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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 TANIA BALAH, individually and on
12 behalf of all similarly situated persons,

13 Plaintiff,

14 v.

15 PIPING ROCK HEALTH PRODUCTS,
16 LLC, a New York limited liability
17 company,

18 Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Tania Balah (“Plaintiff”) brings this class action complaint individually
2 and on behalf of all others similarly situated against Piping Rock Health Products, LLC
3 (“Defendant” or “Piping Rock”). The allegations contained in this class action complaint
4 are based on Plaintiff’s personal knowledge of facts pertaining to herself and upon
5 information and belief, including further investigation conducted by Plaintiff’s counsel,
6 as to the remainder.

7 **I. NATURE OF THE ACTION**

8 1. “It has long been considered a deceptive practice to state falsely that a product
9 ordinarily sells for an inflated price but that it is being offered at a special reduced price,
10 even if the offered price represents the actual value of the product and the purchaser is
11 receiving his money’s worth.” *F.T.C. v. Colgate-Palmolive Co.*, 380 U.S. 374, 387 (1965).

12 2. This is a class action lawsuit brought to address Defendant’s misleading and
13 unlawful pricing, sales, and discounting practices on its website www.PipingRock.com
14 for Piping Rock-branded products (the “products”)¹. Defendant advertises *fake and*
15 *inflated comparison reference prices* to deceive customers into a false belief that the sale
16 price is a deeply discounted bargain price.

17 3. Anyone visiting the website during a 50% off sitewide promotion who buys
18 an item on “sale” from a “regular” price is being misled. So too is any person who buys
19 an item on “sale” from a “stricken” regular price. This is because that item has not been
20 listed for sale or sold in the recent past on the website at the regular price. Yet Defendant’s
21 use of inflated reference prices, strikethrough pricing and discounting, and purported
22 limited time sales all lead reasonable consumers to believe that the products in fact had
23 been listed for sale and sold at the regular price in the recent past for a substantial period
24 of time.

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26
27 ¹ The Piping Rock-branded products also includes all Lindberg-branded products.
28 Lindberg is owned by, and is a sub-brand of, Piping Rock. Lindberg products are also
offered on the website.

1 4. Further, because the website is the primary channel through which
2 Defendant's Piping Rock-branded products are sold, Defendant cannot claim that another
3 comparable retailer listed and sold that exact same item for the regular price in the recent
4 past and for a substantial period, let alone that the regular price is the market value.

5 5. All or nearly all the reference prices on the website are false. They are not
6 original, regular, or former prices. They are inflated prices posted to lure consumers into
7 purchasing items from Defendant.

8 6. Defendant also falsely advertises sales as being of limited duration, or
9 available for a limited time in connection with a holiday or event, when the sale is actually
10 perpetual. This is accomplished through language like "Hurry! Expires September 29,
11 2023" or similar, along with "countdown timers" to the sale's purported expiration. In
12 truth, when one sale expires, another comparable sale is promptly instituted. This cycle
13 continues over and over.

14 7. Beyond that, Defendant's products sold on the website not only have a market
15 value lower than the promised regular price, but the market value of the products is also
16 lower than the "sale" price. By using false reference pricing and false limited time sales,
17 Defendant artificially drives up demand for the products, and by extension drives up the
18 price of the products. As a result, consumers received a product worth less than the price
19 paid. An example illustrates the point. Assume a company knows a product will sell in
20 the marketplace at \$30. But to increase revenue, the company advertises the product as
21 having a "regular" price of \$100 and being on "sale" for a "limited time" at 60% off (i.e.,
22 \$60 off). Because consumers value products based on the regular price, and a limited-
23 time sale conveys additional savings, the company can sell that \$30 product for \$40.

24 8. As a result, consumers are deceived into spending money they otherwise
25 would not have spent, purchasing items they would not have purchased, and/or spending
26 more money for an item than they otherwise would have absent deceptive marketing.

27 **II. PARTIES**

28

1 9. Plaintiff Tania Balah is a resident of the State of California and County of
2 Los Angeles. She was present in Los Angeles County at the time she made her purchases
3 from the website.

4 10. Defendant Piping Rock Health Products, LLC is a New York limited liability
5 company. Defendant is an online retailer of health and beauty products and supplements,
6 including without limitation vitamins, essential oils, herbs, serums, and creams. Among
7 the products Defendant sells are the Piping-Rock branded products at issue in this case.
8 Through the website, Defendant sells its products to consumers in California and
9 nationwide. Defendant's website states that Defendant is headquartered at 2120
10 Smithtown Avenue, Ronkonkoma, New York.

11 **III. JURISDICTION AND VENUE**

12 11. This Court has jurisdiction over this lawsuit under the Class Action Fairness
13 Act, 28 U.S.C. § 1332(d)(2), because this is a proposed class action in which: (i) there are
14 at least 100 class members; (ii) the aggregate amount in controversy exceeds \$5,000,000,
15 exclusive of interest and costs; and (iii) at least one putative class member and one
16 Defendant are citizens of different states.

17 12. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a
18 substantial part of the events or omissions giving rise to the claims herein occurred in this
19 judicial district. As set forth herein, Defendant owns and operates the website, and
20 marketed, sold, and shipped products to purchasers located in this district, including
21 Plaintiff.

22 13. Further, as set forth herein, Defendant has contacts in this district sufficient
23 to subject it to the personal jurisdiction of this district as if this district were a separate
24 state. Defendant continuously and systematically places goods into the stream of
25 commerce for distribution in California, maintains an interactive commercial website,
26 offers to ship products to California, maintains a California-specific privacy policy, and
27 allows customers in California to order products. Exercising jurisdiction over Defendant
28 is fair, just, and reasonable considering the quality and nature of Defendant's acts that

1 occur in California and which affect interests located in California. Defendant has
2 purposefully availed itself of the privilege of conducting activities in California, and
3 should reasonably anticipate being haled into court in California.

4 **IV. GENERAL ALLEGATIONS**

5 **A. Company Background**

6 14. On the website's About Us page, Defendant describes itself as "a worldwide
7 producer of vitamins and dietary supplements, firmly dedicated to producing high-quality
8 wellness products."

9 15. The About Us page further states that "Piping Rock's in-house manufacturing
10 leads to lower production costs, which translates into more budget-friendly prices for you!
11 Our tightly controlled production processes allow us to meticulously manage every aspect
12 of manufacturing, guaranteeing steadfast quality and effectiveness across our complete
13 product lineup. Our steadfast dedication is to continuously deliver the superior quality and
14 exceptional value that you rightfully deserve."

15 16. The website emphasizes the "in-house formulation" and proprietary nature
16 of Defendant's Piping Rock-branded products, stating "Piping Rock's in-house
17 formulation process is exceptionally purposeful, with well-defined goals and envisioned
18 outcomes for each product. We meticulously select ingredients with the highest potential
19 to achieve the product's intended objectives, resulting in precise dosages, ratios,
20 combinations, and strengths. This commitment enables us to deliver genuinely high-
21 potency formulas to our valued customers."

22 17. The website also highlights the extensive product catalog: "Piping Rock
23 boasts an extensive product catalog, featuring over 2,000 items. Within our range, you'll
24 discover a wide variety of supplements and vitamins available in a multitude of forms,
25 including caplets, tablets, softgels, gummies, liquids, powders, and capsules, providing
26 you with a diverse array of options to suit your preferences."
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1 18. Defendant, through the website, has sold millions of Piping Rock-branded
2 products to consumers in California and nationwide. Defendant touts that it has “over 3
3 million satisfied customers around the world.”

4 **B. Defendant’s False and Deceptive Pricing Scheme**

5 **1. The Products Are Not Regularly Listed or Sold on the Website at**
6 **the Reference Prices**

7 19. Defendant’s business model relies on deceiving consumers with fake sales.
8 Defendant prominently displays on the landing page of the website some form of sale
9 where many products are supposedly marked down by a specific percentage, for example,
10 50% off, and will expire soon. When one sale expires, another substantially equivalent
11 sale is promptly instituted. This cycle continues over and over.



23 20. On any given date, all or nearly all Piping Rock-branded products on the
24 website are represented as being discounted from a substantially higher reference price.
25 On individual listing pages, the supposed markdowns are represented to the consumer by
26 prominently displaying a “crossed-out” reference price next to the sale price.
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21. Defendant also creates a false sense of urgency through high-pressure sales tactics. This is accomplished through language like “Limited Time Only!”, “Expires [date]”, or similar, along with countdown timers to the sale’s purported expiration. The website’s homepage and many listing pages display these durational statements. Representative examples of Defendant’s listing pages are shown below.

CRAZY DEAL

TESTED & VERIFIED

Calcium Magnesium Zinc (Cal 1000mg/Mag 400mg/Zn 15mg) (per serving), 300 Coated Caplets

by PipingRock

★★★★★ 234 customer reviews

SALE ENDS IN
04 : 13 : 15 : 16
DAYS HRS MIN SEC

Size: 1 | 300 Coated Caplets - In Stock

1 | 300 Coated Caplets
\$10.00 (50% Off) \$19.99
50% Off

4.8 ★★★★★
Google Customer Reviews

Quantity: - 1 +

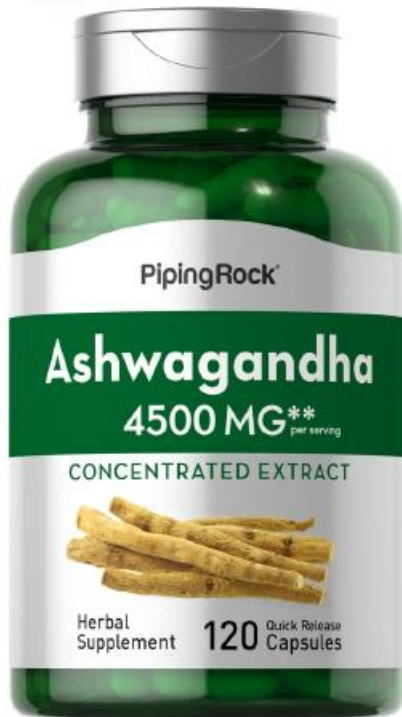
\$10.00 | Add to cart

SUPERIOR QUALITY GUARANTEED

✓ 1 Year 100% No-Risk Satisfaction Guarantee
🇺🇸 Shipped from the USA

Ashwagandha, 4500 mg (per serving), 120 Quick Release Capsules

by [PipingRock](#)



Pinch or double tap image to zoom



★★★★★ [302 customer reviews](#)

- ✔ Ashwagandha (4,500 mg** per serving)
- ✔ Therapeutic Grade Formula
- ✔ Traditional Ayurvedic Herb
- ✔ Enhanced with Black Pepper Extract
- ✔ Convenient Quick-Release Capsules

Size: 1 | 120 Quick Release Capsules

1 | 120 Quick Release Capsules
\$13.99 (35% Off) ~~\$21.49~~

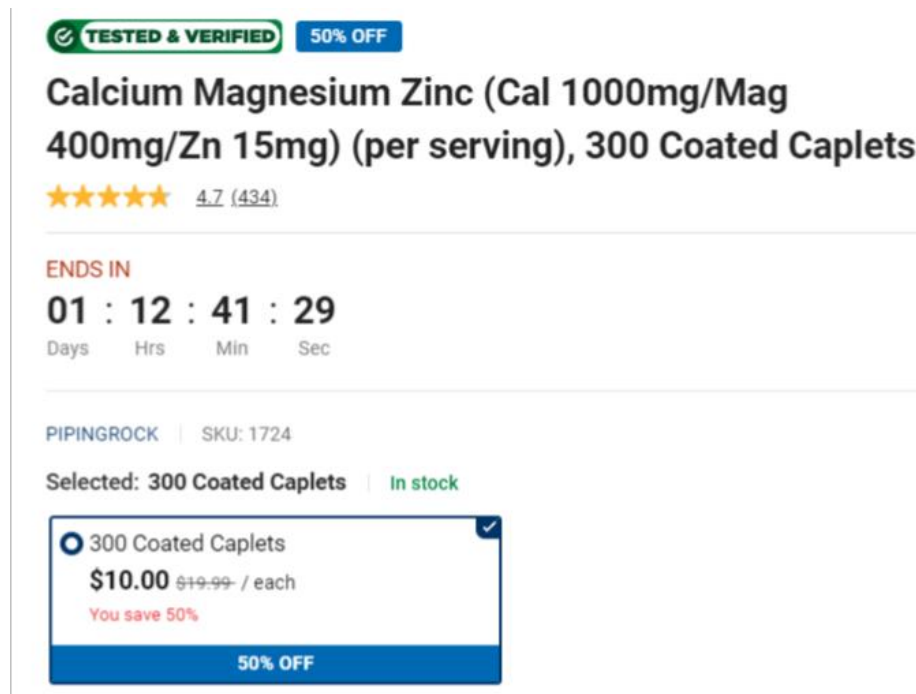
1 | 240 Quick Release Capsules
\$25.49 (35% Off) ~~\$39.19~~

22. Defendant employs these deceptive tactics to convey to customers that the product was listed or sold in the recent past *on the website* at the reference price for a substantial period of time, but is now being listed and sold to the customer at a substantial discount. In other words, reasonable consumers would understand that the strikethrough

1 reference price, or the adjacent “% off”, each independently convey that the product was
 2 listed or sold in the recent past *on the website* at the reference price for a substantial period
 3 of time, but is now being listed and sold to the customer at a substantial discount.

4 23. However, this reference price is always a falsely inflated price because
 5 Defendant rarely, if ever, lists or sells items at the reference price. The only purpose of the
 6 reference price is to mislead customers into believing that the displayed reference price is
 7 an original or regular price at which Defendant usually lists and sells the item in the recent
 8 past. As a result, Defendant falsely conveys to customers that they are receiving a
 9 substantial markdown or discount.

10 24. For example, take the Piping Rock-branded Calcium Magnesium Zinc
 11 Coated Caplets. On December 15, 2023, as shown below, the product was advertised as
 12 having a regular (strikethrough) price of \$19.99, and was on sale at 50% off for \$10.00.



25. That sale was false and misleading. In the months and years prior, the product
 26 has consistently been offered on sale and rarely, if ever, offered at the \$19.99 reference
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1 price. When any sale purportedly expired, another comparable sale was promptly
2 instituted, as confirmed by archived captures of the website shown below.

3 Calcium Magnesium Zinc listing on March 28, 2023:

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The screenshot displays the PipingRock website interface. At the top, there is a navigation bar with the PipingRock logo, a search bar, and a shopping cart icon. Below the navigation bar, there is a main menu with categories such as Crazy Deals, Supplements, Vitamins, Essential Oils, Herbs, Beauty, Weight Support, Sports, and Healthy Foods. The main content area features a product listing for Calcium Magnesium Zinc (Cal 1000mg/Mag 400mg/Zn 15mg) (per serving), 300 Coated Caplets. The product image shows a white bottle with a blue label. The price is listed as \$11.99 (40% Off) \$49.99. The page also includes a sidebar with category links, a quantity selector, and a 'Add to cart' button. The bottom of the page features a 'SUPERIOR QUALITY GUARANTEED' badge and a '1 Year 100% No-Risk Satisfaction Guarantee'.

Calcium Magnesium Zinc listing on November 26, 2022:

The screenshot shows the PipingRock website interface. At the top, there is a navigation bar with the PipingRock logo, a search bar, and a shopping cart icon. Below the navigation bar, there are several menu items: Crazy Deals, Supplements, Vitamins, Essential Oils, Herbs, Beauty, Weight Support, Sports, Rewards, and a Checkout button. The main content area features a sidebar on the left with 'Shop All Categories' and a list of product types including Calcium Supplements, Calcium Citrate, EDTA, Red Mineral Algae, Strontium, Supplements, Nuts & Seeds, Alpha Lipoic Acid, Amino Acids, Antioxidants, C Vitamins, CoQ10, Digestive Health, Eye Nutrients, Flaxseed (Linseed) Oil, Organic Products, Herbal Supplements, and Liquid Extracts. The main product listing is for 'Calcium Magnesium Zinc (Cal 1000mg/Mag 400mg/Zn 15mg) (per serving), 300 Coated Caplets' by BioFood. The product image shows a white bottle with a blue label. The price is listed as \$11.99 (25% Off) from \$46.99. There is an 'Add to cart' button and a '1 Year 100% No-Risk Satisfaction Guarantee' badge. The date in the top right corner is November 26, 2022.

Calcium Magnesium Zinc listing on December 3, 2021:

The screenshot shows the PipingRock website interface. At the top, there is a navigation bar with the PipingRock logo, a search bar, and a shopping cart icon. Below the navigation bar, there are several menu items: Crazy Deals, Supplements, Vitamins, Herbs, Essential Oils, Beauty, Sports, Weight Support, Nuts & Seeds, and PipingRock. The main content area features a sidebar on the left with 'Shop All Categories' and a list of product types including Calcium Supplements, Calcium Citrate, EDTA, Red Mineral Algae, Strontium, Supplements, Nuts & Seeds, Alpha Lipoic Acid, Amino Acids, Organic Products, Herbal Supplements, and Liquid Extracts. The main product listing is for 'Calcium Magnesium Zinc (Cal 1000mg/Mag 400mg/Zn 15mg) (per serving), 300 Coated Caplets' by BioFood. The product image shows a white bottle with a blue label. The price is listed as \$10.49 (25% Off) from \$13.99. There is an 'Email Me When Available' button and a 'Temporarily Out of Stock' notice. The date in the top right corner is December 03, 2021.

1 Calcium Magnesium Zinc listing on April 16, 2021:

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INTERNET ARCHIVE Wayback Machine https://www.pipingrock.com/calcium-magnesium/calcium-magnesium-zinc-cal-1000mgmag-400mgzn-15mg-per-serving-300-coated-caplets-1724 Go OCT APR JUL 16 2021 2022 About this capture

6 captures 25 Oct 2020 - 28 Mar 2023

PipingRock UNITED STATES SITE | EN | USD Search Products Sign In / Join My Account Share \$0.00

Crazy Deals Supplements Vitamins Herbs Essential Oils Beauty Sports Rewards Checkout

Shop All Categories
Shop All Products
Shop All Brands
PipingRock's Best
Sale Items
Calcium Supplements
Calcium Citrate
EDTA
Red Mineral Algae
Strontium
Supplements
Nuts & Seeds
Alpha Lipoic Acid
Amino Acids

Home > Calcium Magnesium > Item #1724

50% OFF SALE | On Select Items Shop Now
HURRY! Expires April 17, 2021

Calcium Magnesium Zinc (Cal 1000mg/Mag 400mg/Zn 15mg) (per serving), 300 Coated Caplets
by PipingRock
List Price: ~~\$12.79~~ You Save: \$3.20
Our Price: **\$9.59 (25% Off)**
Quantity: 1 Add to cart

Other Sizes
Calcium Magnesium Zinc, 90 Caplets
Calcium Magnesium Zinc (Cal 1000mg/Mag 400mg/Zn 15mg) (per serving), 90 Coated Caplets
\$3.59 Add to cart

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16 Calcium Magnesium Zinc listing on October 25, 2020:

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INTERNET ARCHIVE Wayback Machine https://www.pipingrock.com/calcium-magnesium/calcium-magnesium-zinc-cal-1000mgmag-400mgzn-15mg-per-serving-300-coated-caplets-1724 Go SEP OCT APR 25 2020 2021 6 captures 25 Oct 2020 - 28 Mar 2023

PipingRock EN | USD Search Products Sign In / Join My Account Share

Crazy Deals Supplements Vitamins Herbs Essential Oils Beauty Sports Rewards

Home > Calcium Magnesium > Item #1724

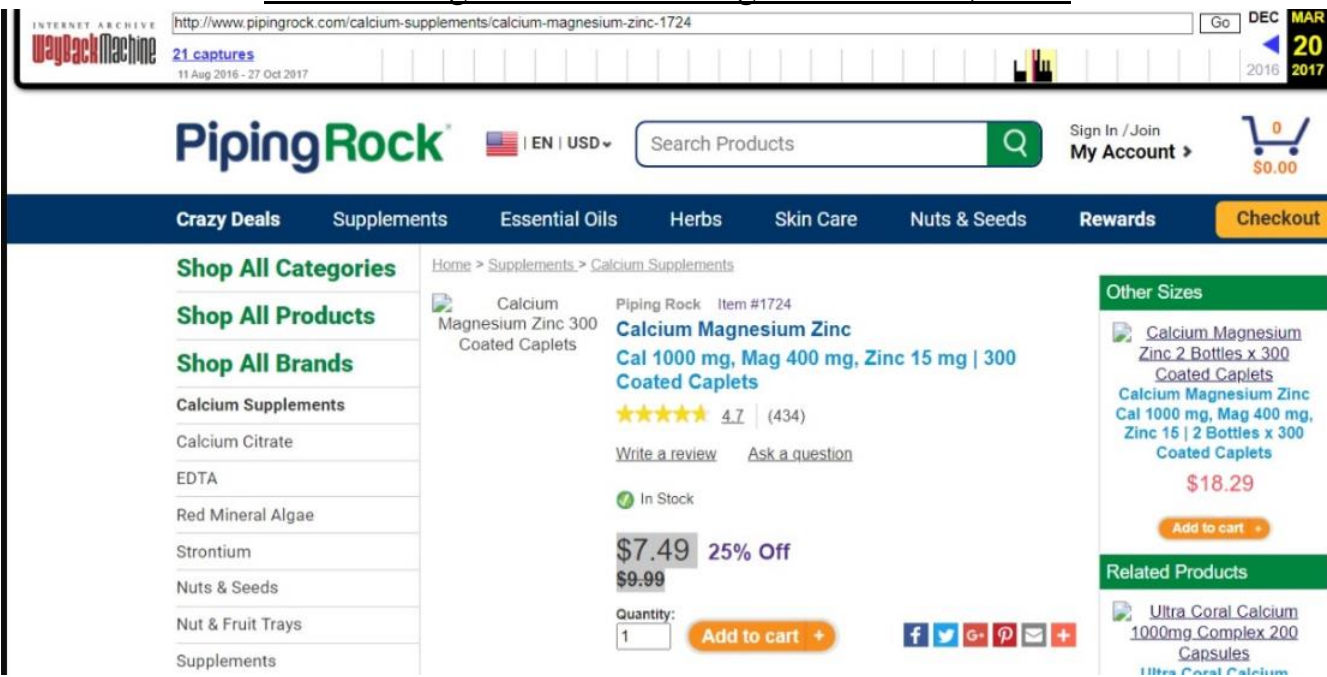
Shop All Categories
Shop All Products
Shop All Brands
Piping Rock's Best
Sale Items
Calcium Supplements
Calcium Citrate
EDTA
Red Mineral Algae
Strontium



Calcium Magnesium Zinc (Cal 1000mg/Mag 400mg/Zn 15mg) (per serving), 300 Coated Caplets
by Piping Rock
List Price: ~~\$11.29~~ You Save: \$2.80
Our Price: **\$8.49 (25% Off)**
Quantity: 1 Add to cart

Other Sizes
Calcium M (Cal 10 400mg/Z serving) Ci
\$3.19

Calcium Magnesium Zinc listing on March 20, 2017:



26. As another representative example, take the Ashwagandha 4500 mg 120 Quick Release Capsules. On December 12, 2023, the product was offered at \$13.99. The listing page showed a strikethrough price of \$21.49 and “35% off”.

Size: 1 | 120 Quick Release Capsules

1 | 120 Quick Release Capsules
 \$13.99 (35% Off) ~~\$21.49~~

1 | 240 Quick Release Capsules
 \$25.49 (35% Off) ~~\$39.19~~

27. The advertised strikethrough reference price and sale price for the Ashwagandha were false and misleading because the product had not been offered on the website at the reference price for any substantial period of time.

a. On August 6, 2023, the product was offered at the exact same price: \$13.99 with a strikethrough reference price of \$21.49 and “35% off”

b. On May 19, 2023, the product was offered for \$10.75 with a strikethrough reference price of \$21.59 and “50% off”

1 c. On April 21, 2023, the product was offered for \$8.99 with a
2 strikethrough reference price of \$21.59 and “58% off”. The listing further
3 described the sale as the “deal of the month” and included a countdown timer.

4 d. On April 7, 2023, the product was offered for \$8.99 with a
5 strikethrough reference price of \$21.59 and “58% off”. The listing further
6 described the sale as the “deal of the month” and included a countdown timer.

7 e. On February 21, 2023, the product was offered for \$13.99 with a
8 strikethrough reference price of \$21.59 and “35% off”

9 f. On May 23, 2022, the product was offered for \$12.99 with a
10 strikethrough reference price of \$17.29 and “25% off”

11 28. This is not a new or isolated sales practice by Defendant, but continued
12 regularly throughout at least 2022, 2021, 2020, 2019, 2018, 2017, and 2016, and on
13 information and belief years earlier.

14 29. These pricing and advertising practices reflect high-pressure fake sales and
15 are deceptive. Defendant intends to mislead consumers into believing that they are getting
16 a bargain by buying products from the website on sale and at a substantial and deep
17 discount. But Defendant never offers for sale or sells any of its products at the reference
18 price. The reference price is, therefore, artificially inflated, and the advertised discounts
19 are phantom markdowns.

20 **2. The Reference Prices are not the Market Value of the Products,**
21 **Including During the Rolling 90-Day Period Prior to Offering**

22 30. Separately, because Defendant’s website is the primary channel through
23 which its branded products are sold, Defendant cannot claim that the reference price is the
24 prevailing market price of the product.

25 31. On information and belief, the reference prices are unsubstantiated and based
26 on an undisclosed formula. Defendant does not independently verify that the reference
27 prices are the prevailing market prices at which the products are listed for sale by other
28 retailers for a substantial period of time and in substantial quantities.

32. Defendant’s advertised reference prices are actually higher than the prevailing market prices for the identical products. Indeed, because Defendant consistently sells its Piping Rock-branded products at prices significantly (i.e., 25% to 50% or more) lower than its advertised former prices, there is no reasonable basis to believe that Defendant consistently sells its products at prices 25% to 50% below the prevailing market prices. In competitive markets, the actual prices offered by vendors selling the same item tend to converge on the market price.

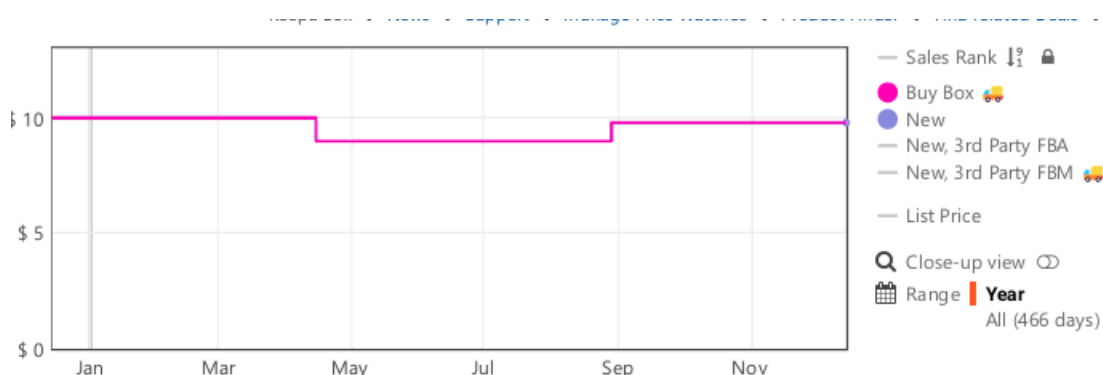
33. Regardless, a sampling of the prices charged for the identical products at other retailers confirms the above.

34. For example, Defendant concurrently sells its Piping Rock-branded products on Amazon.com.

a. On December 15, 2023, the Ashwagandha product discussed above was offered by Defendant on Amazon.com for **\$9.79**, with 15% off the strikethrough regular price of **\$11.52**.

b. But that same day, the product was offered on Defendant’s website at **\$13.99**, with a strikethrough price of **\$21.49** and “35% off”.

c. Additionally, according to a third-party service that tracks the offering prices on Amazon, the product was offered between \$8.98 and \$9.99 from January 2023 to December 2023.



35. Defendant also sells its Piping Rock-branded products through LindbergNutrition.com (“Lindberg”), a third-party retailer. On December 15, 2023, the

1 same Ashwagandha product discussed above was offered by Lindberg for \$13.99, with a
2 strikethrough price of \$21.49 and “35% off”—i.e., the *same price* offered on Defendant’s
3 website.

4 **3. Consumers Suffered Economic Harm**

5 36. Defendant’s products sold on the website have a market value lower than the
6 promised “regular” price, and as a result, consumers were harmed. As explained above,
7 the reference prices are false and the products rarely, if ever, offered or sold at the reference
8 price on the website. Nor are the products regularly offered for sale at the reference price
9 by third-party retailers.

10 37. Additionally, Defendant’s products sold on the website not only have a
11 market value lower than the promised regular price, but the value of the products is also
12 lower than the “sale” price. By using false reference pricing and false limited time sales,
13 Defendant artificially drives up demand for the products, and by extension drives up the
14 price of the products. As a result, consumers received a product worth less than the price
15 paid. Reasonable consumers would not have paid the prices charged had they known that
16 the products were rarely, if ever, offered for sale on the website at the reference prices.

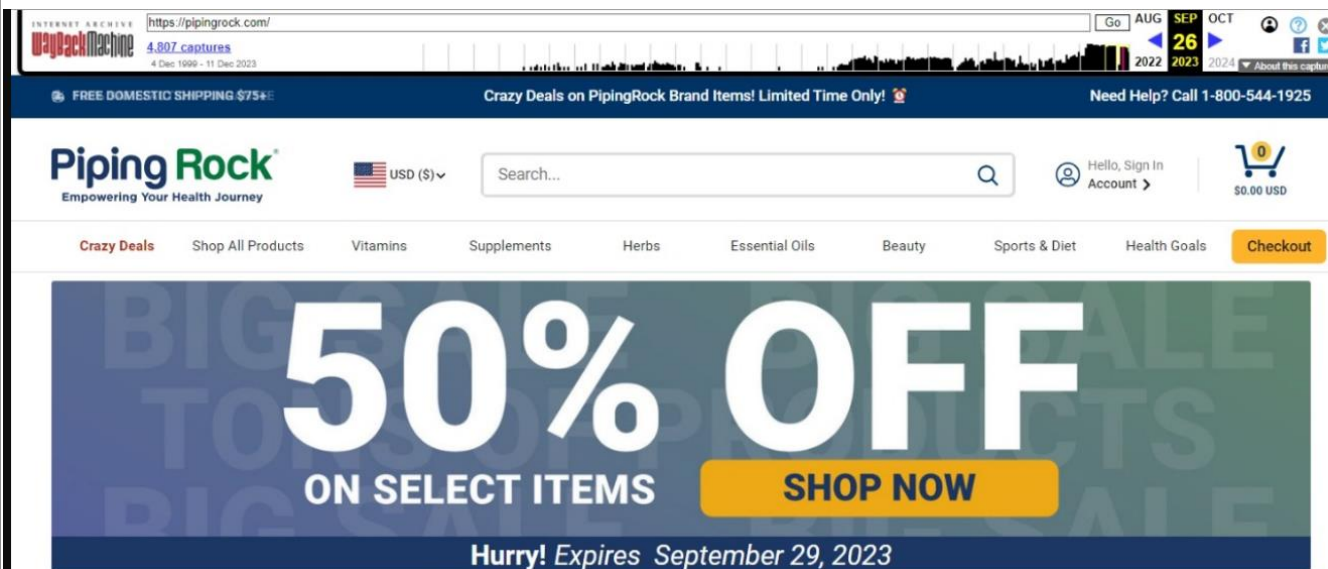
17 38. Again, an example illustrates the point. Assume a company knows a product
18 will sell in the marketplace at \$30. But to increase revenue, the company advertises the
19 product as having a “regular” price of \$100 and being on “sale” for a “limited time” at
20 60% off (i.e., \$60 off). Because consumers value products based on the regular price, and
21 a limited-time sale conveys additional savings, the company can sell that \$30 product for
22 \$40. Defendant has done just that.

23 **C. Plaintiff’s Purchases from the Website**

24 39. On September 26, 2023, Plaintiff purchased Piping Rock-branded
25 Ashwagandha Capsules, Clove Fragrance Oil, Krill Oil Softgels, Vitamin D3 Gummies
26 Natural Pineapple, Ultra Papaya Enzyme Tablets, and Boswellia Complex Capsules.

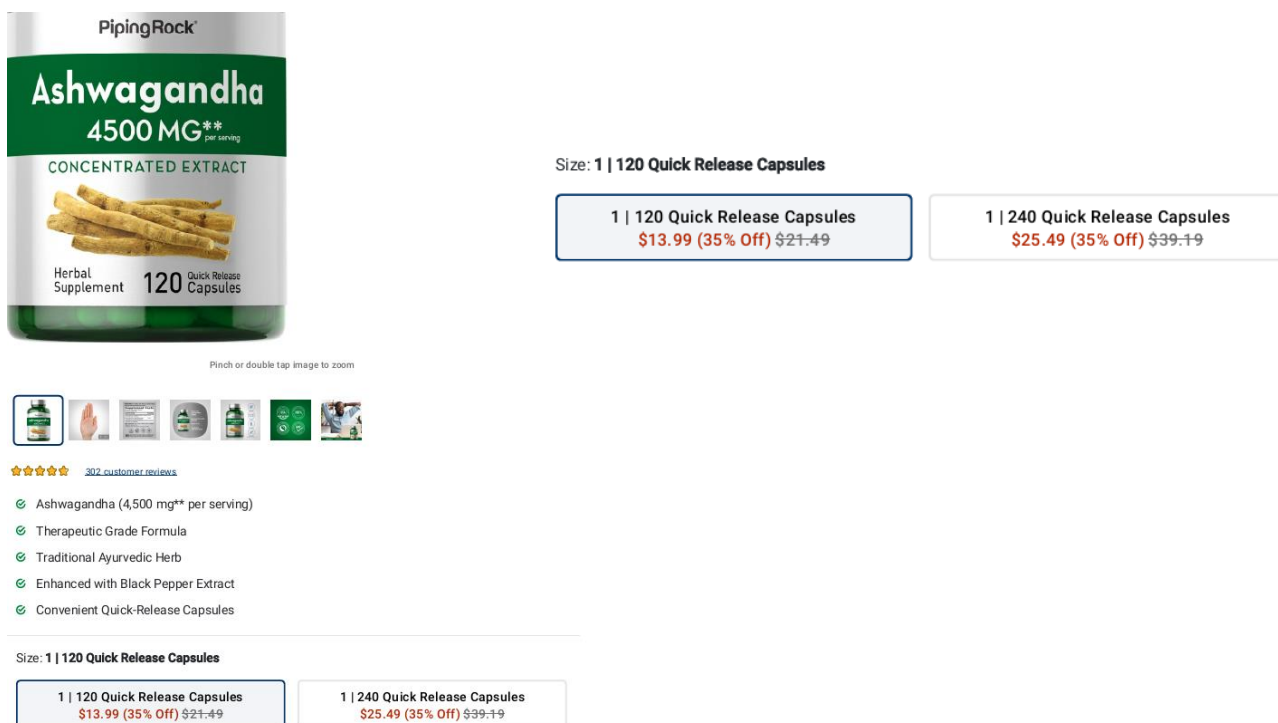
27 40. She saw an advertisement on the website’s home page stating “50% off on
28

select items” and “Hurry! Expires September 29, 2023.”



41. She then navigated to the listing page for each product she purchased. On each listing page, she saw a crossed-out regular price, an adjacent sale price, and a “__% off” or similar statement. For example:

a. the listing page for the Ashwagandha product she purchased stated “\$13.99 (35% Off) ~~\$21.49~~” [exemplar screen capture shown below].



1
2 b. the listing page for the Clove Fragrance Oil product she purchased
3 stated “\$0.89”, ~~\$6.69~~, and “You save 86%”

4 c. the listing page for the Krill Oil product she purchased stated “19.99”
5 with a strikethrough reference price of ~~\$30.79~~ and “you save 35%”

6 d. the listing page for the Vitamin D3 Gummies Natural Pineapple she
7 purchased stated “0.99” with a strikethrough reference price of “~~\$9.29~~ each”
8 and “You save 89%”

9 e. the listing page for the Ultra Papaya Enzyme Tablets stated “5.99”
10 with a strikethrough reference price of “~~9.59~~ each” and “you save 37%”

11 f. the listing page for the Boswellia Complex Capsules stated “\$19.99”
12 “Buy 1, Get 1 Free”, resulting in an effective sale price of \$9.99 each.

13 42. She then purchased the products with the understanding that she was
14 receiving all advertised discounts off the regular price. After accounting for sales taxes,
15 Plaintiff paid \$83.90 for her September 26, 2023 order.

16 43. Similarly, on June 22, 2023, Plaintiff purchased Piping Rock-branded
17 Calcium Magnesium Zinc Caplets, Ashwagandha Capsules, Vitamin C 1000mg Tablets
18 (Lindberg), Triple Magnesium Complex Capsules, Mega Multi for Men 50 Plus Caplets,
19 Krill Oil 500 mg Softgels (Lindberg), Clove Fragrance Oil, and Vitamin A & D3 Softgels.
20 She then navigated to the listing page for each product she purchased. On each listing
21 page, she saw a crossed-out regular price, an adjacent sale price, and a “__% off” or similar
22 statement. For example:

23 a. the listing page for the Calcium Magnesium Zinc product she
24 purchased stated “\$11.99 (40% Off) ~~\$19.99~~” and had a “sale ends in”
25 countdown timer.

26 b. the listing page for the Ashwagandha product she purchased stated
27 “\$13.99 (35% Off) ~~\$21.49~~”

28 c. the listing page for the Vitamin C 1000mg (Linberg) product she

1 purchased stated “\$7.99” with a strikethrough reference price of “\$10.69”
2 and “You save 25%”

3 d. The listing page for the Triple Magnesium Complex Capsules stated
4 stated “\$12.99” with a strikethrough reference price of “\$23.29” and “You
5 save 44%”

6 e. The listing page for the Mega Multi for Men 50 Plus Caplets stated
7 “\$5.49” with a strikethrough reference price of ~~\$19.99~~” and “You save 73%”

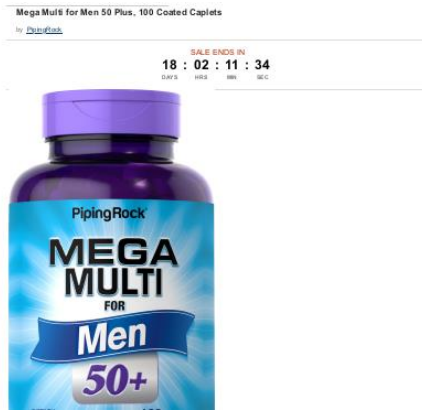
8 f. The listing page for the Krill Oil 500 mg Softgels (Lindberg) stated
9 “\$17.99 (Save 25%) ~~\$23.99~~”

10 g. the listing page for the Clove Fragrance Oil product she purchased
11 stated “\$0.89” with a strikethrough reference price of ~~\$6.69~~” and “You save
12 86%”

13 h. The listing page for the Vitamin A & D3 Softgels stated “\$6.49” with
14 a strikethrough reference price of “~~\$8.69~~” and “You save 25%”

15 44. She then purchased the products with the understanding that she was
16 receiving all advertised discounts off the regular price. After accounting for sales taxes,
17 Plaintiff paid \$165.37 for her June 22, 2023 order.

18 45. Similarly, on March 24, 2023, Plaintiff purchased certain products including
19 the Mega Multi for Men 50 Plus Caplets. Plaintiff purchased the product for \$5.49.
20 Plaintiff viewed the listing page for the product, which stated it was on sale for “\$5.49”
21 and “(73% Off) \$19.99”. The listing page also showed a countdown timer stating that the
22 “sale ends in 19 days,” which Plaintiff viewed. A screen capture of the product listing
23 dated March 23, 2023—the day before Plaintiff’s purchase—is below.



Size: 1 Bottle | 100 Coated Caplets - In Stock

1 Bottle | 100 Coated Caplets
\$5.49 (73% Off) ~~\$19.99~~*Crazy Deal*

46. As of December 18, 2023, none of the products are offered on the website at the reference price without any discount. The products are still on sale.

47. Plaintiff thus viewed and relied on the website's purported current and limited-time sale promotion. She relied on the above representations that the products each had a regular price and market value of the stated reference price, and in fact been offered for sale on the website in the recent past at the stated reference price on a regular basis for a substantial time. And she relied on the representations that the products were truly on sale and being sold at a substantial markdown and discount for a limited time.

48. The above-listed products Plaintiff purchased were not substantially marked down or discounted, and any discount she was receiving had been grossly exaggerated.

49. For at least the 90-day period prior to Plaintiff's purchases, and months and years more, Defendant very rarely, if ever, offered any of the items sold on its website at the reference prices.

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

51. Plaintiff continues to be interested in purchasing Piping Rock-branded vitamins and supplements in the future, but she will be unable to trust and rely on Defendant's advertising, and so will not purchase the products. Absent injunctive relief, Plaintiff cannot know whether Defendant's regular prices represent honest prices at which

1 the products were listed for sale on the website, on a regular basis for a reasonably
2 substantial period of time, or if Defendant’s sales are perpetual.

3 **D. Research Shows That the Use of Reference Price Advertising Schemes**
4 **Influence Consumer Behavior and Perceptions of Value**

5 52. Academic studies support the effectiveness of Defendant’s deceitful pricing
6 scheme. In an article titled *Comparative Price Advertising: Informative or Deceptive?*
7 (cited in *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1106 (9th Cir. 2013)), Professors Dhruv
8 Grewal and Larry D. Compeau write that, “[b]y creating an impression of savings, the
9 presence of a higher reference price enhances subjects’ perceived value and willingness to
10 buy the product.”² Thus, “empirical studies indicate that, *as discount size increases,*
11 *consumers’ perceptions of value and their willingness to buy the product increase, while*
12 *their intention to search for a lower price decreases.*”³ Indeed, the Ninth Circuit observed
13 that “[m]isinformation about a product’s ‘normal’ price is . . . significant to many
14 consumers in the same way as a false product label would be.” *Hinojos*, 718 F.3d at 1106.

15 53. Professors Compeau and Grewal reached similar conclusions in a 2002
16 article: “decades of research support the conclusion that advertised reference prices do
17 indeed enhance consumers’ perceptions of the value of the deal.”⁴ The professors also
18 found that “[c]onsumers are influenced by comparison prices even when the stated
19 reference prices are implausibly high.”⁵

20 54. In another publication, Professors Joan Lindsey-Mullikin and Ross D. Petty
21 concluded that “[r]eference price ads strongly influence consumer perceptions of value . .
22 . . . Consumers often make purchases not based on price but because a retailer assures them
23 that a deal is a good bargain. This occurs when . . . the retailer highlights the relative
24

25 ² Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising:*
26 *Informative or Deceptive?*, 11 J. Pub. Pol’y & Mktg. 52, 55 (Spring 1992).

³ *Id.* at 56 (emphasis added).

27 ⁴ Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Believe It*
28 *Or Not*, J. of Consumer Affairs, Vol. 36, No. 2, at 287 (Winter 2002).

⁵ *Id.*

1 savings compared with the prices of competitors . . . [T]hese bargain assurances (BAs)
2 change consumers' purchasing behavior and may deceive consumers."⁶

3 55. Similarly, according to Professors Praveen K. Kopalle and Joan Lindsey-
4 Mullikin, "research has shown that retailer-supplied reference prices clearly enhance
5 buyers' perceptions of value" and "have a significant impact on consumer purchasing
6 decisions."⁷

7 56. The results of a 1990 study by Professors Jerry B. Gotlieb and Cyndy Thomas
8 Fitzgerald, came to the conclusion that "reference prices are important cues consumers
9 use when making the decision concerning how much they are willing to pay for the
10 product."⁸ This study also concluded that "consumers are likely to be misled into a
11 willingness to pay a higher price for a product simply because the product has a higher
12 reference price."⁹

13 57. Accordingly, research confirms that deceptive advertising through false
14 reference pricing is intended to, and in fact does, influence consumer behavior by
15 artificially inflating consumer perceptions of a given item's value and causing consumers
16 to spend money they otherwise would not have, purchase items they otherwise would not
17 have, and/or purchase products from a specific retailer.

18 **E. Defendant's Deceptive Pricing Practice Violates Federal Law**

19 58. The Federal Trade Commission Act ("FTCA") prohibits "unfair or deceptive
20 acts or practices in or affecting commerce[.]" 15 U.S.C. § 45(a)(1). Under FTC
21 regulations, false former pricing schemes similar to the ones employed by Defendant, are
22 deceptive practices that violate the FTCA.

23
24 ⁶ Joan Lindsey-Mullikin & Ross D. Petty, *Marketing Tactics Discouraging Price*
25 *Search: Deception and Competition*, 64 J. of Bus. Research 67 (January 2011).

26 ⁷ Praveen K. Kopalle & Joan Lindsey-Mullikin, *The Impact of External Reference*
Price On Consumer Price Expectations, 79 J. of Retailing 225 (2003).

27 ⁸ Jerry B. Gotlieb & Cyndy Thomas Fitzgerald, *An Investigation Into the Effects of*
Advertised Reference Prices On the Price Consumers Are Willing To Pay For the
Product, 6 J. of App'd Bus. Res. 1 (1990).

28 ⁹ *Id.*

1 59. Pursuant to 16 C.F.R. § 233.1, entitled Former Price Comparisons:

2
3 (a) One of the most commonly used forms of bargain advertising is to offer a
4 reduction from the advertiser's own former price for an article. If the **former price**
5 is the actual, bona fide price at which the article was offered to the public on a
6 **regular basis** for a **reasonably substantial period of time**, it provides a legitimate
7 basis for the advertising of a price comparison. Where the former price is genuine,
8 the bargain being advertised is a true one. If, on the other hand, the former price
9 being advertised is not bona fide but fictitious – for example, where an **artificial,**
inflated price was established for the purpose of enabling the subsequent offer of a
large reduction – the “bargain” being advertised is a false one; the purchaser is not
receiving the unusual value he expects.

10 (b) A former price is not necessarily fictitious merely because no sales at the
11 advertised price were made. The advertiser should be especially careful, however,
12 in such a case, that the price is one at which the product was openly and actively
13 offered for sale, for a **reasonably substantial period of time**, in the **recent**, regular
14 course of her business, honestly and in good faith – and, of course, not for the
purpose of establishing a fictitious higher price on which a deceptive comparison
might be based.

15 (c) The following is an example of a price comparison based on a fictitious former
16 price. John Doe is a retailer of Brand X fountain pens, which cost him \$5 each. His
17 usual markup is 50 percent over cost; that is, his regular retail price is \$7.50. In
18 order subsequently to offer an unusual “bargain,” Doe begins offering Brand X at
19 \$10 per pen. He realizes that he will be able to sell no, or very few, pens at this
inflated price. But he doesn't care, for he maintains that price for only a few days.
20 Then he “cuts” the price to its usual level—\$7.50—and advertises: “Terrific
Bargain: X Pens, Were \$10, Now Only \$7.50!” **This is obviously a false claim.** The
21 advertised “bargain” is not genuine.

22 (d) Other illustrations of fictitious price comparisons could be given. An advertiser
23 might use a price at which he **never offered the article at all**; he might feature a
24 price which was **not used in the regular course of business**, or which was **not used**
25 **in the recent past** but at some **remote period in the past**, without making disclosure
26 of that fact; he might use a price that was not openly offered to the public, or that
27 was **not maintained for a reasonable length of time**, but was immediately reduced.
28

1 60. The FTCA also prohibits the pricing scheme employed by Defendant
2 regardless of whether the product advertisements and representations use the words
3 “regular,” “original,” or “former” price. Under 16 C.F.R. § 233.1:

4
5 (e) If the former price is set forth in the advertisement, whether accompanied or not
6 by descriptive terminology such as “Regularly,” “Usually,” “Formerly,” etc., the
7 advertiser should make certain that the former price is not a fictitious one. If the
8 former price, or the amount or percentage of reduction, is not stated in the
9 advertisement, as when the ad merely states, “Sale,” the advertiser must take care
10 that the amount of reduction is not so insignificant as to be meaningless. It should
11 be sufficiently large that the consumer, if he knew what it was, would believe that
12 a genuine bargain or saving was being offered. An advertiser who claims that an
13 item has been “Reduced to \$9.99,” when the former price was \$10, is misleading
14 the consumer, who will understand the claim to mean that a much greater, and not
15 merely nominal, reduction was being offered.

16 61. The FTCA also prohibits retailers from offering fake limited duration sales.
17 See 16 C.F.R. § 233.5 which provides:

18 [Retailers] should not represent that they are selling at “factory” prices when they
19 are not selling at the prices paid by those purchasing directly from the manufacturer.

20 ...

21 They should *not offer an advance sale* under circumstances where they *do not in*
22 *good faith expect to increase the price at a later date*, or make a ‘limited’ offer
23 which, in fact, is not limited.

24 **F. Class Action Allegations**

25 62. Plaintiff brings this action on behalf of herself and all persons similarly
26 situated pursuant to Rule 23(b)(2), 23(b)(3), and 23(c)(4) of the Federal Rules of Civil
27 Procedure and seeks certification of the following class:

28 **California Class:**

All persons in California who purchased one or more Piping Rock-branded or
Lindberg-branded products from www.PipingRock.com, during the Class Period,
at a discount from a higher reference price.

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63. The California Class is collectively referred to as the “Class.” Excluded from the Class are the Defendant, the officers and directors of the Defendant at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which either Defendant has or had a controlling interest. Also excluded from the Class are persons or entities that purchased products from Defendant for purposes of resale.

64. The “Class Period” is the time period beginning on the date established by the Court’s determination of any applicable statute of limitations, after consideration of any tolling, discovery, concealment, and accrual issues, and ending on the date of entry of judgment.

65. Plaintiff reserves the right to expand, limit, modify, or amend the class definitions stated above, including the addition of one or more subclasses, in connection with a motion for class certification, or at any other time, based upon, among other things, changing circumstances, or new facts obtained during discovery.

66. **Numerosity.** The Class is so numerous that joinder of all members in one action is impracticable. The exact number and identities of the members of the Class is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, but on information and belief, Plaintiff alleges that there are in excess of 500,000 members of the Class.

67. **Typicality.** Plaintiff’s claims are typical of those of other members of the Class, all of whom have suffered similar harm due to Defendant’s course of conduct as described herein.

68. **Adequacy of Representation.** Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class. Plaintiff has retained attorneys who are experienced in the handling of complex litigation and class actions, and Plaintiff and her counsel intend to diligently prosecute this action.

1 **69. Existence and Predominance of Common Questions of Law or Fact.**

2 Common questions of law and fact exist as to all members of the Class that predominate
3 over any questions affecting only individual members of the Class. These common legal
4 and factual questions, which do not vary among members of the Class, and which may be
5 determined without reference to the individual circumstances of any member of the Class,
6 include, but are not limited to, the following:

- 7 a. Whether, during the Class Period, Defendant advertised false reference prices
8 on products offered on the website.
- 9 b. Whether, during the Class Period, Defendant advertised price discounts from
10 false reference prices on products offered on the website.
- 11 c. Whether the products listed on Defendant’s website during the Class Period
12 were offered at their reference prices for any reasonably substantial period of
13 time prior to being offered at prices that were discounted from their reference
14 prices.
- 15 d. Whether Defendant’s deceptive pricing scheme using false reference prices
16 constitute an “unlawful,” “unfair,” or “fraudulent” business practice in
17 violation of the California Unfair Competition Law, Cal. Bus & Prof. Code §
18 17200, et seq.
- 19 e. Whether Defendant’s deceptive pricing scheme using false reference prices
20 constitutes false advertising in violation of the California False Advertising
21 Law under Business & Professions Code section 17500, et seq.
- 22 f. Whether Defendant’s use of false reference prices on products offered on
23 their website during the Class Period was material.
- 24 g. Whether Defendant had a duty to disclose to customers that the reference
25 prices were fake “original” prices in furtherance of sham sales.
- 26 h. Whether the members of the Class are entitled to damages and/or restitution.
- 27 i. Whether injunctive relief is appropriate and necessary to enjoin Defendant
28 from continuing to engage in false or misleading advertising.

1 j. Whether Defendant's conduct was undertaken with conscious disregard of
2 the rights of the members of the Class and was done with fraud, oppression,
3 and/or malice.

4 70. **Superiority.** A class action is superior to other available methods for the fair
5 and efficient adjudication of this controversy because individual litigation of the claims of
6 all members of the Class is impracticable. Requiring each individual class member to file
7 an individual lawsuit would unreasonably consume the amounts that may be recovered.
8 Even if every member of the Class could afford individual litigation, the adjudication of
9 at least tens of thousands of identical claims would be unduly burdensome to the courts.
10 Individualized litigation would also present the potential for varying, inconsistent, or
11 contradictory judgments and would magnify the delay and expense to all parties and to
12 the court system resulting from multiple trials of the same factual issues. By contrast, the
13 conduct of this action as a class action, with respect to some or all of the issues presented
14 herein, presents no management difficulties, conserves the resources of the parties and of
15 the court system, and protects the rights of the members of the Class. Plaintiff anticipates
16 no difficulty in the management of this action as a class action. The prosecution of separate
17 actions by individual members of the Class may create a risk of adjudications with respect
18 to them that would, as a practical matter, be dispositive of the interests of the other
19 members of the Class who are not parties to such adjudications, or that would substantially
20 impair or impede the ability of such non-party Class members to protect their interests.

21 71. The products at issue in the action are substantially similar in all material
22 respects. Namely, the products were all advertised with a false reference price, advertised
23 with a strikethrough reference price, advertised with a false sale price, and/or advertised
24 with a fake sale expiration date. The products are also all sold by Defendant and fall under
25 the umbrella of health and beauty products and supplements.

26 **V. TOLLING OF THE STATUTE OF LIMITATIONS AND DELAYED**
27 **DISCOVERY**

1 72. All applicable statutes of limitations have been tolled by the delayed
2 discovery doctrine. Plaintiff and Class members could not have reasonably discovered
3 Defendant’s practice of running perpetual sales, based on false reference prices, with false
4 expiration dates, at any time prior to filing this class action litigation.

5 73. A reasonable consumer viewing the website on multiple occasions would
6 simply believe that a product is on sale for the limited time period represented on the
7 website. Short of visiting and checking the website for months continuously, a reasonable
8 consumer would not suspect that Defendant’s sales and pricing practices were false and
9 misleading. Nor would a reasonable consumer be able to ascertain the market value of
10 the products being sold absent extensive investigation.

11 74. Plaintiff did not learn of Defendant’s deceptive practices alleged herein until
12 commencing this action.

13 75. As a result, any and all applicable statutes of limitations otherwise applicable
14 to the allegations herein have been tolled.

15 **FIRST CAUSE OF ACTION**

16 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW (CAL. BUS. &
17 PROF. CODE § 17200, et seq.)**

18 **(On Behalf of the California Class)**

19 76. Plaintiff restates the preceding allegations as if set forth herein.

20 77. California Business and Professions Code section 17200 et seq., known as
21 the California Unfair Competition Law (“UCL”), prohibits acts of “unfair competition,”
22 including any “unfair or fraudulent business act or practice” as well as “unfair, deceptive,
23 untrue or misleading advertising.”

24 ***Fraudulent***

25 78. Under the UCL, a business act or practice is “fraudulent” if it actually
26 deceives or is likely to deceive members of the consuming public.

27 79. Here, members of the public are likely to be deceived by Defendant’s conduct
28 as alleged above. Among other things, Defendant affirmatively misrepresented the

1 reference prices of products, which thereby misled and deceived consumers into believing
2 that they were buying products at substantially marked-down and discounted prices.
3 Defendant's deceptive marketing practice gave consumers the false impression that its
4 products were regularly listed or sold on the website for a substantially higher price in the
5 recent past than they actually were and thus led to the false impression that the products
6 were worth more than they actually were.

7 80. Defendant's representations that its products were on sale, that the sale was
8 limited in time, that the products had a specific regular price, and that consumers were
9 receiving discounts, were false and misleading.

10 81. In addition, Defendant had a duty to disclose the truth about its pricing
11 deception, including, among other things, that the reference prices advertised and
12 published on their websites were not, in fact, prices at which Defendant's items were listed
13 or sold in the recent past for a reasonably substantial period of time, but in reality, the
14 products never were offered or sold at the advertised reference prices. Defendant also
15 failed to disclose that the expiration of any given sale would be followed by a substantially
16 equivalent sale. Members of the public, therefore, were also likely to be deceived by
17 Defendant's failure to disclose material information.

18 82. Defendant's conduct was and continues to be fraudulent because it has the
19 effect of deceiving consumers into believing they are receiving a product that is worth
20 more than it actually is, by presenting a fake sale price.

21 83. Defendant's representations were materially misleading to Plaintiff and other
22 reasonable consumers. Consumers are heavily influenced by price, including significant
23 price reductions of purported limited duration, as employed by Defendant's high-pressure
24 sales tactics.

25 84. Plaintiff relied upon Defendant's misleading representations and omissions,
26 as detailed above, believing that she was receiving a genuine discount of limited duration
27 from a prevailing and genuine market or regular price.

28

1 85. Absent Defendant’s misrepresentations, Plaintiff and the Class would not
2 have purchased the items they purchased from Defendant, or, at minimum, they would not
3 have paid as much for the items as they ultimately did. Plaintiff and the class’s reliance
4 was a substantial factor in causing them harm.

5 86. Had the omitted information been disclosed, Plaintiff reasonably would have
6 behaved differently. Among other things, Plaintiff would not have purchased the items she
7 purchased from Defendant, or, at minimum, would not have paid as much for the items as
8 she ultimately did.

9 87. As a result of Defendant’s fraudulent business acts and practices, Defendant
10 has and continues to fraudulently obtain money from Plaintiff and members of the
11 California Class.

12 ***Unfairness***

13 88. Under the UCL, a business act or practice is “unfair” if its conduct is
14 substantially injurious to consumers, offends public policy, and is immoral, unethical,
15 oppressive, and unscrupulous, as the benefits for committing such acts or practices are
16 outweighed by the gravity of the harm to the alleged victims.

17 89. Defendant’s deceptive marketing practice gave consumers the false
18 impression that their products were regularly listed or sold on the website for a
19 substantially higher price in the recent past than they actually were and thus led to the
20 false impression that Defendant’s products were worth more than they actually were.

21 90. Defendant’s conduct was and continues to be of no benefit to purchasers of
22 the products, as it is misleading, unfair, unlawful, and is injurious to consumers. It is also
23 against public policy, as it harms fair competition. For example, the federal Lanham Act
24 includes prohibitions on “commercial advertising or promotion” that “misrepresents the
25 nature, characteristics, qualities, or geographic origin of his or her or another person’s
26 goods, services, or commercial activities.” 41 U.S.C. § 1125(a). Defendant is siphoning
27 sales away from sellers who compete fairly on price and do not promote fake regular prices
28

1 and fake sales of limited duration. Further, there is no benefit to consumers who pay a sale
2 price that is actually a regular price.

3 91. Indeed, “[t]here is a strong public interest in preventing false advertising of
4 products in the marketplace.” *POM Wonderful LLC v. Purely Juice, Inc.*, 2008 WL
5 4222045, at *16 (C.D. Cal. July 17, 2008) (finding that where defendant has made false
6 claims as to the contents of its product and the public is deceived into paying for what it
7 believes is an accurate representation of the product, the public interest favors injunctive
8 relief to prevent the false advertising of defendant’s product); *United States v. Kennedy*,
9 2007 WL 404915, at *4 (N.D. Cal. 2007) (ordering removal of false advertising from
10 website).

11 92. The harm to Plaintiff and members of the California Class outweighs the
12 utility of Defendant’s practices. There were reasonably available alternatives to further
13 Defendant’s legitimate business interests, other than the misleading and deceptive conduct
14 described herein.

15 93. As a result of Defendant’s unfair business acts and practices, Defendants has
16 and continues to unfairly obtain money from Plaintiff and members of the proposed
17 California Class.

18 ***Unlawful***

19 94. A cause of action may be brought under the “unlawful” prong of the UCL if
20 a practice violates another law. Such action borrows violations of other laws and treats
21 these violations, when committed pursuant to business activity, as unlawful practices
22 independently actionable under the UCL.

23 95. Here, by engaging in false advertising, as well as the false, deceptive, and
24 misleading conduct alleged above, Defendant has engaged in unlawful business acts and
25 practices in violation of the UCL, including violations of state and federal laws and
26 regulations. Specifically, as detailed herein, Defendant violated 16 C.F.R. §§ 233.1 and
27 233.5, California Business & Professions Code sections 17500 and 17501, and California
28 Civil Code sections 1770(a)(9) and 1770(a)(13).

* * *

1
2 96. In the alternative to those claims seeking remedies at law, Plaintiff and class
3 members allege that there is no plain, adequate, and complete remedy that exists at law to
4 address Defendant’s unlawful and unfair business practices. The legal remedies available
5 to Plaintiff are inadequate because they are not “equally prompt and certain and in other
6 ways efficient” as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214
7 (1937); *see also United States v. Bluit*, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct. 6, 1992)
8 (“The mere existence’ of a possible legal remedy is not sufficient to warrant denial of
9 equitable relief.”); *Quist v. Empire Water Co.*, 2014 Cal. 646, 643 (1928) (“The mere fact
10 that there may be a remedy at law does not oust the jurisdiction of a court of equity. To
11 have this effect, the remedy must also be speedy, adequate, and efficacious to the end in
12 view ... It must reach the whole mischief and secure the whole right of the party in a
13 perfect manner at the present time and not in the future.”). Additionally, unlike damages,
14 the Court’s discretion in fashioning equitable relief is very broad and can be awarded in
15 situations where the entitlement to damages may prove difficult. *Cortez v. Purolator Air*
16 *Filtration Products Co.*, 23 Cal.4th 163, 177-180 (2000) (Restitution under the UCL can
17 be awarded “even absent individualized proof that the claimant lacked knowledge of the
18 overcharge when the transaction occurred.”). Thus, restitution would allow recovery even
19 when normal consideration associated with damages would not. *See, e.g., Fladeboe v. Am.*
20 *Isuzu Motors Inc.*, 150 Cal. App. 4th 42, 68 (2007) (noting that restitution is available
21 even in situations where damages may not be available). Furthermore, the standard and
22 necessary elements for a violation of the UCL “unlawful” and “unfair” prongs are different
23 from the standard that governs legal claims.

24 97. Plaintiff, on behalf of herself and the members of the California Class, seeks
25 restitution and restitutionary disgorgement of all moneys received by Defendant through
26 the conduct described above.

27 98. Plaintiff, on behalf of herself and the members of the California Class, seeks
28 an injunction from this Court prohibiting Defendant from engaging in the patterns and

1 practices described herein, including putting a stop to the deceptive advertisements and
2 false reference prices in connection with the sale of products on the website. Plaintiff and
3 class members are entitled to injunctive relief. On information and belief, the
4 dissemination of Defendant’s false and misleading advertising is ongoing

5 **SECOND CAUSE OF ACTION**

6 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW, CAL. BUS. &**

7 **PROF. CODE § 17500, et seq.**

8 **(On Behalf of the California Class)**

9 99. Plaintiff restates the preceding allegations as if set forth herein.

10 100. The California False Advertising Law, codified at California Business &
11 Professions Code section 17500, et seq. (the “FAL”) provides, in relevant part, that it is
12 unlawful for any business, with intent directly or indirectly to dispose of personal property,
13 to make or disseminate in any “manner or means whatever, including over the Internet,
14 any statement, concerning that . . . personal property . . . which is untrue or misleading,
15 and which is known, or which by the exercise of reasonable care should be known, to be
16 untrue or misleading[.]” Cal. Bus. & Prof. Code § 17500. The “intent” required by section
17 17500 is the intent to dispose of property, and not the intent to mislead the public in the
18 disposition of such property.

19 101. A separate section of the FAL, Cal Bus. & Prof. Code § 17501, provides:

20
21 For the purpose of this article the worth or value of any thing advertised is the
22 prevailing market price, wholesale if the offer is at wholesale, retail if the offer is at
23 retail, at the time of publication of such advertisement in the locality wherein the
advertisement is published.

24 No price shall be advertised as a *former price* of any advertised thing, unless the
25 alleged former price was the *prevailing market price* as above defined within *three*
26 *months next immediately preceding* the publication of the advertisement or unless
27 the date when the alleged former price did prevail is clearly, exactly and
28 conspicuously stated in the advertisement.

1 102. Defendant violated Cal Bus. & Prof. Code §§ 17500 and 17501.

2 103. Defendant routinely disseminated false reference prices for the products
3 offered for sale on the website, including to Plaintiff. Defendant rarely, if ever, offered
4 products on the website at the reference prices within the three months immediately
5 preceding the publication of the reference prices. Additionally, the reference prices shown
6 were not the prevailing market prices for the products in the three months immediately
7 preceding the publication.

8 104. Defendant did not verify that the advertised reference prices were the
9 prevailing market prices within the preceding three months. On information and belief,
10 Defendant had no policies or procedures to verify and update the reference prices on a
11 daily basis.

12 105. Defendant's deceptive marketing practice gave consumers the false
13 impression that their products were regularly offered and sold for a substantially higher
14 price in the recent past than they actually were and thus led to the false impression that
15 Defendant's products were worth more than they actually were.

16 106. Defendant knew that its dissemination of reference prices for the products
17 sold on its website was untrue and/or misleading. Among other things, Defendant
18 represented the reference prices in connection with the products sold on its website even
19 though they knew that such products had rarely, if ever, sold at the strikethrough reference
20 prices.

21 107. As a direct and proximate result of Defendant's misleading and false
22 advertisements, Plaintiff and members of the California Class have suffered injury in fact
23 and have lost money. As such, Plaintiff requests that this Court order Defendant to restore
24 this money to Plaintiff and all members of the California Class, and to enjoin Defendant
25 from continuing their false and misleading advertising practices in violation of California
26 law in the future.

27 108. Plaintiff and class members are entitled to injunctive relief. On information
28 and belief, the dissemination of Defendant's false and misleading advertising is ongoing.

1 109. In the alternative to those claims seeking remedies at law, Plaintiff and class
2 members allege that there is no plain, adequate, and complete remedy that exists at law to
3 address Defendant’s unlawful and unfair business practices. The legal remedies available
4 to Plaintiff are inadequate because they are not “equally prompt and certain and in other
5 ways efficient” as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214
6 (1937); *see also United States v. Bluitt*, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct. 6, 1992)
7 (“The mere existence’ of a possible legal remedy is not sufficient to warrant denial of
8 equitable relief.”); *Quist v. Empire Water Co.*, 2014 Cal. 646, 643 (1928) (“The mere fact
9 that there may be a remedy at law does not oust the jurisdiction of a court of equity. To
10 have this effect, the remedy must also be speedy, adequate, and efficacious to the end in
11 view ... It must reach the whole mischief and secure the whole right of the party in a
12 perfect manner at the present time and not in the future.”). Additionally, unlike damages,
13 the Court’s discretion in fashioning equitable relief is very broad and can be awarded in
14 situations where the entitlement to damages may prove difficult. *Cortez v. Purolator Air*
15 *Filtration Products Co.*, 23 Cal.4th 163, 177-180 (2000) (restitution under the UCL can
16 be awarded “even absent individualized proof that the claimant lacked knowledge of the
17 overcharge when the transaction occurred.”). Thus, restitution would allow recovery even
18 when normal consideration associated with damages would not. *See, e.g., Fladeboe v. Am.*
19 *Isuzu Motors Inc.*, 150 Cal. App. 4th 42, 68 (2007) (noting that restitution is available
20 even in situations where damages may not be available). Furthermore, the standard and
21 necessary elements for a violation of the FAL under Cal Bus. & Prof. Code § 17501 are
22 different from the standard that governs legal claims.

THIRD CAUSE OF ACTION

VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT, CAL. CIV. CODE § 1750, et seq. (On Behalf of the California Class)

27 110. Plaintiff restates the preceding allegations as if set forth herein.

1 111. The Consumer Legal Remedies Act, Cal. Civ. Code sections 1750 *et seq.* (the
2 “CLRA”), is a California consumer protection statute which allows plaintiffs to bring
3 private civil actions for “unfair methods of competition and unfair or deceptive acts or
4 practices undertaken by any person in a transaction . . . which results in the sale or lease
5 of goods or services to any consumer.” Cal. Civ. Code § 1770(a).

6 112. Plaintiff and each member of the California Class are “consumers” as defined
7 by California Civil Code section 1761(d). Defendant’s sale of products on the website to
8 Plaintiff and the Class were “transactions” within the meaning of California Civil Code
9 section 1761(e). The products purchased by Plaintiff and the class are “goods” within the
10 meaning of California Civil Code section 1761(a).

11 113. Defendant violated and continues to violate the CLRA by engaging in the
12 following practices prohibited by California Civil Code section 1770(a) in transactions
13 with Plaintiff and the class which were intended to result in, and did result in, the sale of
14 Defendant’s products:

- 15 a. Advertising goods or services with intent not to sell them as advertised (Cal.
16 Civ. Code § 1770(a)(9))
- 17 b. Making false or misleading statements of fact concerning reasons for,
18 existence of, or amounts of price reductions (Cal. Civ. Code § 1770(a)(13))
- 19 c. Misrepresenting that goods are of a particular standard, quality, or grade (Cal.
20 Civ. Code § 1770(a)(7))
- 21 d. Representing that goods do have characteristics they do not actually have
22 (Cal. Civ. Code § 1770(a)(5))

23 114. With regards to section 1770(a)(9), (7), and (5), Defendant advertised and
24 represented products on the website with the “intent not to sell” them as advertised and
25 misrepresenting product characteristics and standard because, as explained herein, (a) the
26 false reference prices advertised in connection with products offered on the website misled
27 and continue to mislead customers into believing (i) the merchandise was previously
28 offered for sale and/or sold *on the website* at the higher reference prices on a regular basis

1 for a reasonably substantial period of time, and (ii) were valued in the market at the
2 advertised “regular” price, and (b) Defendant falsely represents the products as on sale for
3 limited time when in truth a new substantially equivalent sale is promptly instituted after
4 the expiration of an existing sale.

5 115. With regards to section 1770(a)(13), Defendant made false or misleading
6 statements of fact concerning the “existence of” and the “amounts of price reductions”
7 because (a) no true price reductions existed in that Defendant’s merchandise was rarely, if
8 ever, previously offered for sale and/or sold *on the website* at the higher reference prices
9 on a regular basis for a reasonably substantial period of time, (b) the reference prices
10 Defendant advertised in connection with its products are not prevailing market prices
11 because the products were not sold elsewhere at the reference prices for a reasonably
12 substantial period of time, and (c) Defendant falsely represents the products as on sale for
13 limited time when in truth a new substantially equivalent sale is promptly instituted after
14 the expiration of an existing sale.

15 116. In addition, Defendant had a duty to disclose the truth about its pricing
16 deception, including that the reference prices advertised on the website were not prices at
17 which Defendant’s items were listed or sold on the website in the recent past on a regular
18 basis for a reasonably substantial period of time, and in truth, Defendant’s products are
19 typically not offered or sold on the website at the advertised reference prices. Defendant
20 also failed to disclose that the expiration of any given sale would be followed by a
21 substantially equivalent sale. Members of the public, therefore, were also likely to be
22 deceived by Defendant’s failure to disclose material information.

23 117. Plaintiff and the class reasonably relied on Defendant’s representations.
24 Absent Defendant’s misrepresentations, Plaintiff and the Class would not have purchased
25 the items they purchased from Defendant, or, at the very least, they would not have paid
26 as much for the items as they ultimately did. Plaintiff and the class’s reliance was a
27 substantial factor in causing them harm.

28

1 118. Had the omitted information been disclosed, Plaintiff reasonably would have
2 behaved differently. Among other things, Plaintiff would not have purchased the items she
3 purchased from Defendant or, at the very least, would not have paid as much for the items
4 as she ultimately did.

5 119. Plaintiff, through counsel, sent notice to Defendant pursuant to Cal. Civ.
6 Code § 1782(a) on December 13, 2023 via certified mail, but the 30-day response period
7 has not elapsed. Thus, Plaintiff claims no damages pursuant to this count, but will timely
8 amend this Complaint after expiration of the response period to seek money damages and
9 punitive damages under the CLRA. At this time, Plaintiff seeks only injunctive or other
10 equitable relief under the CLRA as described above.

11 **FOURTH CAUSE OF ACTION**

12 **FRAUD (INTENTIONAL MISREPRESENTATION AND CONCEALMENT)**

13 **(On Behalf of the California Class)**

14 120. Plaintiff restates the preceding allegations as if set forth herein.

15 121. Plaintiff pleads this claim under California law.

16 122. Defendant made false or misleading statements of fact concerning the
17 existence of and the amounts of price reductions because, as explained herein, (a) the false
18 reference prices advertised in connection with products offered on the website misled and
19 continue to mislead customers into believing (i) the merchandise was previously offered
20 for sale and/or sold *on the website* at the higher reference prices on a regular basis for a
21 reasonably substantial period of time, and (ii) were valued in the market at the advertised
22 “regular” price, (b) the reference prices Defendant advertised are not prevailing market
23 prices because the products were not sold elsewhere at the reference prices on a regular
24 basis for a reasonably substantial period of time, and (c) Defendant falsely represents the
25 products as on sale for limited time when in truth a new substantially equivalent sale is
26 promptly instituted after the expiration of an existing sale.

27 123. In addition, Defendant had a duty to disclose the truth about its pricing
28 deception, including that (1) the reference prices advertised and published on the website

1 were not prices at which Defendant's items had been offered and/or sold on the website in
2 the recent past on a regular basis for a reasonably substantial period of time, (2)
3 Defendant's products rarely (if ever) were offered or sold anywhere at the advertised
4 reference prices on a regular basis for a reasonably substantial period of time, and (2) the
5 expiration of any given sale would be followed by a substantially equivalent sale.
6 Defendant, however, concealed this material information from consumers and the public.

7 124. Defendant knew that its representations were false when made, or at the very
8 least, were made recklessly and without regard for their truth. Defendant knew that the
9 items Plaintiff and the Class purchased had rarely, if ever, been offered or sold on the
10 website at the substantially higher reference price in the recent past and/or in the prevailing
11 market, and knew its sales were advertised with false expiration dates.

12 125. Defendant's representations were made with the intent that Plaintiff and the
13 Class rely on the false representations and spend money they otherwise would not have
14 spent, purchase items they otherwise would not have purchased, and/or spend more money
15 for an item than they otherwise would have absent the deceptive marketing scheme.

16 126. Defendant engaged in this fraud to the Plaintiff and the Class's detriment to
17 increase Defendant's own sales and profits.

18 127. Plaintiff and the class reasonably relied on Defendant's representations.
19 Absent Defendant's misrepresentations, Plaintiff and the Class would not have purchased
20 the items they purchased from Defendant, or, at the very least, they would not have paid
21 as much for the items as they ultimately did. Plaintiff and the Class's reliance was a
22 substantial factor in causing them harm.

23 128. Had the omitted information been disclosed, Plaintiff reasonably would have
24 behaved differently. Among other things, Plaintiff would not have purchased the items she
25 purchased from Defendant or, at the very least, would not have paid as much for the items
26 as she ultimately did.

27 129. As a direct and proximate result of the above, Plaintiff and the class have
28 suffered damages in an amount to be proven at trial.

1 130. Plaintiff and the class are also entitled to punitive or exemplary damages.
2 Defendant, through its senior executives and officers, undertook the illegal acts
3 intentionally or with conscious disregard of the rights of Plaintiff and the Class, and did
4 so with fraud, malice, and/or oppression. Based on the allegations above, Defendant's
5 actions constituted fraud because Defendant intended to and did deceive and injure
6 Plaintiff and the Class. Based on the allegations above, Defendant's actions constituted
7 malice because Defendant acted with the intent to and did cause injury to Plaintiff and the
8 Class, and also because Defendant's deceptive conduct was done with a willful and
9 knowing disregard of the rights of Plaintiff and the Class.

10 **FIFTH CAUSE OF ACTION**

11 **UNJUST ENRICHMENT/QUASI-CONTRACT**

12 **(On Behalf of the California Class)**

13 131. Plaintiff restates the preceding allegations as if set forth herein.

14 132. Plaintiff pleads this claim under California law and in the alternative to her
15 remaining claims.

16 133. By its wrongful acts and omissions, Defendant was unjustly enriched at the
17 expense of and to the detriment of Plaintiff and the Class and/or while Plaintiff and the
18 Class were unjustly deprived. Defendant's unlawful and deceptive pricing scheme induced
19 Plaintiff and the Class to spend money they otherwise would not have spent, purchase
20 items they otherwise would not have purchased, and/or spend more money for a product
21 than they otherwise would have absent the deceptive advertising.

22 134. On behalf of the Class, Plaintiff seeks restitution from Defendant and an order
23 disgorging all payments and profits obtained by Defendant from its wrongful conduct.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf of the proposed Class,
26 respectfully prays for following relief:
27
28

- 1 a. Certification of this case as a class action on behalf of the proposed Class and
2 subclasses defined above, appointment of Plaintiff as Class representative,
3 and appointment of their counsel as Class counsel;
- 4 b. An award to Plaintiff and the proposed Class and subclasses of restitution
5 and/or other equitable relief, including, without limitation, restitutionary
6 disgorgement of all profits Defendant obtained from Plaintiff and the
7 proposed Class as a result of its unlawful, unfair and fraudulent business
8 practices described herein;
- 9 c. An injunction ordering Defendant to cease the false advertising and unfair
10 business practices complained of herein;
- 11 d. An award of all economic, monetary, actual, consequential, and
12 compensatory damages caused by Defendant's conduct;
- 13 e. An award of nominal, punitive, and statutory damages where available;
- 14 f. Reasonable expenses and attorneys' fees;
- 15 g. Pre- and post-judgment interest, to the extent allowable; and
- 16 h. For such further relief that the Court may deem just and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff, individually and on behalf of the proposed Class, demands a trial by jury
19 for all claims so triable.

20
21
22 Dated: December 20, 2023

MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC

23
24 By: /s/ Alexander E. Wolf

25 ALEXANDER E. WOLF
26 Attorneys for Plaintiff
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