regular
5 prices or the prevailing regular prices. The purported discounts were not true discounts. And the
6 sales Defendant advertised were not really time-limited sales. Had Defendant been truthful,
7 Plaintiffs and other consumers would not have purchased the Products or would have paid less
8 for them.

9 16.

10 Plaintiffs bring this case for themselves and the other customers who purchased Displate
11 Products.

12 **Parties.**

13 17.

14 Plaintiff Cameron Yates is domiciled in Springfield, Oregon.

15 18.

16 Plaintiff Daniel Gutierrez is domiciled in Bakersfield, California.

17 19.

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

19 20.

20 Defendant GWD Concept sp. z o.o. is a foreign citizen. It is a Polish company with its
21 principal place of business in Poland.

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

21.

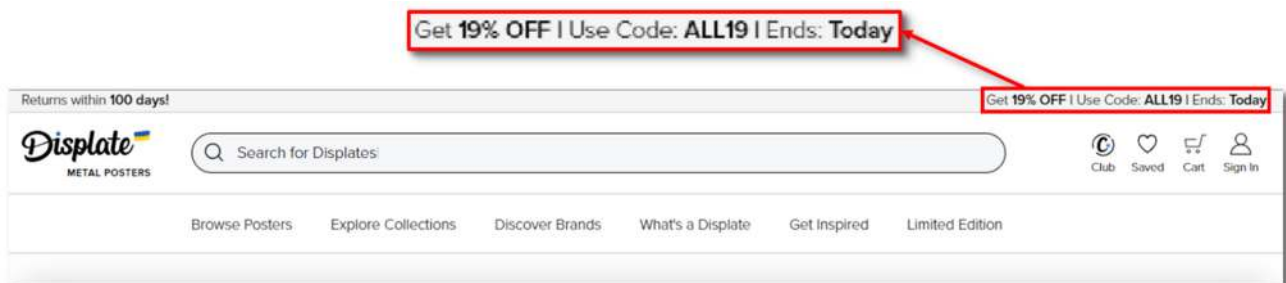
This Court has jurisdiction over Defendant under ORCP 4. Defendant does business in this state. Defendant advertises and sells products to consumers in Oregon, and serves a market for their products in Oregon. Due to Defendant's actions, their products have been marketed and sold to consumers in Oregon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

Facts.

Defendant's fake sales and discounts.

22.

Defendant makes, sells, and markets Displate posters. Defendant sells their Products directly to consumers online, through their website, www.displate.com. Defendant's website creates an illusion that customers are receiving a limited-time discount and that their posters' regular prices are higher than they truly are. Defendant does this by advertising fake limited-time sales, fake regular prices, and fake discounts based on the fake regular prices. For example, Defendant advertises purportedly time-limited sales that end on a certain date, where consumers can receive "19% OFF" all posters:



Captured July 5, 2022

23.

But Displate Products are routinely on “sale.” For example, Defendant has prominently displayed, for over a year, a sale on all posters on their website. These sales are designed to induce consumers to purchase their Products under the mistaken belief they are getting a significant bargain because they are buying while the sale is going on. And it advertises these discounts extensively: on an attention-grabbing banner at the top of their website; on the individual product pages for each Product, and on the checkout pages. Defendant advertises them by touting “X% OFF”; by advertising list prices in strikethrough font next to lower, purported discount prices; with slogans such as “25% OFF” in attention-grabbing, bold font next to product descriptions. Example screenshots are provided on the following pages:



Captured September 26, 2022



Captured December 25, 2022

Get 20% OFF on all Displates | Use Code: **SAVE20** | Ends: **Today**

Returns within 100 days!

Get 20% OFF on all Displates | Use Code: **SAVE20** | Ends: **Today**

Displate
METAL POSTERS

Search for Displate

Club Saved Cart Sign In

Browse Posters Explore Collections Discover Brands Limited Edition Accessories What's a Displate

Captured March 17, 2023

Get 19% OFF on all Displates | Use Code: **GET19** | Ends: **Today**

Returns within 100 days!

Get 19% OFF on all Displates | Use Code: **GET19** | Ends: **Today**

Displate
METAL POSTERS

Search for desi

Club Wishlist Cart Join

Browse Posters Explore Collections Discover Brands Limited Displates **NEW** Accessories What's a Displate

Captured May 16, 2023

Get 19% OFF | Use Code: **SAVE19** | Ends: **Thursday**

Returns within 100 days!

Get 19% OFF | Use Code: **SAVE19** | Ends: **Thursday**

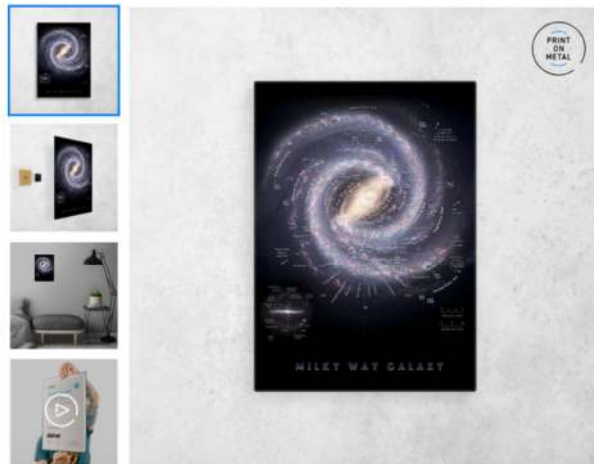
Displate
METAL POSTERS

Search for desi

Club Saved Cart Sign In

Browse Posters Explore Collections Discover Brands What's a Displate Get Inspired Limited Edition

Home Page • PabloCarlonBudassi • Maps Of The Universe • Milky Way Map Poster



Milky Way Map

Created by PabloCarlonBudassi • [Read more](#)

Select size:



Select finish:

Matte

Select frame:



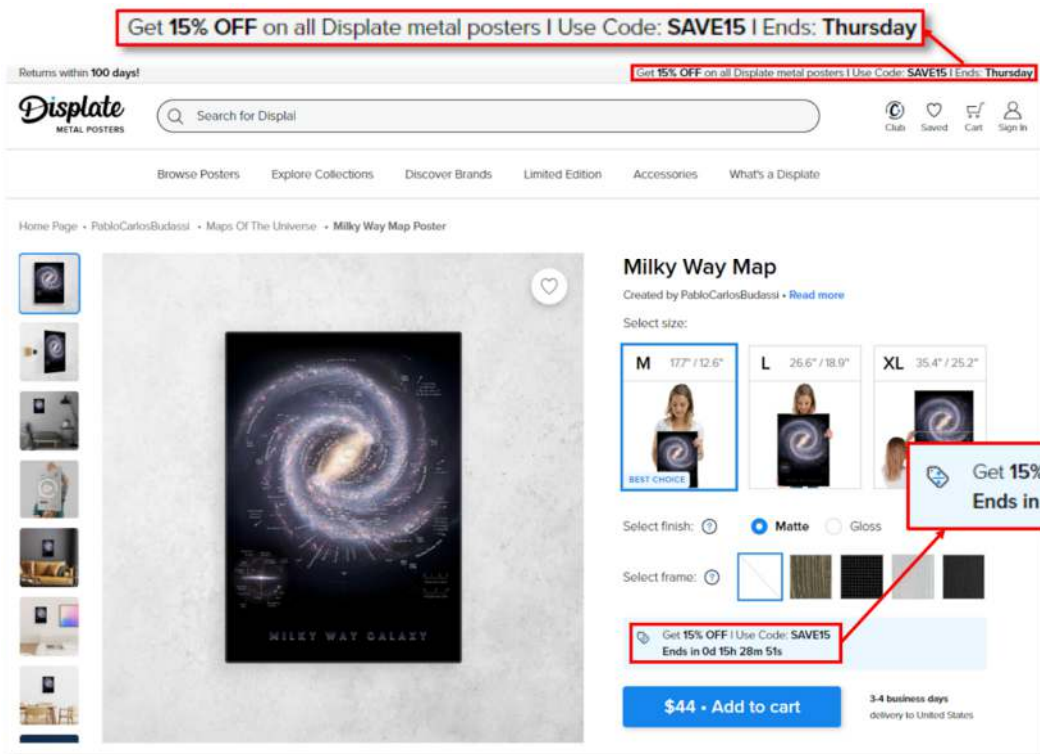
Environment Day Sale with CODE: **PLANTTREES**
• Buy 1-2 Displates get 20% OFF
• Buy 3+ Displates get 30% OFF
Sale ends in 3d 23h 38m 17s

Environment Day Sale with CODE: **PLANTTREES**
• Buy 1-2 Displates get 20% OFF
• Buy 3+ Displates get 30% OFF
Sale ends in 3d 23h 38m 17s

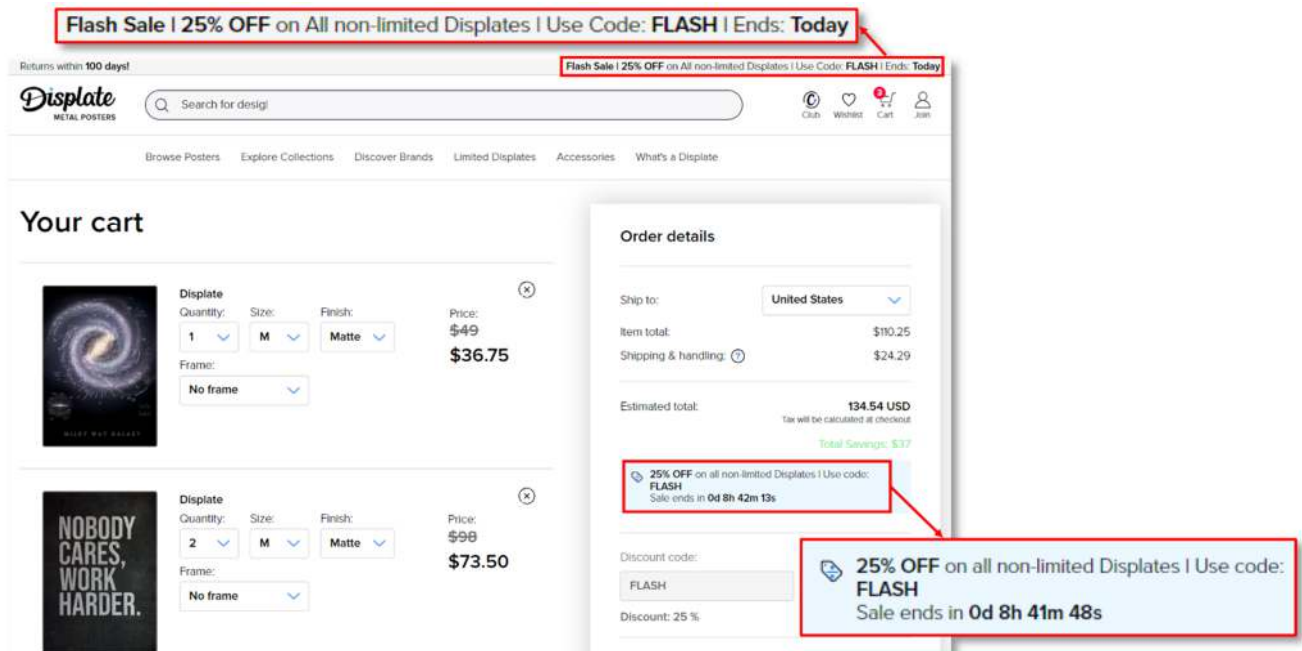
\$44 • Add to cart

3-4 business days
delivery to United States

Captured June 3, 2022



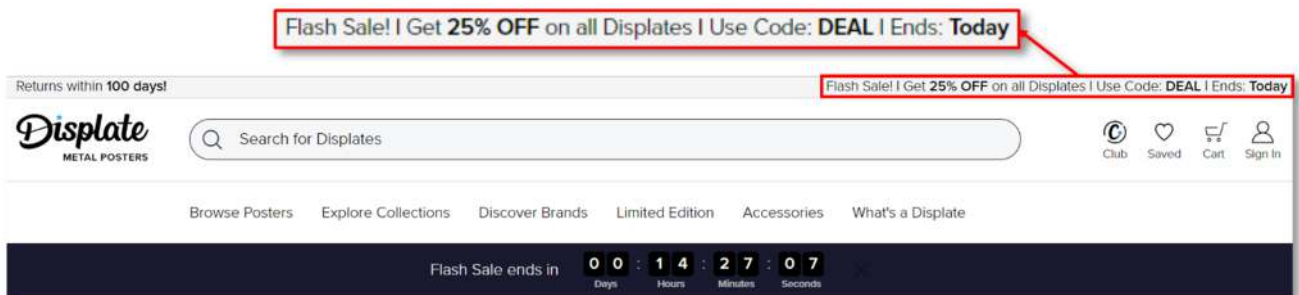
Captured March 22, 2023



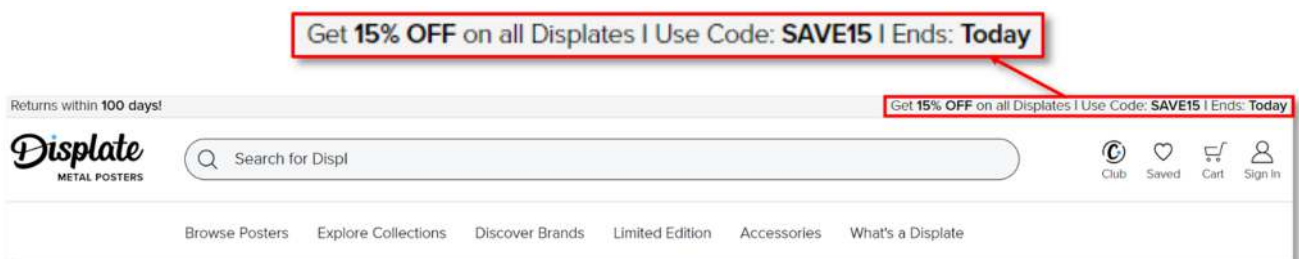
Captured September 12, 2023

24.

As shown above, Defendant represents that these discounts are only available for a limited time. For example, Defendant represents that their sales expire on a particular date (“Today”) or when a displayed countdown clock expires, for example, as shown above: “1 Day[, 7 Hours, 37 Mins, 13 Secs.” To reasonable consumers, this means that after the countdown clock runs out, Defendant’s posters will no longer be on sale and will retail at their purported list prices. But in reality, the discounts are ongoing. For example, as depicted below, as soon as the “25% OFF on all Displates” discount ended on April 3, 2023 (“Today” in screenshot), Defendant generated another sitewide sale with a similar discount, except with a new end date of April 4, 2023 (“Today” in screenshot):



Captured April 3, 2023



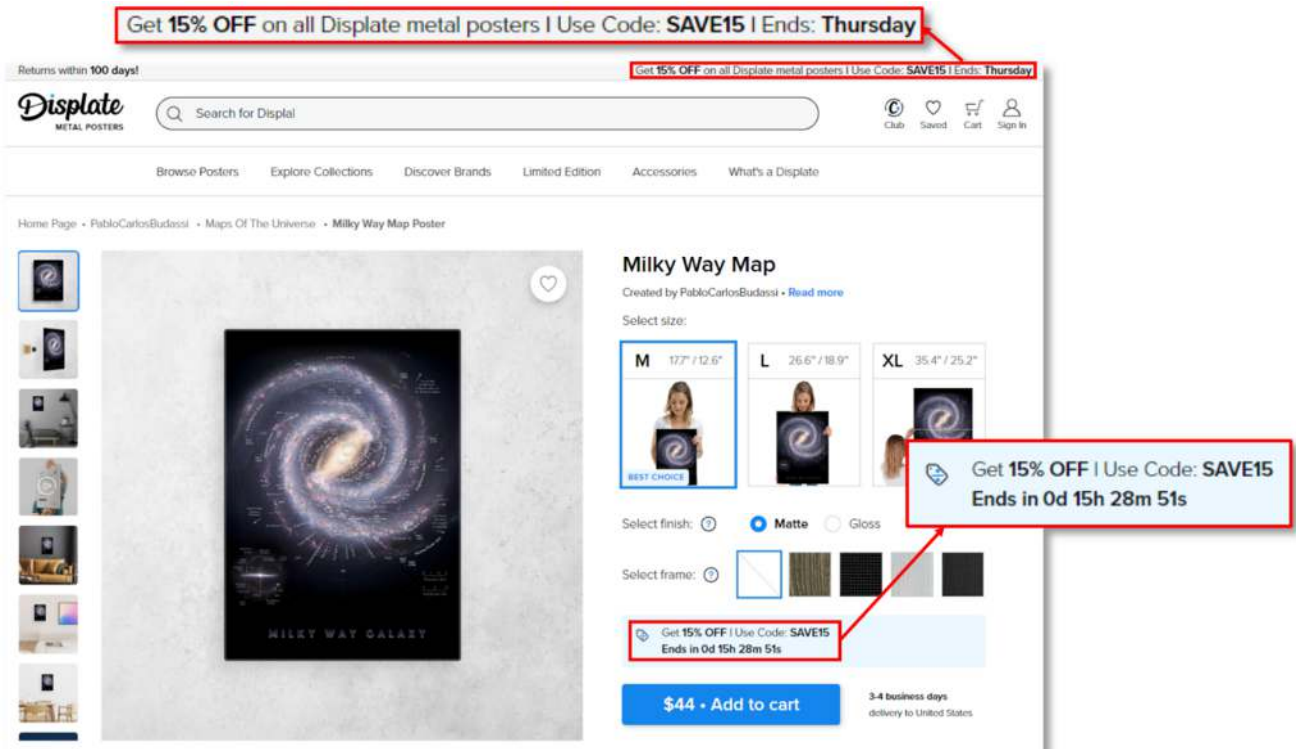
Captured April 4, 2023

25.

In addition, Defendant’s website lists fake regular prices (that is, prices reflecting the list price or value of an item) and fake discounts.

26.

For example, on March 22, 2023, Defendant advertised a purported “Get 15% OFF on all Displate metal posters” discount and claimed that this sale “Ends: Thursday” (March 23, 2023). On this day, Defendant offered their Medium Sized Milky Way Map Displate poster, which has a purported regular price of \$44:



Captured March 22, 2023

27.

But the truth is, the Medium Sized Milky Way Map Displate poster’s listed regular price of \$44 is not its prevailing price. Instead, it is routinely found at a discount from the purported regular price (e.g., on May 31, 2023, it was once again on sale for \$33 (15% off) with a purported regular price of \$44), and the customer is not receiving the advertised discount by buying during the purported sale.

1 28.

2 To obtain the advertised discounts, consumers generally must enter an advertised promo
3 code. The promo code is prominently displayed in bold in a banner at the top of every page of
4 Defendant's website, including on the homepage, product pages, search pages, and the checkout
5 pages.

6 29.

7 As shown above, it also appears in bold directly above the "Add to cart" button on the
8 product page of every Displate poster. Plus, as described above, the sale is extensively
9 advertised throughout Defendant's website. So, the overwhelming majority (if not all) of
10 Defendant's sales are made using the promo codes, at the advertised discount price (and not the
11 supposedly regular list price).

12 30.

13 Using these tactics, Defendant leads reasonable consumers to believe that they will get a
14 discount on the Products they are purchasing if they purchase during the limited-time promotion
15 period and use the prominently advertised promo code. In other words, Defendant leads
16 reasonable consumers to believe that if they buy now, they will get a Product worth X at a
17 discounted, lower price Y. This creates a sense of urgency: buy now, and you will receive
18 something worth more than you pay for it; wait, and you will pay more for the same thing later.

19 31.

20 Based on Defendant's advertisements, reasonable consumers reasonably believe that the
21 list prices are Defendant's regular prices (that is, the prices at which the Products ordinarily or
22 typically retail for), and their former prices (that is, the price at which the goods were
23 consistently offered for sale before the limited-time offer went into effect). In other words,
24 reasonable consumers believe that the list prices Defendant advertises represent the amount that

1 consumers usually have to pay for Defendant's goods, formerly had to pay for Defendant's
2 goods, before the limited-time sale began, and will again have to pay for Defendant's goods
3 when the sale ends. Said differently, reasonable consumers reasonably believe that, prior to the
4 supposedly time-limited sale, consumers had to pay the list price to get the item and did not have
5 the opportunity to get a discount from that list price.

6 32.

7 Reasonable consumers also reasonably believe that the list prices that Defendant
8 advertises represent the true market value of the Products, and that they are the prevailing prices
9 for those Products. Reasonable consumers also believe that they are receiving reductions from
10 Defendant's regular prices, and the market value of the Products in the amounts advertised. Said
11 differently, reasonable consumers reasonably interpret Defendant's advertisements to mean that,
12 if they buy now, they will receive a price reduction from the price at which Defendant ordinarily
13 sells its Products and a price reduction from the Products' market value. In truth, however,
14 Defendant routinely offers purported reductions off the list prices it advertises and ordinarily
15 sells its Products at prices lower than the listed regular prices.

16 33.

17 Defendant's purported "regular" prices were not the prevailing prices during the 90 days
18 immediately preceding Defendant's advertisement of the purported discounts. Defendant makes,
19 and exclusively sells, Displate posters. Defendant's website describes Displate posters as "one-
20 of-a-kind metal poster[s]."¹ It also states that they are a "unique metal poster" and a "21st
21 century canvas unlike any other."² Displate posters also come with Displate's "unique" magnet
22 mounting system for hanging posters on walls.³ Because Defendant makes and exclusively sells

23 ¹ <https://displate.com/whats-a-displate>.

24 ² <https://displate.com/about-us>.

³ <https://displate.com/about-mounting>.

1 its Products, its own prices are the prevailing market prices. And, as explained above, because
2 Defendant consistently sells their Products at a purported discount price, the prevailing market
3 prices in the last 90 days (and, for that matter, for any period) are consistently lower than the
4 “regular prices” Defendant advertises. Moreover, if any of Defendant’s Products were sold by
5 other retailers, they would be sold in a competitive market where prices offered by vendors
6 selling the same item converge on the same market price. Thus, the fact that Defendant
7 advertises former prices that are not the prevailing market price in the last 90 days for their
8 exclusive Products, also shows that the advertised former prices for any non-exclusive Products
9 are likewise higher than prevailing market rates for those Products.

10 34.

11 As a result, everything about Defendant’s price and purported discount advertising is
12 false and misleading. The list prices Defendant advertises are not actually Defendant’s regular
13 prices, or the prevailing prices for the Products Defendant sells, and do not represent the true
14 market value for the Products, because Defendant’s Products are regularly available for less than
15 that. The purported discounts Defendant advertises are not the true discount the customer is
16 receiving. Nor are the purported discounts time-limited—they are regularly available.

17 35.

18 By listing fake regular prices and fake discounts, Defendant misleads consumers into
19 believing that they are getting a good deal.

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

21 36.

22 Oregon’s Unlawful Trade Practices Act (UTPA) expressly prohibits businesses from
23 making “false or misleading representations of fact concerning the reasons for, existence of, or
24 amounts of price reductions,” O.R.S. § 646.608(j); “false or misleading representations of fact

1 concerning the offering price of, or the person's cost for real estate, goods or services," O.R.S.
2 § 646.608(s); representing that goods have "characteristics" that they do not have, O.R.S.
3 § 646.608(e); advertising "goods ... with intent not to provide the real estate, goods or services
4 as advertised," O.R.S. § 646.608(i); and making "false or misleading statements about a ...
5 promotion," O.R.S. § 646.608(p).

6 37.

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

9 38.

10 California's False Advertising Law also prohibits businesses from making statements
11 they know or should know to be untrue or misleading. Cal. Bus. & Prof. Code § 17500. This
12 includes statements falsely suggesting that a product is on sale, when it actually is not.
13 Moreover, California's False Advertising Law specifically provides that "[n]o price shall be
14 advertised as a former price ... unless the alleged former price was the prevailing market price
15 ... within three months next immediately preceding" the advertising. Cal. Bus. & Prof. Code
16 § 17501.

17 39.

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

22 40.

23 Like Oregon and California law, Washington's Consumer Protection Law prohibits
24 "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any

1 trade or commerce.” Wash. Rev. Code Ann. § 19.86.020. An act is unfair if “(1) it causes or is
2 likely to cause substantial injury that (2) consumers cannot avoid and that (3) is not ‘outweighed
3 by countervailing benefits’” to consumers or competition. *Merriman v. Am. Guarantee & Liab.*
4 *Ins. Co.*, 198 Wash. App. 594, 628 (2017). And an act is deceptive if it constitutes “a
5 representation, omission or practice that is likely to mislead’ a reasonable consumer.” *Panag v.*
6 *Farmers Ins. Co. of Wash.*, 166 Wash. 2d 27, 50 (2009).

7 41.

8 The Federal Trade Commission’s regulations prohibit false or misleading “former price
9 comparisons,” for example, making up “an artificial, inflated price ... for the purpose of enabling
10 the subsequent offer of a large reduction” off that price. 16 C.F.R. § 233.1. They also prohibit
11 false or misleading “retail price comparisons” and “comparable value comparisons,” for
12 example, ones that falsely suggest that the seller is “offer[ing] goods at prices lower than those
13 being charged by others for the same merchandise” when this is not the case. 16 C.F.R. § 233.1.

14 42.

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

18 43.

19 In addition, Defendant advertised goods or services with the intent not to sell them as
20 advertised, for example, by advertising goods having certain former prices and/or market values
21 without the intent to sell goods having those former prices and/or market values. Defendant
22 made false or misleading statements of fact concerning the reasons for, existence of, and
23 amounts of price reductions, including false statements regarding the reasons for their sitewide
24 sales (e.g., advertising an “XMAS sale,” when in fact the sale is ongoing), the existence of

1 sitewide sales, and the amounts of price reductions resulting from those sales. And Defendant
2 engaged in unlawful, unfair, and deceptive business practices.

3 44.

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

16 45.

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

18 46.

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

1 47.

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

7 **Defendant’s advertisements harm consumers.**

8 48.

9 Based on Defendant’s advertisements, reasonable consumers would expect that the listed
10 regular prices (the prices without the advertised discounts) are former prices at which Defendant
11 consistently sold its Products before the discounts were introduced for a limited time; that they
12 are the prevailing prices for the Products; and that they represent the true market value of the
13 Products.

14 49.

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

21 50.

22 As explained above, however, Plaintiffs and Class members’ reasonable expectations
23 were not met. Instead of receiving Products with a market value equal to the alleged regular
24 prices, they received items worth less. In addition, instead of receiving a significant discount,

1 Plaintiffs and the Class received little or no discount. Thus, Defendant's false advertisements
2 harm consumers by depriving them of the reasonable expectations to which they are entitled.

3 51.

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

7 52.

8 Consumers that are presented with discounts are substantially more likely to make the
9 purchase. "Nearly two-thirds of consumers surveyed admitted that a promotion or a coupon
10 often closes the deal, if they are wavering or are undecided on making a purchase."⁴ And, "two-
11 thirds of consumers have made a purchase they weren't originally planning to make solely based
12 on finding a coupon or discount," while "80% [of consumers] said they feel encouraged to make
13 a first-time purchase with a brand that is new to them if they found an offer or discount."⁵

14 53.

15 Similarly, when consumers believe that an offer is expiring soon, the sense of urgency
16 makes them more likely to buy a product.⁶

17 54.

18 Thus, Defendant's advertisements harm consumers by inducing them to make purchases
19 they otherwise would not have made, based on false information. In addition, Defendant's
20

21 ⁴ <https://www.invespcro.com/blog/how-discounts-affect-online-consumer-buying-behavior/>.

22 ⁵ RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases Online, Especially Among Millennial Buyers (prnewswire.com).

23 ⁶ <https://cxl.com/blog/creating-urgency/> (addition of a countdown timer increased
24 conversion rates from 3.4%-10%); Dynamic email content leads to 400% increase in conversions for Black Friday email | Adestra (uplandsoftware.com) (400% higher conversation rate for ad with countdown timer).

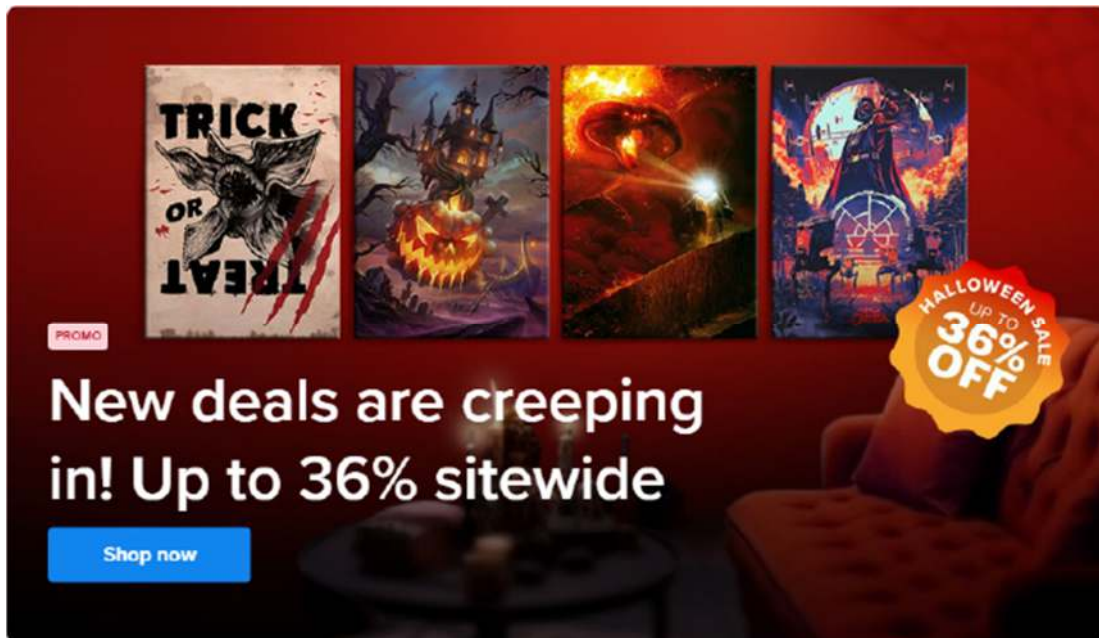
1 advertisements artificially increase consumer demand for Defendant's Products. This puts
2 upward pressure on the prices that Defendant can charge for its Products. As a result, Defendant
3 can charge a price premium for its Products, that it would not be able to charge absent the
4 misrepresentations described above. So, due to Defendant's misrepresentations, Plaintiffs and
5 the Class paid more for the Products they bought than they otherwise would have.

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

7 ***Plaintiff Cameron Yates***

8 55.

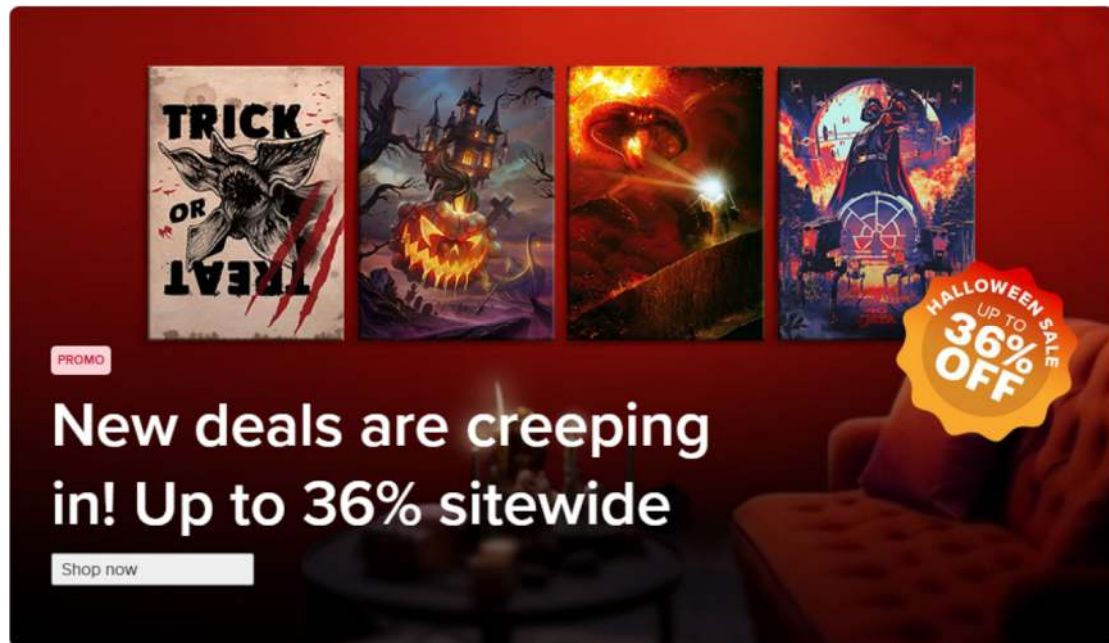
9 On October 28, 2023, Defendant represented on its website that a time-limited discount
10 of "up to 36% sitewide" was running:



20 *Captured October 28, 2023*

21 56.

22 On October 30, 2023, Defendant represented on its website that a time-limited discount
23 of "up to 36% sitewide" was running:
24



Captured October 30, 2023

57.

On October 29, 2023, during the above sale, Mr. Yates purchased a poster from Defendant online. He purchased the Product from Defendant's website, www.displate.com, while living in Eugene, Oregon.

58.

At the time that Mr. Yates made his purchase, Defendant represented that the Product had a regular price, but was on sale for a discounted price of \$41.30. Mr. Yates' order confirmation email from the order represented that Mr. Yates' discounted price was \$41.30. When Mr. Yates made the purchase, he read and relied on the representations on the website that the Product had the published regular price and that this was its market value, and that he was receiving the advertised discount as compared to the regular price. He also relied on the representations that the sale was limited in time, and would end soon. He would not have made the purchase if he had known that the Product was not discounted as advertised, and that he was not receiving the advertised discount.

1 ***Plaintiff Daniel Gutierrez***

2 59.

3 On July 15, 2020, Mr. Gutierrez purchased a Displate poster from Defendant online. He
4 purchased the Product from Defendant's website, www.displate.com, while living in Bakersfield,
5 California.

6 60.

7 On July 14, 2020, Defendant represented on its website that a time-limited "20% Off"
8 sale was running, which continued through the date of Mr. Gutierrez's purchase until "Thursday"
9 (July 16, 2020):



12
13
14 *Captured July 14, 2020*

15 61.

16 Defendant also represented that the Product had a regular price, but was on sale for a
17 discounted price of \$44.00. Mr. Gutierrez's order confirmation email from the order represented
18 that Mr. Gutierrez's discounted price was \$44.00. When Mr. Gutierrez made the purchase, he
19 read and relied on the representations on the website that the Product had the published regular
20 price and that this was its market value, and that he was receiving the advertised discount as
21 compared to the regular price. He also relied on the representations that the sale was limited in
22 time, and would end soon. He would not have made the purchase if he had known that the
23 Product was not discounted as advertised, and that he was not receiving the advertised discount.

62.

On November 9, 2020, Mr. Gutierrez purchased five Displate posters from Defendant online. On November 8, 2020, Defendant represented on its website that a time-limited “36% Off” sale was running (if consumers bought “4+” Products), which continued through the date of Mr. Gutierrez’s purchase until “Wednesday” (November 11, 2020):



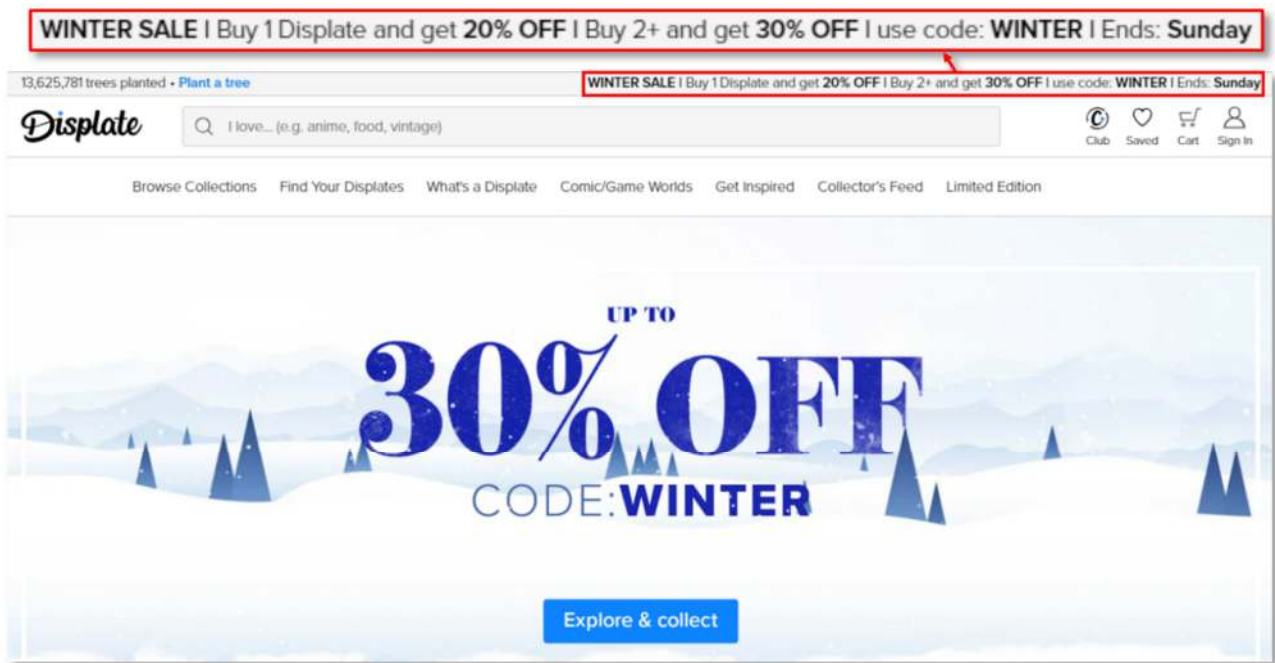
Captured November 8, 2020

63.

The items’ product pages represented that the Products each had a regular price, but were on sale for discounted prices, for a total discounted price of \$140.80 plus tax. Mr. Gutierrez’s order details (visible in his online order history) represented that Mr. Gutierrez’s total discounted price was \$140.80 plus tax. When Mr. Gutierrez made the purchase, he read and relied on the representations on the website that the Products had the published regular prices and that those prices were their market value, and that he was receiving the advertised discount as compared to the regular price. He also relied on the representations that the sale was limited in time, and would end soon. He would not have made the purchase if he had known that the Products were not discounted as advertised, and that he was not receiving the advertised discount.

64.

On January 31, 2021, Mr. Gutierrez purchased a Displate poster from Defendant online. On this day, Defendant advertised a “WINTER SALE | Buy 1 Displate and get 20% OFF” discount:



Captured January 31, 2021

65.

The website represented that the Product had a regular price, but was on sale for a discounted price of \$34.32 plus tax. Mr. Gutierrez's order details (visible in his online order history) represented that Mr. Gutierrez's discounted price was \$34.32 plus tax. When Mr. Gutierrez made the purchase, he read and relied on the representations on the website that the Product had the published regular price and that this was its market value, and that he was receiving the advertised discount as compared to the regular price. He also relied on the representations that the sale was limited in time, and would end soon. He would not have made the purchase if he had known that the Product was not discounted as advertised, and that he was not receiving the advertised discount.

66.

Despite Defendant's representations, Plaintiffs did not receive Products with regular prices or market values equal to the list prices displayed for the Products they purchased. Nor

1 did they receive the advertised discounts. As explained above, Defendant's poster Products are
2 regularly on sale for a significant discount. And as a result, the advertised list prices for all of
3 Defendant's poster Products—including the Products Plaintiffs purchased—do not reflect true
4 regular prices, and are in fact higher than the actual "regular" prices that the posters are sold at.
5 In other words, the advertised discounts for all Displate poster Products—including the Products
6 Plaintiffs purchased—were false, and consumers, like Plaintiffs, did not receive the advertised
7 discount off of the true regular prices.

8 67.

9 Plaintiffs face an imminent threat of future harm. Plaintiffs would purchase Displate
10 Products again if they could feel sure that Defendant's list prices accurately reflected its regular
11 prices and former prices, and the market value of the Products, and that Defendant's discounts
12 were truthful. But without an injunction, Plaintiffs have no realistic way to know which—if
13 any—of Defendant's list prices, discounts, and sales are not false or deceptive. For example,
14 while they could watch a sale until the countdown or the day ends to see if the sale is permanent,
15 doing so could result in them missing out on the sale (*e.g.*, if the sale is actually limited in time,
16 and not permanent). Accordingly, Plaintiffs are unable to rely on Defendant's advertising in the
17 future, and so cannot purchase the Products they would like to.

18 **Defendant breached its contract with and warranties to Plaintiffs and the putative Class.**

19 68.

20 When Plaintiffs and other members of the putative Class purchased and paid for the
21 Products that they bought as described above, they accepted offers that Defendant made, and
22 thus, a contract was formed each time that they made purchases. Each offer was to provide
23 Products having a particular listed regular price and market value, and to provide those Products
24 at the discounted price advertised on the website.

69.

Each time that Plaintiffs made a purchase from Defendant, Plaintiffs and Defendant entered a contract.

70.

Defendant's website lists the regular prices—the market values—of the items that Defendant promised to provide. And Defendant agreed to provide discounts equal to the difference between the regular prices, and the discounted prices paid by Plaintiffs and putative Class members. Defendant also warranted that the regular prices and market values of the Products Plaintiffs purchased were the advertised list prices and warranted that Plaintiffs were receiving specific discounts on that Products.

71.

The regular prices and market values of the Products that Plaintiffs and the putative Class members would receive, and the amount of the discounts that they would be provided off the regular prices of the items, were specific and material terms of the contracts. They were also affirmations of fact about the Products and a promise relating to the goods.

72.

Plaintiffs and other members of the putative Class performed their obligations under the contracts by paying for the items they purchased.

73.

Defendant breached its contract by failing to provide Plaintiffs and other members of the putative Class with Products that have a regular price and market value equal to the list price displayed on its website, and by failing to provide the discounts it promised, in the amounts it promised. Defendant also breached warranties for the same reasons.

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

2

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

20

21

22

23

1 limitations period, purchased one or more Displate Products at a purported discount on
2 Defendant's website.

3 76.

4 The following people are excluded from the proposed Class: (1) any Judge or Magistrate
5 Judge presiding over this action and the members of their family; (2) Defendant, Defendant's
6 subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its
7 parents have a controlling interest and their current employees, officers and directors; (3) persons
8 who properly execute and file a timely request for exclusion from the Class; (4) persons whose
9 claims in this matter have been finally adjudicated on the merits or otherwise released; (5)
10 Plaintiffs' counsel and Defendant's counsel, and their experts and consultants; and (6) the legal
11 representatives, successors, and assigns of any such excluded persons.

12 ***Numerosity***

13 77.

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

16 78.

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

18 ***Commonality***

19 79.

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

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

23 (2) whether Defendant violated consumer protection statutes;

24 (3) whether Defendant committed a breach of contract;

1 (4) whether Defendant committed a breach of an express warranty;

2 (5) damages needed to reasonably compensate Plaintiffs and the proposed Class.

3 ***Typicality & Adequacy***

4 80.

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

8 ***Notice of Action for Damages***

9 81.

10 Plaintiff Cameron Yates gave notice to Defendant, pursuant to ORCP 32 H, of his intent
11 to seek damages on December 2, 2024.

12 82.

13 Plaintiff Daniel Gutierrez has given notice to Defendant, pursuant to ORCP 32 H, of his
14 intent to seek damages by mailing a notice letter via Registered Mail and Certified Mail (return
15 receipt requested), to Defendant's headquarters in Poland and to its counsel on September 8,
16 2023. Defendant's does not have a California, or U.S., headquarters. A copy of this letter was
17 also emailed to Defendant's counsel.

18 ***Superiority***

19 83.

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

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

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

12
13
14
15
16
17
18
19
20
21
22
23
24

13
14
15
16
17
18
19
20
21
22
23
24

- 16
17
18
19
20
21
22
23
24

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

2 88.

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 89.

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 posters and related products in Oregon, and serves a market for its Products
11 in Oregon. Due to Defendant's actions, its Products have been marketed and sold to consumers
12 in Oregon, and harmed consumers in Oregon, including Class Members. Defendant's unlawful
13 methods, acts and practices described above were committed in the course of Defendant's
14 business. O.R.S. § 646.608(1).

15 90.

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

20 91.

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 list prices, and fake limited
24 time sales. By advertising regular list prices and supposedly time-limited discounts, Defendant's

1 website creates an illusion that consumers are receiving a limited-time 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 listed 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 discounts, as well as discounts on
6 certain items, it does not ordinarily or typically sell its Products at the purported regular prices.

7 92.

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

14 93.

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

20 94.

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

1 95.

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

8 96.

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

21 97.

22 As alleged in greater detail above, Defendant uses misleading price comparisons. For
23 example, Defendant uses strikethrough pricing without clearly and conspicuously identifying in
24 the advertisement the origin of the price that the seller is comparing to the current price.

1 Defendant's strikethrough pricing does not contain any disclosures at all about the origin of the
2 strikethrough price.

3 98.

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

9 99.

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

14 100.

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

18 101.

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).

22 102.

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.

5 103.

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

8 104.

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.

12 105.

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.

15 106.

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.

18 107.

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.

21 108.

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.

109.

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

110.

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).

111.

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.

112.

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.

1 113.

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

4 114.

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

7 115.

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

10 116.

11 Absent class members of the Class are still not aware, at the time of the filing of this
12 Complaint, of Defendant’s false discount advertising scheme. By Defendant’s design, the false
13 advertising scheme by its very nature is hidden and difficult for the typical consumer to discover.
14 Consumers who shop on Defendant’s website do not know the true historical prices or sales
15 histories of the Products that they have viewed and purchased. They do not know that the
16 discounts offered are false, or that the false discounting practices extend to all of Defendant’s
17 Products. Class Members have not discovered, and could not have reasonably discovered,
18 Defendant’s fake discounting scheme.

19 117.

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

1 **Second Cause of Action:**

2 **Violation of California's False Advertising Law, Bus. & Prof. Code §§ 17500 *et. seq.***

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

4 118.

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

6 119.

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

8 120.

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

11 121.

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

14 122.

15 As alleged more fully above, Defendant advertises former prices on its website along
16 with discounts. Defendant does this, for example, by crossing out a higher price (*e.g.*, \$44) and
17 displaying it next to the discount price. Reasonable consumers would understand prices denoted
18 as “regular” prices from which time-limited discounts are calculated to denote “former” prices,
19 i.e., the prices that Defendant charged before the time-limited discount went into effect.

20 123.

21 The prices advertised as former prices by Defendant were not the true former prices of
22 the Products. As explained above, Defendant makes and exclusively sells its unique poster
23 Products. As a result, its own prices are the prevailing market prices. And, because Defendant
24 consistently sells its Products at purported discount prices, the true prevailing market prices for

1 Defendant's Products in the last 90 days are consistently lower than the purported former prices
2 Defendant advertises. Accordingly, Defendant's statements about the former prices of its
3 Products were untrue and misleading.

4 124.

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

8 125.

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

12 126.

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

16 127.

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

19 128.

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

Third Cause of Action:
Violation of California’s Consumer Legal Remedies Act
(By Plaintiffs and the Class)

129.

Plaintiffs incorporate each and every factual allegation set forth above.

130.

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

131.

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

132.

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

133.

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.

134.

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

1 135.

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

4 136.

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

9 137.

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

13 138.

14 And Defendant violated, and continue to violate section 1770(a)(13) by making false or
15 misleading statements of fact concerning reasons for, existence of, or amounts of, price
16 reductions on their website, including by (1) misrepresenting the regular price of Products on
17 their website, (2) advertising discounts and savings that are exaggerated or nonexistent, (3)
18 misrepresenting that the discounts and savings are unusually large, when in fact they are
19 regularly available, and (4) misrepresenting the reason for the sale (e.g., “XMAS Sale,” when in
20 fact the sale is ongoing and not limited to Christmas).

21 139.

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

140.

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

141.

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.

142.

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

143.

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

144.

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

145.

CLRA § 1782 NOTICE. On September 8, 2023, a CLRA demand letter was sent, via Registered Mail and Certified Mail (return receipt requested), to Defendant's headquarters in Poland and to its counsel. Defendant does not have a California, or U.S., headquarters. A copy

1 of this letter was also emailed to Defendant's counsel. It has been more than 30 days since
2 Defendant received notice of its CLRA violations. In that time, it has not corrected the problem.
3 Accordingly, Plaintiffs seek all monetary relief available under the CLRA, including restitution,
4 damages (including compensatory damages, expectation damages, and punitive damages),
5 attorneys' fees, and all other forms of monetary relief available.

6 146.

7 A CLRA venue declaration is attached.

8 **Fourth Cause of Action:**

9 **Violation of California's Unfair Competition Law**

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

11 147.

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

13 148.

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

15 149.

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

18 ***The Unlawful Prong***

19 150.

20 Defendant engaged in unlawful conduct by violating the CLRA and FAL, as alleged
21 above and incorporated here. In addition, Defendant engaged in unlawful conduct by violating
22 the FTCA. The FTCA prohibits "unfair or deceptive acts or practices in or affecting commerce"
23 and prohibits the dissemination of false advertisements. 15 U.S.C. § 45(a)(1). As the FTC's
24

1 regulations make clear, Defendant's false pricing schemes violate the FTCA. 16 C.F.R. § 233.1,
2 § 233.2.

3 ***The Deceptive Prong***

4 151.

5 As alleged in detail above, Defendant's representations that its Products were on sale,
6 that the sale was limited in time, that the Products had a specific regular price, and that the
7 customers were receiving discounts were false and misleading.

8 152.

9 Defendant's representations were misleading to Plaintiffs and other reasonable
10 consumers.

11 153.

12 Class members, including Plaintiffs, relied upon Defendant's misleading representations
13 and omissions, as detailed above.

14 ***The Unfair Prong***

15 154.

16 As alleged in detail above, Defendant committed "unfair" acts by falsely advertising that
17 its Products were on sale, that the sale was limited in time, that the Products had a specific
18 regular price, and that the customers were receiving discounts.

19 155.

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

1 156.

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

7 157.

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

10 158.

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

13 * * *

14 159.

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

18 160.

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

22 161.

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

1 162.

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

6 **Fifth Cause of Action:**

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

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

9 163.

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

11 164.

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

13 165.

14 Defendant has violated the Washington Consumer Protection Act (CPA), RCW Chapter
15 19.86. This statute is materially similar to California and Oregon law in that it prohibits unfair,
16 unconscionable, and/or deceptive acts or practices in the course of trade or commerce or in
17 connection with the sale of goods or services to consumers. Defendant's misleading ads violate
18 Washington law for the same reasons they violate Oregon and California law.

19 166.

20 Section 19.86.020 of the CPA states, "[u]nfair methods of competition and unfair or
21 deceptive acts or practices in the conduct of any trade or commerce are hereby declared
22 unlawful." RCW § 19.86.020.

1 167.

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

7 168.

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

11 169.

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

15 Unfair Acts or Practices

16 170.

17 As alleged in detail above, Defendant committed “unfair” acts by falsely advertising that
18 its Products were on sale, that the sale was limited in time, that the Products had higher regular
19 prices, and market values and that customers were receiving discounts, when none of this was
20 true. This caused members of the Class to make purchases they otherwise would not have made,
21 pay more for their purchases, and deprived them of their expectancy interest in receiving the
22 Products as advertised.

23 171.

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

5 Deceptive Acts or Practices

6 172.

7 As alleged in detail above, Defendant's representations that its Products were on sale,
8 that the sale was limited in time, that the Products had a specific regular price, and that the
9 customers were receiving discounts were false and misleading.

10 173.

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

14 * * *

15 174.

16 Defendant intended that Class Members rely on these representations, and Class
17 Members read and reasonably relied on them.

18 175.

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

22 176.

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

177.

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.

178.

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:

Breach of Contract

(By Plaintiffs and the Class)

179.

Plaintiffs incorporate each and every factual allegation set forth above.

180.

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

181.

Plaintiffs and Class members entered into contracts with Defendant when they placed orders to purchase Products on Defendant's website.

1 182.

2 The contracts provided that Plaintiffs and Class members would pay Defendant for the
3 Products ordered.

4 183.

5 The contracts further required that Defendant provide Plaintiffs and Class Members with
6 Products that have a former price, and a market value, equal to the regular price displayed on the
7 website. They also required that Defendant provide Plaintiffs and the Class Members with the
8 discount advertised on the website. These were specific and material terms of the contracts.

9 184.

10 The specific discounts were a specific and material term of each contract.

11 185.

12 Plaintiffs and Class Members paid Defendant for the Products they ordered, and satisfied
13 all other conditions of their contracts.

14 186.

15 Defendant breached the contracts with Plaintiffs and Class Members by failing to provide
16 Products that had a prevailing market value equal to the regular price displayed on its website,
17 and by failing to provide the promised discounts. Defendant did not provide the discounts that
18 Defendant had promised.

19 187.

20 Plaintiff Yates provided Defendant with notice of this breach of contract, by sending a
21 copy of a notice letter to Defendant's counsel on December 2, 2024.

22 188.

23 Plaintiff Gutierrez provided Defendant with notice of this breach, by mailing a notice
24 letter to Defendant's headquarters and registered agent, on September 8, 2023.

189.

As a direct and proximate result of Defendant's breaches, Plaintiffs and Class Members were deprived of the benefit of their bargained-for exchange, and have suffered damages in an amount to be established at trial.

Seventh Cause of Action:

Breach of Express Warranty

(By Plaintiffs and the Class)

190.

Plaintiffs incorporate each and every factual allegation set forth above.

191.

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

192.

Defendant, as the manufacturer, marketer, distributor, supplier, and/or seller of Displate Products, issued material, written warranties by advertising that the Products had a prevailing market value equal to the regular price displayed on Defendant's website. This was an affirmation of fact about the Products (i.e., a representation about the market value) and a promise relating to the goods.

193.

This warranty was part of the basis of the bargain and Plaintiffs and members of the Class relied on this warranty.

194.

In fact, the Displate Products' stated market value was not the prevailing market value. Thus, the warranty was breached.

1 195.

2 Plaintiff Yates provided Defendant with notice of this breach of warranty, by sending a
3 copy of a notice letter to Defendant's counsel on December 2, 2024.

4 196.

5 Plaintiff Gutierrez provided Defendant with notice of this breach of warranty, by mailing
6 a notice letter to Defendant's headquarters and registered agent, on September 8, 2023.

7 197.

8 Plaintiffs and the Class were injured as a direct and proximate result of Defendant's
9 breach, and this breach was a substantial factor in causing harm, because (a) they would not have
10 purchased Displate Products if they had known that the warranty was false, or (b) they overpaid
11 for the Products because the Products were sold at a price premium due to the warranty, and/or
12 (c) they did not receive the Products as warranted that they were promised.

13 **Eighth Cause of Action:**

14 **Unjust Enrichment**

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

16 198.

17 Plaintiffs incorporate each and every factual allegation set forth in paragraphs 1-67 and
18 73-83 above.

19 199.

20 Plaintiffs bring this cause of action in the alternative to their Breach of Contract claim
21 (Count V), on behalf of themselves and members of the Class.

22 200.

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

1 201.

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

3 202.

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

6 203.

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

8 **Ninth Cause of Action:**

9 **Negligent Misrepresentation**

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

11 204.

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

13 205.

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

15 206.

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

19 207.

20 These representations were false.

21 208.

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

209.

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

210.

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.

211.

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

212.

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

Tenth Cause of Action:

Intentional Misrepresentation

(By Plaintiffs and the Class)

213.

Plaintiffs incorporate each and every factual allegation set forth above.

214.

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

1 215.

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

5 216.

6 These representations were false.

7 217.

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

10 218.

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

13 219.

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

17 220.

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

20 221.

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

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

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

223.

- An order certifying the asserted claims, or issues raised, as a class action;
- A judgment in favor of Plaintiffs and the proposed Class;
- Damages, statutory damages, treble damages, and punitive damages where applicable;
- Restitution;
- Rescission;
- Disgorgement, and other just equitable relief;
- Pre- and post-judgment interest;
- An injunction prohibiting Defendant's deceptive conduct, as allowed by law;
- Reasonable attorneys' fees and costs, as allowed by law;
- Any additional relief that the Court deems reasonable and just.

1 Dated: December 20, 2024.

Respectfully submitted,

2
3 By:  _____

Jonas Jacobson

4 Jonas Jacobson (OSB No. 231106)

jonas@dovel.com

5 Simon Franzini (Cal. Bar No. 287631)*

simon@dovel.com

6 Grace Bennett (Cal Bar No. 345948)*

grace@dovel.com

7 Dovel & Luner, LLP

201 Santa Monica Blvd., Suite 600

8 Santa Monica, CA 90401

Tel: (310) 656-7066

9
10 Cody Hoesly (OSB No. 058260)

choesly@bargsinger.com

Barg Singer Hoesly PC

11 121 SW Morrison St., Suite 600

Portland, OR 97204

12 Tel: (503) 241-3311

13 *Attorneys for Plaintiffs*

14 * *Pro Hac Vice* application forthcoming