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13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 MARIA ABREGO, individually
17 and on behalf of all others similarly
18 situated,

19 *Plaintiff,*

20 v.

21 FROM YOU FLOWERS, LLC

22 *Defendant.*

23 Case No. 5:23-cv-2204

24 **CLASS ACTION COMPLAINT**

25 **DEMAND FOR JURY TRIAL**

Table of Contents

1

2 I. Introduction..... 1

3 II. Parties..... 4

4 III. Jurisdiction and Venue..... 4

5 IV. Facts..... 5

6 A. Defendant’s fake prices and fake discounts..... 5

7 B. Defendant’s advertisements are unfair, deceptive, and unlawful. 13

8 C. Defendant’s advertisements harm consumers..... 14

9 D. Plaintiff was misled by Defendant’s misrepresentations..... 16

10 E. Defendant breached its contract with and warranties to Ms. Abrego

11 and the putative class..... 17

12 F. No adequate remedy at law. 18

13 V. Class action allegations..... 18

14 VI. Claims. 20

15 First Cause of Action: Violation of California’s False Advertising Law Bus.

16 & Prof. Code §§ 17500 & 17501 et. seq. 20

17 Second Cause of Action: Violation of California’s Consumer Legal Remedies

18 Act 22

19 Third Cause of Action: Violation of California’s Unfair Competition Law 24

20 Fourth Cause of Action: Breach of Contract 26

21 Fifth Cause of Action: Breach of Express Warranty..... 27

22 Sixth Cause of Action: Quasi-Contract 28

23 Seventh Cause of Action: Negligent Misrepresentation 29

24 Eighth Cause of Action: Intentional Misrepresentation..... 30

25 VII. Relief. 30

26 VIII. Demand for Jury Trial..... 31

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1 **I. Introduction.**

2 1. Advertised “sale” prices are important to consumers. Consumers are more
3 likely to purchase an item if they know that they are getting a good deal. If an item is on
4 sale, they are more likely to buy now, rather than wait, comparison shop, and buy
5 something else.

6 2. While there is nothing wrong with a legitimate sale, a fake one—that is, one
7 with made-up regular prices and made-up discounts—is deceptive and illegal.

8 3. Section 17500 of California’s False Advertising Law prohibits businesses
9 from making statements they know or should know to be untrue or misleading. Cal. Bus.
10 & Prof. Code § 17500. This includes statements falsely suggesting that a product is on
11 sale, when it actually is not.

12 4. Moreover, section 17501 of California’s False Advertising Law provides that
13 “[n]o price shall be advertised as a former price ... unless the alleged former price was
14 the prevailing market price ... within three months next immediately preceding” the
15 advertising. Cal. Bus. & Prof. Code § 17501. So, in addition to generally prohibiting
16 untrue and misleading fake discounts, it also specifically prohibits this particular flavor of
17 fake discount (where the advertised former price is not the prevailing price during the
18 specified timeframe).

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

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

3 7. So, as numerous courts have found, fake sales violate these laws. They also
4 violate California’s general prohibition on unlawful, unfair, and deceptive business
5 practices. *See* Cal. Bus. & Prof. Code § 17200.

6 8. Defendant From You Flowers, LLC (“Defendant” or “From You
7 Flowers”) sells and markets flower and fruit arrangement products online through the
8 From You Flowers website, www.fromyouflowers.com (“From You Flowers Products”
9 or “Products”).

10 9. On its website, Defendant lists purported regular prices and advertises
11 purported discounts from those regular prices. These include discounts offering “X%
12 off sitewide.” These discounts are made available by using a discount code, such as
13 “1496,” or are automatically applied to the Products sitewide. Defendant also advertises
14 that its Products have a lower discount price as compared to a higher, regular price
15 shown in grey and/or strikethrough font. Examples are shown below:



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The screenshot shows the homepage of fromyouflowers.com. At the top, a dark blue banner features the company logo and a prominent red-bordered box with the text "Save 15% Sitewide | Code 050 Applied". Navigation links for "My Account", "Cart", "Track", "Chat", and "Contact Us" are visible. Below the banner, a navigation menu includes "Birthday", "Occasions", "Get Well", "Sympathy", "SALE", "Flowers", "Plants", "Gift Baskets & Food", and "Same Day". A large hero image of a pink rose bouquet is displayed with the text "Need It Today?" and a link to "Shop All Same Day Flowers". Below this, eight different flower arrangements are showcased in a grid. Each arrangement includes a "SAME DAY DELIVERY" icon, a title, and a price comparison (SRP vs. current price).

| Arrangement Name | SRP | Current Price |
|---------------------------------------|---------|---------------|
| The Most Appealing Autumn Arrangement | \$49.99 | \$42.49 |
| Rose & Lily Celebration | \$44.99 | \$38.24 |
| Harvest Pumpkin | \$44.99 | \$38.24 |
| Jubilant Jack-o'-Lantern | \$54.99 | \$46.74 |
| Southern Peach Bouquet | \$49.99 | \$42.49 |
| You're In My Heart | \$59.99 | \$50.99 |
| Big Bright Blue Skies | \$44.99 | \$38.24 |
| Autumn Harvest Blooms | \$39.99 | \$33.99 |

24 10. However, Defendant's sitewide discounts are *always* available (and are always
25 at least 15% off the purported regular prices). As a result, everything about Defendant's
26 price and purported discount advertising is false. The regular prices Defendant advertises
27 are not actually Defendant's regular prices, because Defendant's Products are *always*

1 available for less than that. The purported discounts Defendant advertises are not the
2 true discount the customer is receiving, and are often not a discount at all.

3 11. As described in greater detail below, Ms. Abrego bought a gift basket from
4 Defendant from its website, www.fromyouflowers.com. When Ms. Abrego made her
5 purchase, Defendant advertised that a sale was going on, and so Defendant represented
6 that the Product Ms. Abrego purchased was being offered at a steep discount from its
7 purported regular price that Defendant advertised. And based on Defendant's
8 representations, Ms. Abrego believed that she was purchasing a Product whose regular
9 price and market value was the purported regular price that Defendant advertised and
10 that she was receiving a substantial discount. These reasonable beliefs are what caused
11 Ms. Abrego to buy from Defendant when she did.

12 12. In truth, however, the representations Ms. Abrego relied on were not true.
13 The purported regular prices were not the true regular prices and the purported discounts
14 were not the true discounts. Had Defendant been truthful, Ms. Abrego and other
15 consumers like her would not have purchased the Products, or would have paid less for
16 them.

17 13. Plaintiff brings this case for herself and the other customers who purchased
18 From You Flowers Products.

19 **II. Parties**

20 14. Plaintiff Maria Abrego is domiciled in Rancho Cucamonga, California.

21 15. The proposed class includes citizens of every state.

22 16. Defendant From You Flowers, LLC is an Delaware limited liability
23 company with its principal place of business at 143 Mill Rock Road East, Old Saybrook,
24 Connecticut.

25 **III. Jurisdiction and Venue.**

26 17. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2).
27 The amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and the
28

1 matter is a class action in which one or more members of the proposed class are citizens
2 of a state different from Defendant.

3 18. The Court has personal jurisdiction over Defendant because Defendant
4 sold From You Flowers Products to consumers in California, including to Plaintiff.

5 19. Venue is proper under 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1391(d)
6 because Defendant would be subject to personal jurisdiction in this District if this
7 District were a separate state, given that Defendant sold From You Flowers Products to
8 consumers in this District, including Plaintiff. Venue is also proper under 28 U.S.C. §
9 1391(b)(2) because a substantial part of Defendant's conduct giving rise to the claims
10 occurred in this District, including Defendant's sale to Plaintiff.

11 **IV. Facts.**

12 **A. Defendant's fake prices and fake discounts.**

13 20. Defendant From You Flowers markets and sells flower and fruit
14 arrangement Products. Defendant sells its Products directly to consumers through its
15 website, www.fromyouflowers.com.

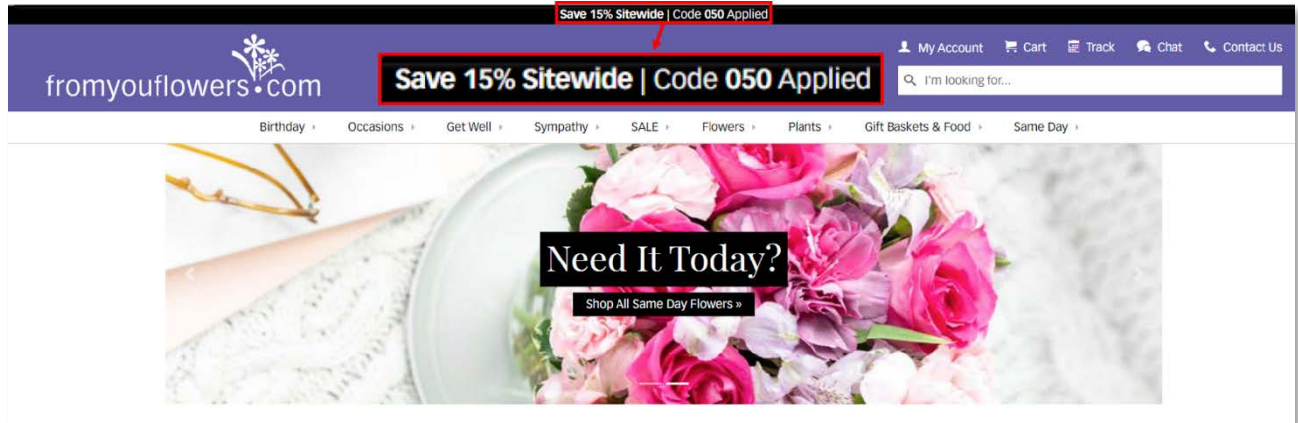
16 21. On its website, Defendant creates the false impression that its Products'
17 regular prices are higher than they truly are.

18 22. At any given time, on its website, Defendant advertises steep sitewide
19 discounts on its Products. These discounts always offer at least 15% off the regular
20 prices that Defendant advertises. And Defendant advertises these discounts extensively:
21 on an attention-grabbing banner at the top of every page of its website; on the products
22 listing pages, beneath images of each Product; on the individual product pages for each
23 Product; and during checkout. Example screenshots are provided on the following
24 pages:

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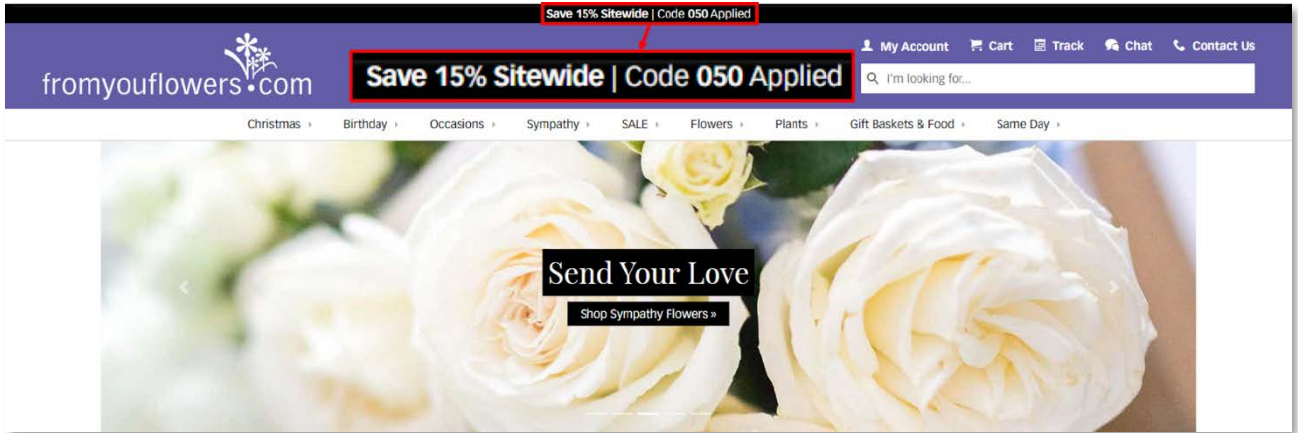
Captured on December 10, 2020



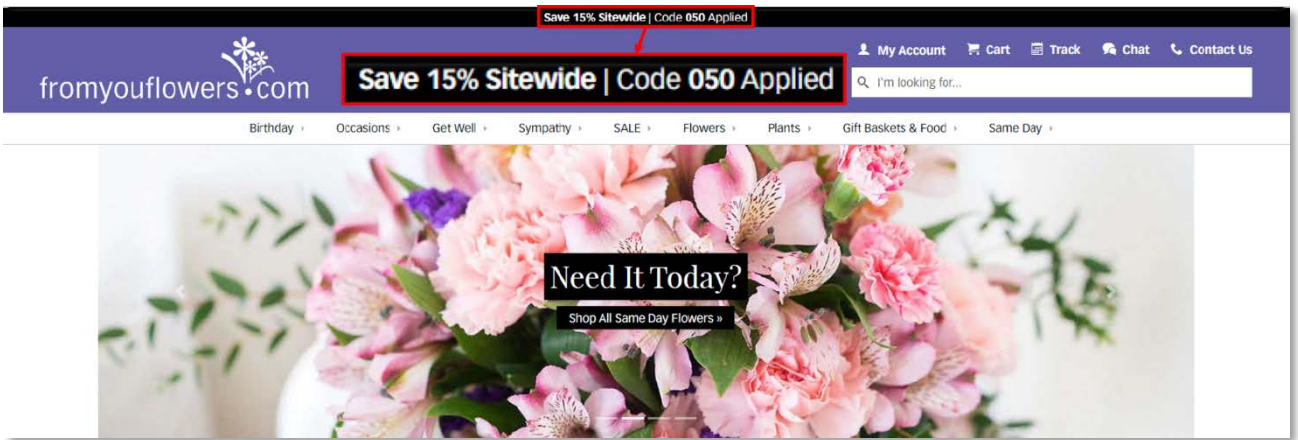
Captured on March 7, 2021



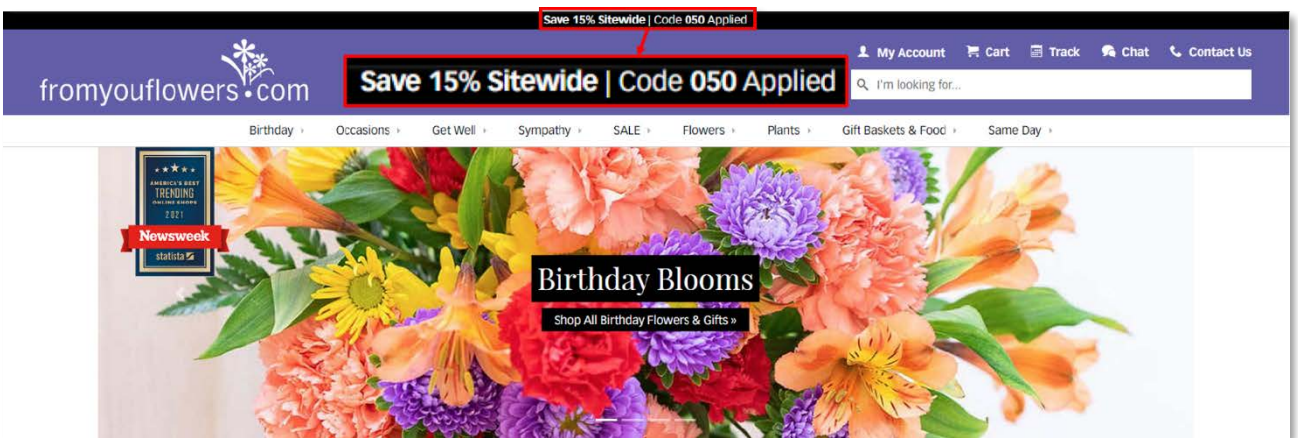
Captured on August 2 2021



8 Captured on November 29, 2021

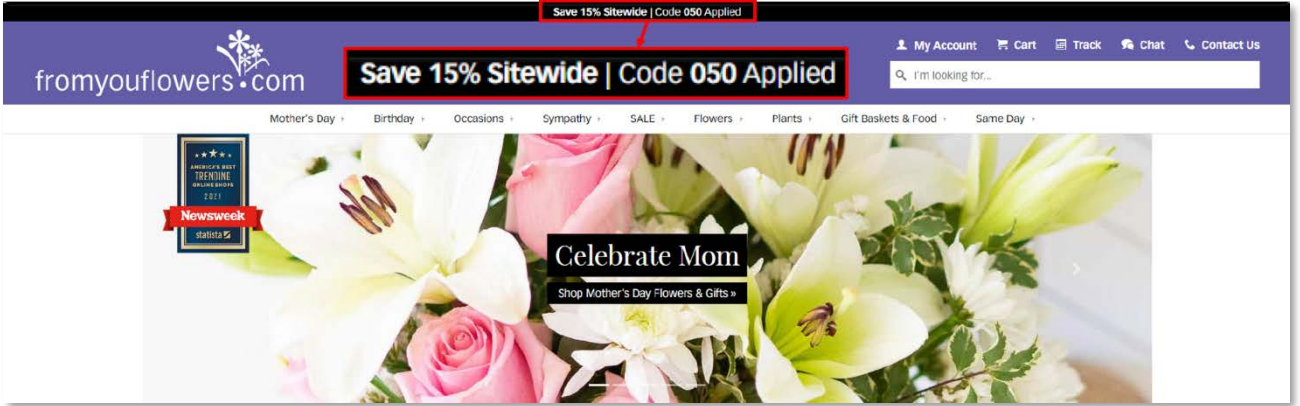


17 Captured on May 21, 2022

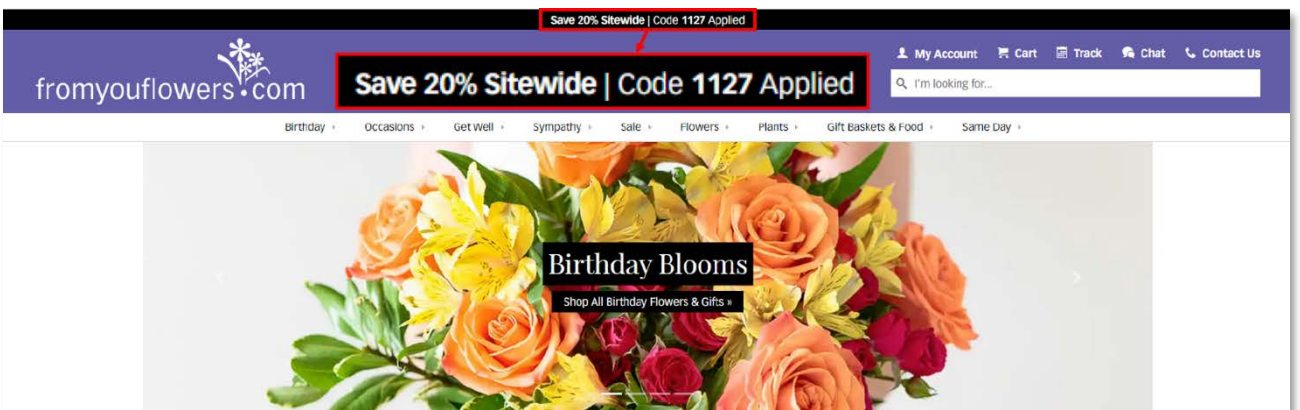


26 Captured on September 2, 2022

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Captured on April 19, 2023



Captured on October 2, 2023

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SAME DAY DELIVERY
Rose & Lily Celebration with Birthday
Balloon
SRP ~~\$49.99~~ \$42.49



SAME DAY DELIVERY
Best Wishes Bouquet with Birthday
Balloon
SRP ~~\$39.99~~ \$33.99



SAME DAY DELIVERY
Be Bold on Your Birthday
SRP ~~\$54.99~~ \$46.74



SAME DAY DELIVERY
Bright Blue Skies Bouquet with Birthday
Balloon
SRP ~~\$49.99~~ \$42.49



One Dozen Birthday Rainbow Roses
SRP ~~\$59.99~~ \$29.99



One Dozen Long Stemmed Red Roses
SRP ~~\$59.99~~ \$29.99

Captured on July 29, 2021



SAME DAY DELIVERY
Premium Fruit Basket
SRP ~~\$79.99~~ \$67.99



SAME DAY DELIVERY
Bon Vivant Gourmet Basket
SRP ~~\$139.99~~ \$118.99



Perfect Deluxe Fruit Basket
~~\$84.99~~ \$72.24



Farmers Market Gift Box
~~\$99.99~~ \$84.99



Goodness Fruit Basket
~~\$74.99~~ \$63.74



Classic Fruit Gift Basket
~~\$69.99~~ \$59.49



LOVE Chocolate Covered Strawberry
~~\$59.99~~ \$50.99



Ultimate Fruit, Cheese, Crackers, & Nuts
Tray
~~\$84.99~~ \$72.24

Captured on February 11, 2022

Save 15% Sitewide | Code 050 Applied

fromyouflowers.com **Save 15% Sitewide | Code 050 Applied** My Account Cart Track Chat Contact Us

Valentine's Day Birthday Occasions Sympathy SALE Flowers Plants Gift Baskets & Food Same Day

Home / Gift Baskets / Premium Fruit Basket

Premium Fruit Basket

1 Select Your Options

| | | |
|---------------------------------------|--------------------------------------|--|
| Regular \$79.99 \$67.99 | Deluxe \$89.99 \$76.49 | Premium \$99.99 \$84.99 |
|---------------------------------------|--------------------------------------|--|

2 Make It Special

Mylar Balloons \$3.00/each Qty Select Balloon Latex Balloons \$3.00/each Qty Select Balloon

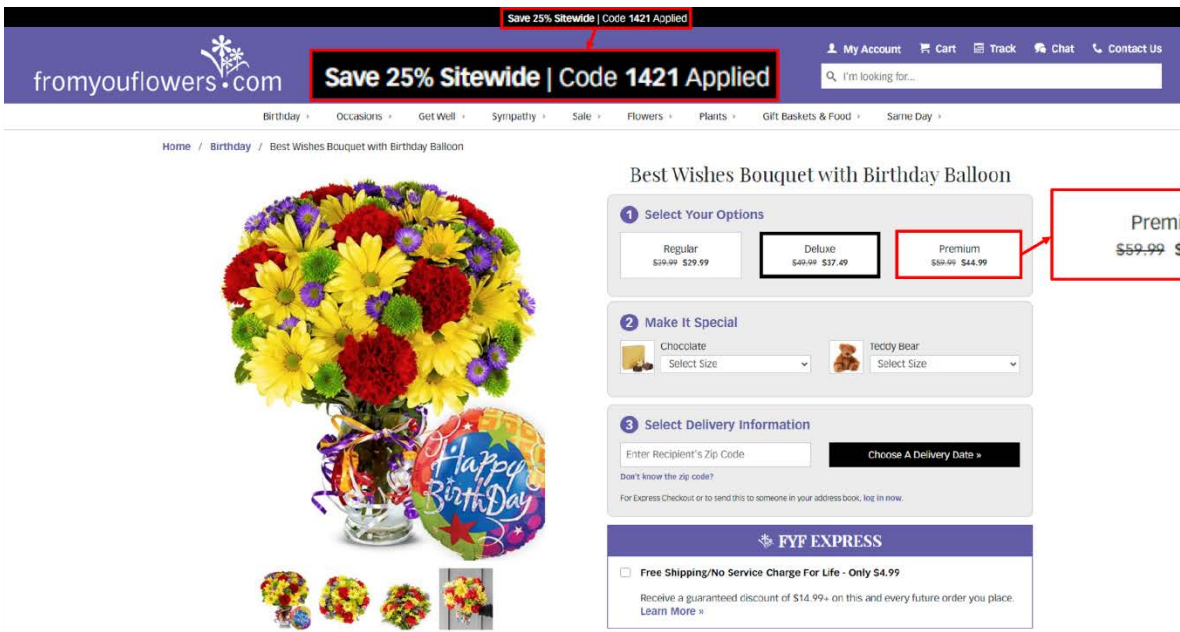
Chocolate Select Size Teddy Bear Select Size

3 Select Delivery Information

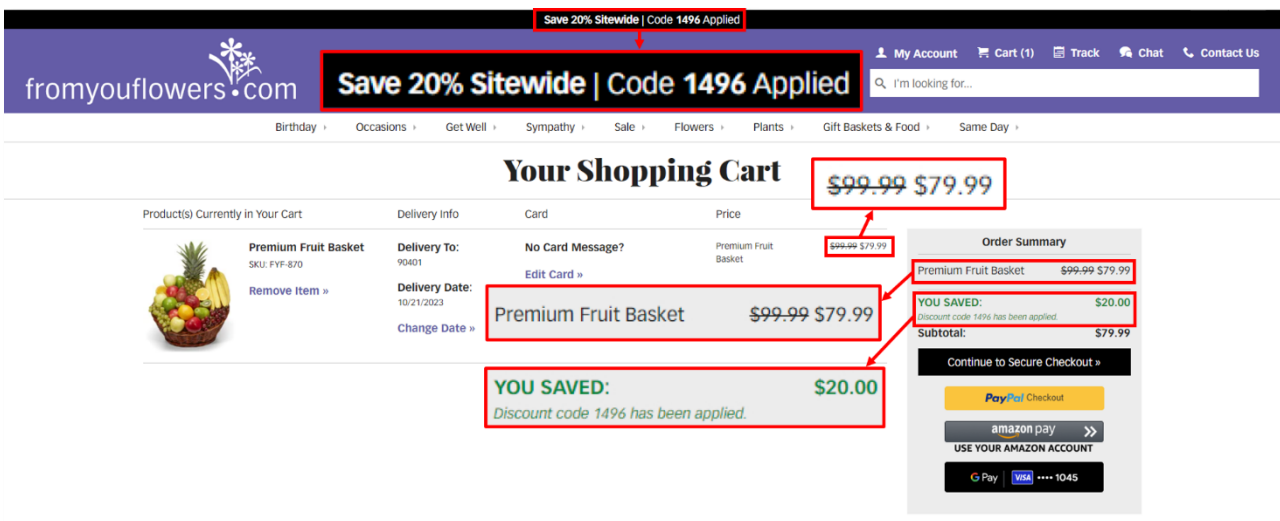
Enter Recipient's Zip Code Choose A Delivery Date

Don't know the zip code? For Address Checkout or to send this to someone in your address book, log in now.

Captured on January 24, 2022



Captured on September 28, 2023



Captured on October 19, 2023

23. To confirm that Defendant always offers sitewide discounts of at least 15% off of purported regular prices, Plaintiff’s counsel performed an investigation of Defendant’s advertising practices using the Internet Archive’s Wayback Machine (available at www.archive.org).¹ Defendant’s sales have persisted continuously since at least October 15, 2020. For example, 56 randomly selected screenshots of Defendant’s

¹ The Internet Archive, available at archive.org, is a library that archives web pages. <https://archive.org/about/>

1 website, www.fromyouflowers.com, were collected from the Internet Archive's Wayback
2 Machine, from the 2020-2023 period. One hundred percent of the 56 randomly selected
3 screenshots of Defendant's website captured on the Wayback Machine displayed a
4 purported sitewide discount of at least 15%.

5 24. In several places on Defendant's website, the purported regular prices are
6 shown in a strikethrough font (for example, ~~\$99.99~~), with a lower price displayed next to
7 them. Reasonable consumers understand these representations to convey that the
8 strikethrough or gray font price is the former price at which the items were previously
9 sold and the prices at which the Products are usually sold. For example, where the
10 website shows "~~\$99.99~~" with "\$79.99" displayed directly next to it, a reasonable
11 consumer reasonably understands this to mean that the item was formerly sold at \$99.99,
12 and is usually sold at that price, but is on sale for \$79.99. To reasonable consumers, a
13 strikethrough price signifies a former price, as well as a regular price, because this
14 notation is commonly used on websites for this reason.

15 25. Based on Defendant's advertisements, reasonable consumers reasonably
16 believe that the listed regular prices Defendant advertises are Defendant's former prices
17 (that is, the price at which the goods were actually offered for sale before the discount
18 went into effect). In other words, reasonable consumers reasonably believe that the
19 regular prices that Defendant lists in strikethrough font represent the amount that
20 consumers formerly had to pay for Defendant's goods, before the sale began. Said
21 differently, reasonable consumers reasonably believe that, prior to the supposed sale,
22 consumers had to pay the listed regular price to get the item and did not have the
23 opportunity to get a discount from that regular price.

24 26. Reasonable consumers also reasonably believe that the listed regular prices
25 Defendant advertises in strikethrough font represent the true market value of the
26 Products, and are the prevailing prices for those Products; and that they are receiving
27 reductions from those regular prices in the amounts advertised. In truth, however,
28 Defendant *always* offers discounts off the purportedly regular prices it advertises. As a

1 result, everything about Defendant's price and purported discount advertising is false.
2 The regular prices Defendant advertises are not actually Defendant's regular or former
3 prices, or the prevailing prices for the Products Defendant sells, and do not represent the
4 true market value for the Products, because Defendant's Products are *always* available for
5 at least 15% less than that, and customers did not have to formerly pay that amount to
6 get those items. The purported discounts Defendant advertises are not the true discount
7 the customer is receiving, and are often not a discount at all.

8 27. In some places on its website, Defendant identifies its regular prices as an
9 "SRP," but it does not provide any explanation or description of what "SRP" means
10 anywhere on its website. Accordingly, reasonable consumers do not know what the
11 "SRP" notation means and assume that Defendant's purported list prices are the regular
12 prevailing prices at which Defendant's articles are typically sold. In fact, however, as
13 explained above, Defendant's advertised "SRPs" are not the prices at which the Products
14 are generally sold. In reality, the Products are never sold at the "SRPs" because
15 Defendant's Products are *always* available for at least 15% less than that.

16 28. Using these tactics, Defendant leads reasonable consumers to believe that
17 they will get a discount on the Products they are purchasing if they purchase during the
18 sale. In other words, it leads reasonable consumers to believe that if they buy now, they
19 will get a Product worth X at a discounted, lower price Y.

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

21 29. Section 17500 of California's False Advertising Law prohibits businesses
22 from making statements they know or should know to be untrue or misleading. Cal. Bus.
23 & Prof. Code § 17500. This includes statements falsely suggesting that a product is on
24 sale, when it actually is not.

25 30. Moreover, section 17501 of California's False Advertising Law specifically
26 provides that "[n]o price shall be advertised as a former price ... unless the alleged
27 former price was the prevailing market price ... within three months next immediately
28 preceding" the advertising. Cal. Bus. & Prof. Code § 17501.

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

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

12 33. And finally, California’s unfair competition law bans unlawful, unfair, and
13 deceptive business practices. *See* Cal. Bus. & Prof. Code § 17200.

14 34. Here, as described in detail above, Defendant makes untrue and misleading
15 statements about its prices. Defendant advertises regular prices that are not its true
16 regular prices, or its former prices, and were not the prevailing market price in the three
17 months immediately preceding the advertisement. In addition, Defendant advertised
18 goods or services with the intent not to sell them as advertised, for example, by
19 advertising goods having certain former prices and/or market values without the intent
20 to sell goods having those former prices and/or market values. Defendant made false or
21 misleading statements of fact concerning the existence of and amounts of price
22 reductions, including the existence of steep discounts and the amounts of price
23 reductions resulting from those discounts. And Defendant engaged in unlawful, unfair,
24 and deceptive business practices.

25 **C. Defendant’s advertisements harm consumers.**

26 35. Based on Defendant’s advertisements, reasonable consumers would expect
27 that the listed regular prices are the regular prices at which Defendant usually sells its
28

1 Products and that these are former prices that Defendant sold its Products at before the
2 sale.

3 36. Reasonable consumers would also expect that, if they purchase during the
4 sale, they will receive an item whose regular price and/or market value is the advertised
5 regular price and that they will receive the advertised discount from the regular purchase
6 price.

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

10 38. Consumers that are presented with discounts are substantially more likely to
11 make the purchase. “Nearly two-thirds of consumers surveyed admitted that a
12 promotion or a coupon often closes the deal, if they are wavering or are undecided on
13 making a purchase.”² And, “two-thirds of consumers have made a purchase they weren’t
14 originally planning to make solely based on finding a coupon or discount,” while “80%
15 [of consumers] said they feel encouraged to make a first-time purchase with a brand that
16 is new to them if they found an offer or discount.”³

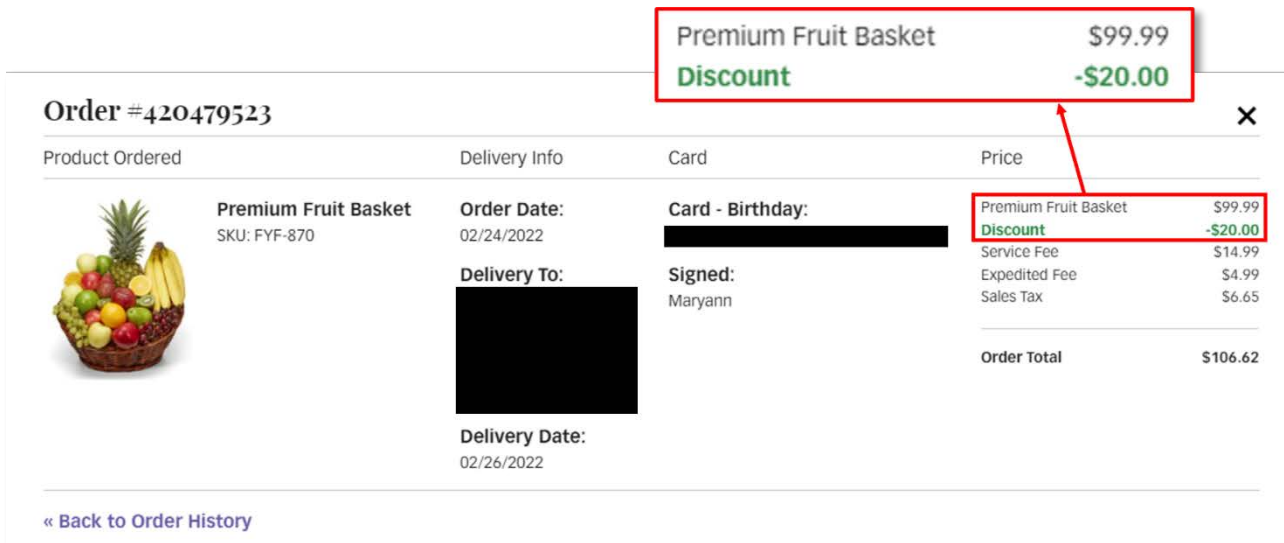
17 39. Thus, Defendant’s advertisements harm consumers by inducing them to
18 make purchases based on false information. In addition, by this same mechanism,
19 Defendant’s advertisements artificially increase consumer demand for Defendant’s
20 Products. This puts upward pressure on the prices that Defendant can charge for its
21 Products. As a result, Defendant can charge a price premium for its Products, that it
22 would not be able to charge absent the misrepresentations described above. So, due to
23 Defendant’s misrepresentations, Plaintiff and the class paid more for the Products they
24 bought than they otherwise would have.

26 ² [https://www.invespcro.com/blog/how-discounts-affect-online-consumer-](https://www.invespcro.com/blog/how-discounts-affect-online-consumer-buying-behavior/)
27 [buying-behavior/](https://www.invespcro.com/blog/how-discounts-affect-online-consumer-buying-behavior/).

28 ³ RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases
Online, Especially Among Millennial Buyers (prnewswire.com).

D. Plaintiff was misled by Defendant’s misrepresentations.

40. On February 24, 2022, Ms. Abrego purchased a Premium Fruit Basket from Defendant’s website, www.fromyouflowers.com. She made this purchase while living in Rancho Cucamonga, California. On its website, Defendant represented that a 20% off sitewide discount was available and that it automatically applied to the Product that Ms. Abrego purchased. Defendant represented the Premium Fruit Basket had a listed regular price of \$99.99 and a discounted price of \$79.99, and that Ms. Abrego was receiving a “discount” of \$20.00. This is all reflected in the online order details on Defendant’s website, shown below:



41. Defendant represented that the Product had a certain regular price and that Ms. Abrego was receiving a substantial discount for the item that she purchased.

42. Ms. Abrego read and relied on Defendant’s representations on the website and order details, specifically that the Product was being offered at a discount and that it had the regular price listed above. Based on Defendant’s representations described and shown above, Ms. Abrego reasonably understood that the Product she was purchasing regularly (and before the promotion Defendant was advertising) retailed at the published regular price, that this regular price was the market value of the Product that she was buying, and that she was receiving the advertised discount as compared to the regular

1 price. She would not have made the purchase if she had known that the Product was not
2 discounted as advertised, and that she was not receiving the advertised discount.

3 43. Plaintiff faces an imminent threat of future harm. Plaintiff would purchase
4 Products from Defendant again in the future if she could feel sure that Defendant's
5 regular prices accurately reflected Defendant's former prices and the market value of the
6 Products, and that its discounts were truthful. But without an injunction, Plaintiff has no
7 realistic way to know which—if any—of Defendant's regular prices, discounts, and sales
8 are not false or deceptive. Accordingly, Plaintiff is unable to rely on Defendant's
9 advertising in the future, and so cannot purchase Products she would like to purchase.

10 **E. Defendant breached its contract with and warranties to Ms. Abrego**
11 **and the putative class.**

12 44. When Ms. Abrego and other members of the putative class purchased and
13 paid for the From You Flowers Products they bought as described above, they accepted
14 offers that Defendant made, and thus, a contract was formed at the time that they made a
15 purchase. The offer was to provide a Product having a particular listed regular price and
16 market value, and to provide that Product at the discounted price advertised on the
17 website.

18 45. Defendant's website and online order details list the market value of the
19 item that Defendant promised to provide (which, for Ms. Abrego, is shown above).
20 Defendant agreed to provide a discount equal to the difference between the regular price
21 listed by Defendant, and the price paid by Ms. Abrego (also shown above for Ms.
22 Abrego) and putative class members. For example, Defendant offered to provide the
23 Premium Fruit Basket with a market value of \$99.99, for a discounted price of \$79.99;
24 and to provide a discount of \$20.00.

25 46. The regular price and market value of the items Ms. Abrego and other
26 members of the putative class purchased, and the amount of the discount they would be
27 provided off the regular price of those items, were specific and material terms of the
28 contract.

1 47. Ms. Abrego and other members of the putative class performed their
2 obligations under the contract by paying for the items they purchased.

3 48. Defendant breached its contract by failing to provide Ms. Abrego and other
4 members of the putative class with a Product that has a regular price and market value
5 equal to the regular price displayed, and by failing to provide the discount it promised.
6 Defendant also breached warranties for the same reasons.

7 **F. No adequate remedy at law.**

8 49. Plaintiff seeks damages and, in the alternative, restitution. Plaintiff is
9 permitted to seek equitable remedies in the alternative because she has no adequate
10 remedy at law.

11 50. A legal remedy is not adequate if it is not as certain as an equitable
12 remedy. The elements of Plaintiff's equitable claims are different and do not require the
13 same showings as Plaintiff's legal claims. For example, Plaintiff's FAL claim under
14 section 17501 (an equitable claim) is predicated on a specific statutory provision, which
15 prohibits advertising merchandise using a former price if that price was not the prevailing
16 market price within the past three months. Cal. Bus. & Prof. Code § 17501. Plaintiff
17 may be able to prove these more straightforward factual elements, and thus prevail under
18 the FAL, while not being able to prove one or more elements of her legal claims. As a
19 second example, to obtain damages under the CLRA, a plaintiff must show that they
20 complied with the CLRA's notice requirement for damages. No such requirements exist
21 to obtain restitution. Because a plaintiff must make this additional showing to obtain
22 damages, rather than restitution, the legal remedies are more uncertain.

23 51. In addition, the remedies at law available to Plaintiff are not equally prompt
24 or otherwise efficient. The need to schedule a jury trial may result in delay. And a jury
25 trial will take longer, and be more expensive, than a bench trial.

26 **V. Class action allegations.**

27 52. Plaintiff brings the asserted claims on behalf of the proposed class of:
28

- 1 • Nationwide Class: all persons who, within the applicable statute of
2 limitations period, purchased one or more From You Flowers Products
3 advertised at a discount on Defendant’s website.
- 4 • California Subclass: all persons who, while in the state of California and
5 within the applicable statute of limitations period, purchased one or more
6 From You Flowers Products advertised at a discount on Defendant’s
7 website.

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

17 ***Numerosity & Ascertainability***

18 54. The proposed class contains members so numerous that separate joinder of
19 each member of the class is impractical. There are tens or hundreds of thousands of
20 class members.

21 55. Class members can be identified through Defendant’s sales records and
22 public notice.

23 ***Predominance of Common Questions***

24 56. There are questions of law and fact common to the proposed class.
25 Common questions of law and fact include, without limitation:

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

28 (2) whether Defendant violated California’s consumer protection statutes;

- 1 (3) whether Defendant committed a breach of contract;
- 2 (4) whether Defendant committed a breach of an express warranty;
- 3 (5) damages needed to reasonably compensate Plaintiff and the proposed class.

4 ***Typicality & Adequacy***

5 57. Plaintiff's claims are typical of the proposed class. Like the proposed class,
6 Plaintiff purchased a From You Flowers Product advertised at a discount from
7 Defendant. There are no conflicts of interest between Plaintiff and the class.

8 ***Superiority***

9 58. A class action is superior to all other available methods for the fair and
10 efficient adjudication of this litigation because individual litigation of each claim is
11 impractical. It would be unduly burdensome to have individual litigation of millions of
12 individual claims in separate lawsuits, every one of which would present the issues
13 presented in this lawsuit.

14 **VI. Claims.**

15 **First Cause of Action:**

16 **Violation of California's False Advertising Law Bus. & Prof. Code §§ 17500 &**
17 **17501 et. seq.**

18 **(By Plaintiff and the California Subclass)**

19 59. Plaintiff incorporates each and every factual allegation set forth above.

20 60. Plaintiff brings this cause of action on behalf of herself and members of the
21 California Subclass.

22 61. Defendant has violated sections 17500 and 17501 of the Business and
23 Professions Code.

24 62. Defendant has violated, and continues to violate, section 17500 of the
25 Business and Professions Code by disseminating untrue and misleading advertisements to
26 Plaintiff and subclass members.

27 63. As alleged more fully above, Defendant advertises former prices along with
28 discounts. Defendant does this, for example, by crossing out a higher price (*e.g.*, \$99.99)

1 and displaying it next to a lower, discounted price. Reasonable consumers would
2 understand prices denoted as regular prices in strikethrough front from which discounts
3 are calculated to denote “former” prices, i.e., the prices that Defendant charged before
4 the discount went into effect.

5 64. The prices advertised by Defendant are not Defendant’s regular prices. In
6 fact, those prices are never Defendant’s regular prices (i.e., the price you usually have to
7 pay to get the product in question), because there is always a heavily-advertised
8 promotion ongoing entitling consumers to a discount. Moreover, for the same reasons,
9 those prices were not the former prices of the Products. Accordingly, Defendant’s
10 statements about the former prices of its Products, and its statements about its discounts
11 from those former prices, were untrue and misleading.

12 65. In addition, Defendant has violated, and continues to violate, section 17501
13 of the Business and Professions Code by advertising former prices that were not the
14 prevailing market price within three months next immediately preceding the advertising.
15 As explained above, Defendant’s advertised regular prices, which reasonable consumers
16 would understand to denote former prices, were not the prevailing market prices for the
17 Products within three months preceding publication of the advertisement. And
18 Defendant’s former price advertisements do not state clearly, exactly, and conspicuously
19 when, if ever, the former prices prevailed. Defendant’s advertisements do not indicate
20 whether or when the purported former prices were offered at all.

21 66. Defendant’s misrepresentations were intended to induce reliance, and
22 Plaintiff saw, read, and reasonably relied on the statements when purchasing From You
23 Flowers Products. Defendant’s misrepresentations were a substantial factor in Plaintiff’s
24 purchase decision.

25 67. In addition, subclass-wide reliance can be inferred because Defendant’s
26 misrepresentations were material, i.e., a reasonable consumer would consider them
27 important in deciding whether to buy the From You Flowers Products.

28

1 68. Defendant’s misrepresentations were a substantial factor and proximate
2 cause in causing damages and losses to Plaintiff and the subclass.

3 69. Plaintiff and the subclass were injured as a direct and proximate result of
4 Defendant’s conduct because (a) they would not have purchased From You Flowers
5 Products if they had known the truth, and/or (b) they overpaid for the Products because
6 the From You Flowers Products were sold at a price premium due to the
7 misrepresentation.

8 **Second Cause of Action:**

9 **Violation of California’s Consumer Legal Remedies Act**

10 **(by Plaintiff and the California Subclass)**

11 70. Plaintiff incorporates each and every factual allegation set forth above.

12 71. Plaintiff brings this cause of action on behalf of herself and members of the
13 California Subclass.

14 72. Plaintiff and the subclass are “consumers,” as the term is defined by
15 California Civil Code § 1761(d).

16 73. Plaintiff and the subclass have engaged in “transactions” with Defendant as
17 that term is defined by California Civil Code § 1761(e).

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

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

26 76. Defendant violated, and continues to violate, section 1770 of the California
27 Civil Code.

28

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

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

10 79. And Defendant violated, and continues to violate section 1770(a)(13) by
11 making false or misleading statements of fact concerning existence of, or amounts of,
12 price reductions on its website, including by (1) misrepresenting the regular price of
13 Products on its website, (2) advertising discounts and savings that are exaggerated or
14 nonexistent, and (3) misrepresenting that the discounts and savings are unusually large,
15 when in fact they are regularly available.

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

19 81. Defendant's misrepresentations were intended to induce reliance, and
20 Plaintiff saw, read, and reasonably relied on them when purchasing From You Flowers
21 Products. Defendant's misrepresentations were a substantial factor in Plaintiff's purchase
22 decision.

23 82. In addition, subclass-wide reliance can be inferred because Defendant's
24 misrepresentations were material, i.e., a reasonable consumer would consider them
25 important in deciding whether to buy the From You Flowers Products.

26 83. Defendant's misrepresentations were a substantial factor and proximate
27 cause in causing damages and losses to Plaintiff and the subclass.

28

1 84. Plaintiff and the subclass were injured as a direct and proximate result of
2 Defendant's conduct because (a) they would not have purchased From You Flowers
3 Products if they had known the discounts and/or regular prices were not real, (b) they
4 overpaid for the Products because the Products were sold at a price premium due to the
5 misrepresentation, and/or (c) they received products with market values lower than the
6 promised market values.

7 85. Accordingly, pursuant to California Civil Code § 1780(a)(2), Ms. Abrego, on
8 behalf of herself and all other members of the subclass, seeks injunctive relief.

9 86. CLRA § 1782 NOTICE. On October 17, 2023, a CLRA demand letter was
10 sent to Defendant's Connecticut headquarters via certified mail (return receipt requested),
11 that provided notice of Defendant's violations of the CLRA and demanded that
12 Defendant correct the unlawful, unfair, false and/or deceptive practices alleged here.
13 Defendant does not have a California headquarters. If Defendant does not fully correct
14 the problem for Plaintiff and for each member of the California Subclass within 30 days
15 of receipt, Plaintiff and the California Subclass will seek all monetary relief allowed under
16 the CLRA.

17 87. A CLRA venue declaration is attached.

18 **Third Cause of Action:**

19 **Violation of California's Unfair Competition Law**
20 **(by Plaintiff and the California Subclass)**

21 88. Plaintiff incorporates each and every factual allegation set forth above.

22 89. Plaintiff brings this cause of action on behalf of herself and members of the
23 California Subclass.

24 90. Defendant has violated California's Unfair Competition Law (UCL) by
25 engaging in unlawful, fraudulent, and unfair conduct (i.e., violating each of the three
26 prongs of the UCL).
27
28

1 ***The Unlawful Prong***

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

8 ***The Deceptive Prong***

9 92. As alleged in detail above, Defendant’s representations that its Products
10 were on sale, that the Products had a specific regular price, and that the customers were
11 receiving discounts were false and misleading.

12 93. Defendant’s representations were misleading to Plaintiff and other
13 reasonable consumers.

14 94. Plaintiff relied upon Defendant’s misleading representations and omissions,
15 as detailed above.

16 ***The Unfair Prong***

17 95. As alleged in detail above, Defendant committed “unfair” acts by falsely
18 advertising that its Products were on sale, that the Products had a specific regular price,
19 and that the customers were receiving discounts.

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

24 97. The harm to Plaintiff and the subclass greatly outweighs the public utility of
25 Defendant’s conduct. There is no public utility to misrepresenting the price of a
26 consumer product. This injury was not outweighed by any countervailing benefits to
27 consumers or competition. Misleading consumer products only injure healthy
28 competition and harm consumers.

1 98. Plaintiff and the subclass could not have reasonably avoided this injury. As
2 alleged above, Defendant's representations were deceptive to reasonable consumers like
3 Plaintiff.

4 99. Defendant's conduct, as alleged above, was immoral, unethical, oppressive,
5 unscrupulous, and substantially injurious to consumers.

6 * * *

7 100. For all prongs, Defendant's representations were intended to induce
8 reliance, and Plaintiff saw, read, and reasonably relied on them when purchasing From
9 You Flowers Products. Defendant's representations were a substantial factor in
10 Plaintiff's purchase decision.

11 101. In addition, subclass-wide reliance can be inferred because Defendant's
12 representations were material, i.e., a reasonable consumer would consider them important
13 in deciding whether to buy From You Flowers Products.

14 102. Defendant's representations were a substantial factor and proximate cause
15 in causing damages and losses to Plaintiff and the subclass members.

16 103. Plaintiff and the subclass were injured as a direct and proximate result of
17 Defendant's conduct because (a) they would not have purchased the From You Flowers
18 Products if they had known that they were not discounted, and/or (b) they overpaid for
19 the Products because the Products were sold at the regular price and not at a discount.

20 **Fourth Cause of Action:**

21 **Breach of Contract**

22 **(by Plaintiff and the Nationwide Class)**

23 104. Plaintiff incorporates each and every factual allegation set forth above.

24 105. Plaintiff brings this cause of action on behalf of herself and the Nationwide
25 Class. In the alternative, Plaintiff brings this cause of action on behalf of herself and the
26 California Subclass.

27 106. Plaintiff and class members entered into contracts with Defendant when
28 they placed orders to purchase Products on Defendant's website.

1 107. The contracts provided that Plaintiff and class members would pay
2 Defendant for the Products purchased.

3 108. The contracts further required that Defendant provides Plaintiff and class
4 members with Products that have a market value equal to the regular prices displayed on
5 the website. They also required that Defendant provide Plaintiff and class members with
6 a discount equal to the difference between the price paid, and the regular prices
7 advertised. These were specific and material terms of the contract.

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

9 110. Plaintiff and class members paid Defendant for the Products they
10 purchased, and satisfied all other conditions of their contracts.

11 111. Defendant breached its contracts with Plaintiff and class members by failing
12 to provide Products that had a regular price, former price, and/or prevailing market value
13 equal to the regular price displayed on its website, and by failing to provide the promised
14 discount. Defendant did not provide the discount that it had promised.

15 112. Plaintiff provided Defendant with notice of this breach of warranty, by
16 mailing a notice letter to Defendant's headquarters on October 17, 2023.

17 113. As a direct and proximate result of Defendant's breaches, Plaintiff and class
18 members were deprived of the benefit of their bargained-for exchange, and have suffered
19 damages in an amount to be established at trial.

20 **Fifth Cause of Action:**

21 **Breach of Express Warranty**

22 **(by Plaintiff and the California Subclass)**

23 114. Plaintiff incorporates each and every factual allegation set forth above.

24 115. Plaintiff brings this cause of action on behalf of herself and members of the
25 California Subclass.

26 116. Defendant, as the seller and marketer of the From You Flowers Products,
27 issued material, written warranties by advertising that the Products had a prevailing
28 market value equal to the regular price displayed on Defendant's website. This was an

1 affirmation of fact about the Products (i.e., a representation about the market value) and
2 a promise relating to the goods.

3 117. This warranty was part of the basis of the bargain and Plaintiff and
4 members of the subclass relied on this warranty.

5 118. In fact, the From You Flowers Products' stated market value was not the
6 prevailing market value. Thus, the warranty was breached.

7 119. Plaintiff provided Defendant with notice of this breach of warranty, by
8 mailing a notice letter to Defendant's headquarters on October 17, 2023.

9 120. Plaintiff and the subclass were injured as a direct and proximate result of
10 Defendant's breach, and this breach was a substantial factor in causing harm, because (a)
11 they would not have purchased From You Flowers Products if they had known that the
12 warranty was false, or (b) they overpaid for the Products because the Products were sold
13 at a price premium due to the warranty.

14 **Sixth Cause of Action:**

15 **Quasi-Contract**

16 **(by Plaintiff and the Nationwide Class)**

17 121. Plaintiff incorporates each and every factual allegation in paragraphs 1-43,
18 49-58 above.

19 122. Plaintiff brings this cause of action in the alternative to her Breach of
20 Contract claim (Count IV), on behalf of herself and the Nationwide Class. In the
21 alternative, Plaintiff brings this claim on behalf of herself and the California Subclass.

22 123. As alleged in detail above, Defendant's false and misleading advertising
23 caused Plaintiff and the class to purchase From You Flowers Products and to pay a price
24 premium for these Products.

25 124. In this way, Defendant received a direct and unjust benefit, at Plaintiff's
26 expense.

27 125. (In the alternative only), due to Defendant's misrepresentations, its contracts
28 with Plaintiff are void or voidable.

1 126. Plaintiff and the class seek restitution, and in the alternative, rescission.

2 **Seventh Cause of Action:**

3 **Negligent Misrepresentation**

4 **(by Plaintiff and the California Subclass)**

5 127. Plaintiff incorporates each and every factual allegation set forth above.

6 128. Plaintiff brings this cause of action on behalf of herself and members of the
7 California Subclass.

8 129. As alleged more fully above, Defendant made false representations and
9 material omissions of fact to Plaintiff and subclass members concerning the existence
10 and/or nature of the discounts and savings advertised.

11 130. These representations were false.

12 131. When Defendant made these misrepresentations, it knew or should have
13 known that they were false. Defendant had no reasonable grounds for believing that
14 these representations were true when made.

15 132. Defendant intended that Plaintiff and subclass members rely on these
16 representations and Plaintiff and subclass members read and reasonably relied on them.

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

20 134. Defendant's misrepresentations were a substantial factor and proximate
21 cause in causing damages and losses to Plaintiff and subclass members.

22 135. Plaintiff and subclass members were injured as a direct and proximate result
23 of Defendant's conduct because (a) they would not have purchased From You Flowers
24 Products if they had known that the representations were false, and/or (b) they overpaid
25 for the Products because the Products were sold at a price premium due to the
26 misrepresentation.

1 **Eighth Cause of Action:**

2 **Intentional Misrepresentation**

3 **(by Plaintiff and the California Subclass)**

4 136. Plaintiff incorporates each and every factual allegation set forth above.

5 137. Plaintiff brings this cause of action on behalf of herself and members of the
6 California Subclass.

7 138. As alleged more fully above, Defendant made false representations and
8 material omissions of fact to Plaintiff and subclass members concerning the existence
9 and/or nature of the discounts and savings advertised.

10 139. These representations were false.

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

14 141. Defendant intended that Plaintiff and subclass members rely on these
15 representations and Plaintiff and subclass members read and reasonably relied on them.

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

19 143. Defendant's misrepresentations were a substantial factor and proximate
20 cause in causing damages and losses to Plaintiff and subclass members.

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

26 **VII. Relief.**

27 145. Plaintiff seeks the following relief for herself and the proposed class:

- 28
 - An order certifying the asserted claims, or issues raised, as a class action;

- 1 • A judgment in favor of Plaintiff and the proposed class;
- 2 • Damages, treble damages, and punitive damages where applicable;
- 3 • Restitution;
- 4 • Rescission;
- 5 • Disgorgement, and other just equitable relief;
- 6 • Pre- and post-judgment interest;
- 7 • An injunction prohibiting Defendant's deceptive conduct, as allowed by
- 8 law;
- 9 • Reasonable attorneys' fees and costs, as allowed by law;
- 10 • Any additional relief that the Court deems reasonable and just.

11 **VIII. Demand for Jury Trial.**

12 146. Plaintiff demands the right to a jury trial on all claims so triable.

13
14 Dated: October 26, 2023

Respectfully submitted,

By: /s/ Christin Cho

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