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*Attorneys for Plaintiff MARY AGRELLA  
FITZPATRICK and the putative class*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MARY AGRELLA FITZPATRICK,  
individually and on behalf of all others  
similarly situated,

Plaintiff,

v.

LENS.COM, INC.,

Defendant.

Case No.: 2:24-cv-02203-JAD-EJY

**AMENDED CLASS ACTION COMPLAINT**

NOW COMES the Plaintiff, MARY AGRELLA FITZPATRICK, individually and on behalf of all others similarly situated, by and through their Counsel, MEYERS & FLOWERS, LLC, and brings this Illinois Consumer Class Action against Defendant, LENS.COM, INC., a Nevada Corporation, (“Lens.com” or “Defendant”), for unlawful, unfair, and deceptive business practices in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815

1 ILCS 505/1 *et seq.*; Plaintiff, by and through her counsel, complains and alleges upon information  
2 and belief, among other things, the investigation made by Plaintiff and through her attorneys, as  
3 follows:

4 **NATURE OF THE CASE**

5 1. This is a proposed consumer class action seeking monetary damages, restitution,  
6 and injunctive and declaratory relief from Defendant arising from their false, misleading, and  
7 deceptive advertising of the prices for the corrective contact lenses they sell through their website  
8 (<https://www.lens.com>).

9 2. Defendant distributes online advertisements displaying deceptively low prices for  
10 contact lenses to lure consumers to their website. When consumers click on those advertisements  
11 and arrive at Defendant’s website, they have to go through several steps to complete their order by  
12 providing details of their prescription, their doctor’s information, and their personal and shipping  
13 information, before finally reaching a page with a final “Order Summary” showing the consumers  
14 their net total after they complete a mail-in rebate, labeled as their “Total After Rebate.” What  
15 Defendant does not make clear on this final order screen is that the consumer’s Total After Rebate  
16 includes a hidden charge “Taxes & fees” (“Deceptive Fees”) that increases the amount the  
17 consumers pay for contact lenses by at least 30 percent to 50 percent, far exceeding the prices that  
18 Defendant advertises. Additionally, if located the “Taxes & fees” charge is itself misleading  
19 because in actuality no taxes are charged but instead a “Processing” fee is added that does not  
20 relate to the actual operational costs associated with processing the order.

21 3. Defendant does everything it can to intentionally hide the extra fees on their  
22 checkout pages which mislead consumers. Even when Defendant “discloses” the Taxes and fees  
23 in a small i-link that must be clicked-on, that disclosure itself is misleading because there is no  
24 breakdown of the Taxes and fees leaving consumers with the impression it must be some  
combination of 1) “taxes”, and 2) “fees”. In actuality, the “Taxes and fees” are 100 percent a

1 “processing fee” which is only disclosed if a “Full Receipt” is requested and provided by a  
2 customer service representative.

3 4. As a result of Defendant’s false and misleading advertising, Plaintiff and the  
4 proposed Class Members have suffered damages. They purchased lenses they would not otherwise  
5 have bought or paid fees they would not otherwise have paid had they not been drawn in by  
6 Defendant’s deceptively low prices for lenses. This practice has been going on for years and has  
7 cost consumers hundreds of thousands of dollars in Illinois, and perhaps millions across the  
8 country in Deceptive Fees. Defendant should not be allowed to continue to profit from their  
9 deception of consumers such as Plaintiff and the proposed Class Members.

10 **JURISDICTION AND VENUE**

11 5. This Court has jurisdiction pursuant to 735 ILCS 5/2-209 over this matter in that  
12 all the actions complained of herein occurred in Geneva, Kane County, Illinois, and the Defendant  
13 has and does conduct business in Geneva, Kane County, Illinois.

14 6. This Court has personal jurisdiction over Defendant because Defendant  
15 intentionally avails itself of the markets within this County by advertising, selling, and delivering  
16 their products to residents of this County through ecommerce channels. Defendant has such  
17 minimum contacts with this County that, under the circumstances, it would be fair and reasonable  
18 to require Defendant to come to this County and defend this action.

19 7. Venue is proper in this Court pursuant to 735 ILCS 5/2- 101 because Defendant  
20 intentionally avails itself of the markets within this State and County so as to render the exercise  
21 of jurisdiction by this Court just and proper. Plaintiff also viewed Defendant’s online  
22 advertisements complained of herein while present in this County, purchased the products while  
23 present in this County, and had them delivered in this County, so a substantial part of the events  
24 or omissions giving rise to the claims asserted herein occurred in this County.

1 8. Plaintiff makes no claims under Federal law. Additionally, upon information and  
2 belief, any individual claim of the named Plaintiff or the putative Class Member is less than  
3 \$75,000.00 and upon information and belief, the total amount in controversy for the entire putative  
4 Class is less than \$5,000,000.

5 **PARTIES**

6 9. Plaintiff, Mary Agrella Fitzpatrick, is and at all times relevant hereto, was an  
7 individual residing in Kane County, Illinois. Plaintiff purchased contact lenses from Defendant's  
8 website while located in Kane Country, Illinois and had them delivered to her residence here.

9 10. Defendant, Lens.com, Inc., is a corporation organized and existing under the laws  
10 of the State of Nevada with its headquarters located at 4730 S. Fort Apache Road, Suite 300, Las  
11 Vegas, Nevada 89147-7947. Upon information and belief, Lens.com created and/or authorized the  
12 false, misleading, and deceptive advertisements complained of herein. Upon information and  
13 belief, Lens.com, directly and through its agents, has substantial contacts with and receive  
14 substantial benefits and income from and through the State of Illinois.

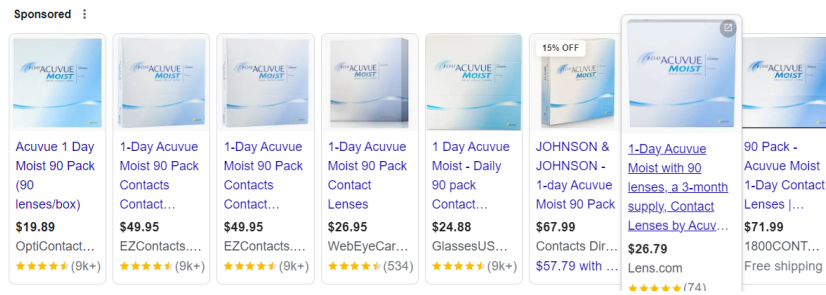
15 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

16 11. Defendant sells corrective contact lenses online through their website, one of many  
17 retailers that operate in this industry. In order to attract consumers to their website, Defendant  
18 distributes advertisements on Google and other online search engines prominently advertising their  
19 prices for contact lenses.

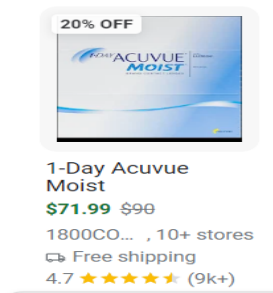
20 12. Defendant, however, advertises artificially low prices for their contact lenses that  
21 mislead consumers as to the actual price of the contact lenses. The advertisements then lure  
22 consumers to their website and gouge consumers with hidden added fees. Defendant does not  
23 disclose these fees upfront, instead adding these fees surreptitiously at the end of the order process,  
24 and these fees raise the actual price Defendant charges for contact lenses by 30 percent to 50  
percent over the price they advertise.

13. Many consumers do not notice that these fees are being added, which is by design, as Defendant attempts to conceal these fees, as described below. To make matters worse, Defendant still does not disclose the amount of the additional fees charged. Instead, Defendant’s website displays only a total purchase price (Subtotal) that includes the products and additional fees, but consumers are required to click on an additional small i-link to find out the amount of additional fees assessed, which is still misleading.

14. The process starts when a consumer uses a search engine, such as Google, to search for websites that sell their preferred corrective contact lenses brand. In the illustrative example below, the Google search “Acuvue 1 day moist 90 pack” retrieves the following (partial) results:



15. As is clear, Lens.com advertises one of the lowest prices among these competitors, at \$26.79 per pack. Compare this to the advertisement from one of the more reputable competitors, 1-800 Contacts, which advertises a 90 pack at \$71.99:



16. When a consumer clicks on Defendant’s advertisement, the consumer is redirected to a landing page on Defendant’s website specific to the selected product, which displays the same pricing as the advertisement at \$26.79 per 90 pack (assuming the consumer purchases at least eight boxes to qualify for the rebate offered):

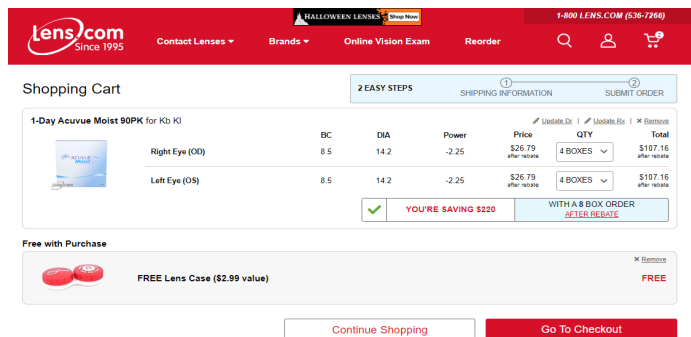
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17. A reasonable consumer would understand Defendant’s advertised price to mean that they would pay \$26.79 to purchase each ninety-day pack of 1-Day Acuvue Moist contact lenses from Defendant. No reasonable consumer would expect that the actual price would be increased by 30% to 50% with surreptitiously added fees.

18. After a consumer selects the number of boxes he or she wishes to purchase and clicks “Continue” on the screen above, the user is asked either to upload a prescription or enter the information manually. If the consumer chooses to enter the prescription information, the consumer is then asked to enter his or her doctor’s name and address.

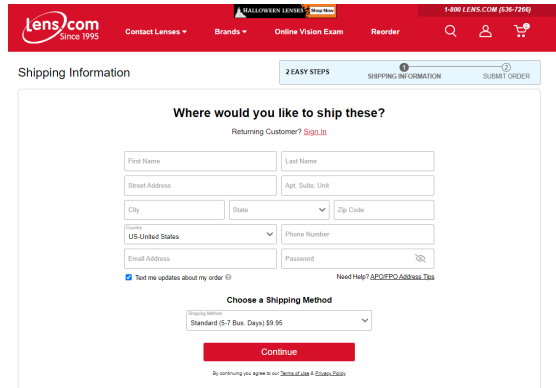
19. After the consumer enters the required prescription and doctor information and clicks continue, the consumer is presented with a screen showing their “Shopping Cart”:



20. This screen indicates that the consumer will receive the advertised price per box of contact lenses (assuming the consumer purchases the requisite number of boxes to trigger rebate eligibility) after the consumer completes the process to obtain a rebate from Defendant.

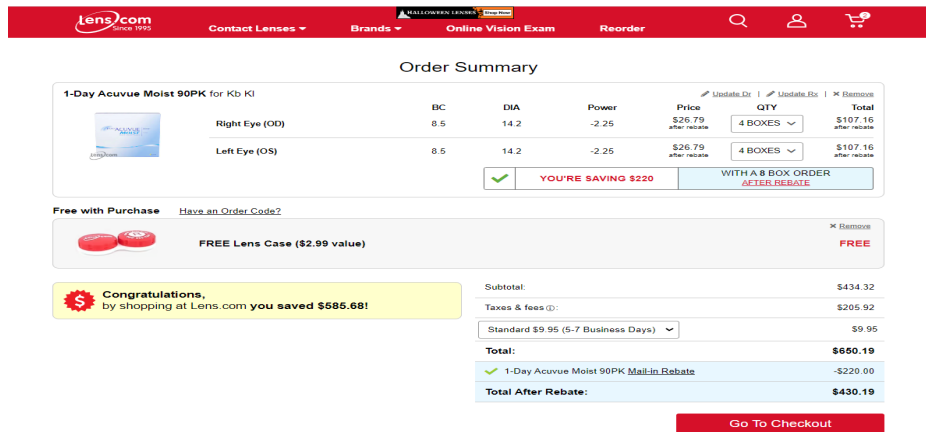
21. When a consumer clicks on the “Go to Checkout” box on this screen, they are

presented with a page prompting them to either sign into their account or provide their shipping information. The picture below is a true and accurate representation of what a consumer would see



on a normal computer using a normal web browser when he or she arrived at this web page (without scrolling down on the page).

22. If the consumer enters their shipping information and clicks “Continue”, the consumer will move on to a page asking for payment information. This page is designed deceptively in that the typical consumer will fill in the information required and click “Continue” to proceed with the order process. Defendant designed the page in such a way that a typical consumer would not scroll down and see the “Order Summary” otherwise it would not place “Continue” link in a position where the “Order Summary” is not seen. However, if the consumer scrolls down this page before clicking “Continue”, the consumer will be presented with an “Order



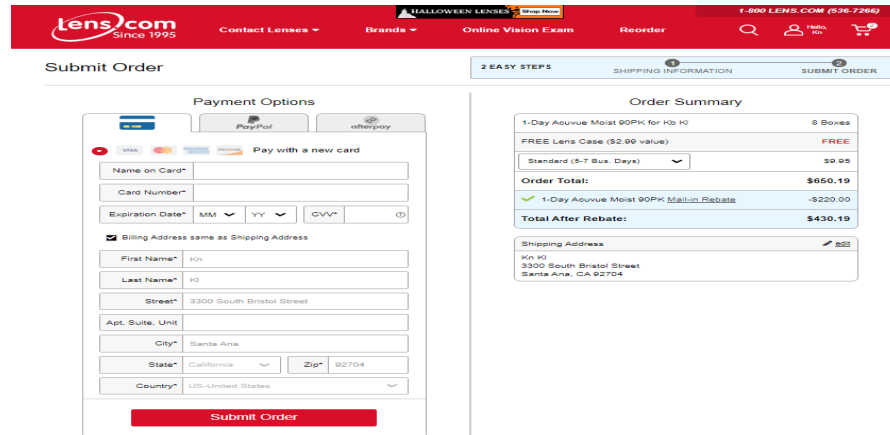
Summary”:

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2 23. In this Order Summary, the consumer is shown a per box price that matches the  
3 advertised price, but the order summary also shows that: (1) the consumer will be charged a  
4 subtotal amount that greatly exceeds the advertised price and will only net the advertised price  
5 after completing a mail-in rebate; and (2) the consumer will be charged a vague line item for  
6 “Taxes & fees” that dramatically increases the amount the consumer will pay, even after the mail-  
7 in rebate. This is the only place where the consumer is shown the “Taxes & fees” line item, and  
8 many consumers completely miss this Order Summary, by design, because it requires them to  
9 scroll down past the “Continue” button, which many average consumers would not think to do.

10 24. If the consumer scrolls down and notices the revised order summary, and notices  
11 the “Fees & taxes” line item the consumer has the ability to click on a small i-link button the  
12 purportedly will provide them additional information as to what the “Taxes and fees” entail, but  
13 all it provides is that “Taxes are tax recovery charged for tax obligations where applicable and the  
14 fees are compensation for servicing your order” which in itself is misleading because in reality  
15 there are no taxes charged. Instead, it is 100 percent a processing fee that is only disclosed if a  
16 customer representative provides a “Full Receipt”. Moreover, this fee is also deceptive because it  
17 does not relate to the actual operational costs associated with processing the order as one would  
18 expect a “Processing” fee to cover.

19 25. If the consumer presses “Continue” to move on the following page, the consumer  
20 is presented with a form to complete their payment information as well as a second version of an  
21 Order Summary. This Order Summary has the same “Order Total” and “Total After Rebate”  
22 numbers as the previous version that the consumer would only see if they scrolled down past the  
23 “Continue” button but does not separately identify the “Taxes and fees” that Defendant is adding  
24 to the order.

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26. By design and the placement of a “Continue” link, many consumers only review this Order Summary screen, not the previous one that breaks out the “Taxes & fees” line item separately and are not presented the hidden “Taxes and fees” line item. They also do not notice that the “Order Total” on this Order Summary is much higher than what appeared on the Shopping Cart screen above, which was based on the prices Defendant actually advertised without any additional “Taxes & fees.”

27. The amount they tag on increases the amount the consumer should be paying based on the advertised prices by 30 percent to 50 percent. This amount greatly exceeds any reasonable tax owed on the purchase, and Defendant makes no effort to explain what taxes or fees are covered by this line item. That is because this is not actually a tax on the lenses purchased or a fee for any service; it is a made-up charge that Defendant adds to increase the price that is totally unrelated to the actual costs in processing the order. And when these fees are factored in, the total cost of buying contacts from Defendant is essentially the same as the total cost of buying contact lenses from Defendant’s more honest competitors.

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28. Defendant, therefore, misleads even those consumers who click on the “Taxes and fees” i-link by representing the fees they charge are related to the costs of processing the Plaintiff’s and the putative Class Members’ order. In fact, Defendant never discloses to purchasers that the fees it assesses upon purchase are purely profit generators.

29. On September 19, 2022, Plaintiff found contacts for purchase at the Defendant’s website and went through the extensive order process as described herein. Plaintiff placed Order Number #1389120063 consisting of 4 boxes of contacts at a price of \$70.54 and 3 boxes of solution at \$6.99 a box.

30. After placing the Order, Plaintiff received the receipt below showing an order total of \$395.07 and a total after rebate price of \$310.07. The small font below this total states “For complete order details, **click here**”. Plaintiff’s credit card was charged \$416.04.

Having trouble viewing? [Click to view details.](#)**Thank You For Your Order!**

Hello Mary,

Thank you for choosing Lens.com. See your order summary below.

**Order Details**Order #: **1389120063**Ordered On: **9/19/2022****Shipping Details**Shipped **Mary Fitzpatrick**Shipping Method: **Standard**To: **4n220 Fox Mill Blvd  
Saint Charles, IL 60175-  
7768**Estimated Arrival: **September 28, 2022 - September 30, 2022****US-United States****Product Information**

- **1-Day Acuvue Moist Multifocal 90PK for Kevin Fitzpatrick 4 boxes**
- **Free Lens Case**

**Order Total:** \$395.071-Day Acuvue Moist Multifocal \$85.00  
90PK Mail-in Rebate:**Total After Rebate:** \$310.07For complete order details, [click here](#).

Congratulations Mary! You qualified for a rebate. We offer a generous 3 month (12 week) window from your order shipped date for you to submit your rebate. Please go to your personalized [Rebate Center](#) for instructions on how to submit your rebate. You will need to include the Manufacturer's Proof of Purchase (found on the ack or side of your contact lens box) with your submission.

31. If a person clicks on the link “For complete order details, **click here**” the receipt on the screen below appears revealing the items being purchased at the prices advertised followed by a subtotal of \$406.09 and a shipping charge of \$9.95 for a total of \$416.04. However, the items on the receipt only total \$313.08 when added together, including Shipping.

lens.com Since 1995									
Contact Lenses		Brands		Online Vision Exam		Reorder		Hello, Mary	
<b>1-Day Acuvue Moist Multifocal 90PK (SKU: J23)</b>		BC	DIA	Power	Addition	Price	Boxes	Total	Status
Left Eye		8.4	14.3	-5.50	Mid (+1.50D to +1.75D)	\$70.54	2	\$141.08	Shipped On 9/22/2022 Via Standard Tracking #: <a href="#">9261290985156480087082</a>
Right Eye		8.4	14.3	-6.00	Mid (+1.50D to +1.75D)	\$70.54	2	\$141.08	
Patient: Kevin Fitzpatrick   Doctor: Lenscrafters   Doctor Phone: 847-760-6200									
<b>biofresh™ Multi-Purpose Solution</b>						Price	Qty	Total	Status
						\$6.99	3	\$20.97	Shipped On 9/22/2022 Via Standard Tracking #: <a href="#">9261290985156480087082</a>
<b>\$85 Mail-in Rebate For 1-Day Acuvue Moist Multifocal 90PK</b>						Your Rebate Expired on 12/19/2022		<a href="#">Redeem at RebateCard.com</a>	
								Subtotal	\$406.09
								Shipping	\$9.95
								<b>Total</b>	<b>\$416.04</b>

32. Plaintiff, as a reasonable consumer, and the putative Class Members believed the Subtotal was the addition of multiple items purchased. Instead, there was a Taxes and fees charge of \$102.96 hidden in the “Subtotal” and not a line item like the Shipping charge. Furthermore, the Taxes and fee charge was nothing more than a 100 percent Processing fee which was only revealed when a customer service representative of the Defendant emailed a “Full Receipt” to the Plaintiff long after the purchase as described below.

33. In late September, or early October, Plaintiff received her Order. Plaintiff has an FSA, or Flexible Spending Account, and submitted the receipt from paragraph 31 above. Her flexible spending account card issuer denied the payment of \$416.04 because it did not match the receipt provided as items listed only totaled \$313.08 including the Shipping charge.

34. Plaintiff was told by her FSA provider to contact Defendant to work out the discrepancy. After multiple phone calls, Plaintiff spoke to an agent of Defendant who realized the issue and stated, “Oh, you want a Full Receipt” and told Plaintiff she would email her a “Full Receipt”.

35. On or about December 13, 2022, Defendant emailed Plaintiff a “Full Receipt” which for the first time contained a line item for “Processing” of \$102.96.

<b>Order #:</b>	<b>Date Ordered:</b>	<b>Shopper:</b>	<b>Email Address:</b>		
1389120063	09/19/2022	Mary Fitzpatrick	<a href="mailto:mfitzpatrick630@sbcglobal.net">mfitzpatrick630@sbcglobal.net</a>		
<b>Billing Information</b>		<b>Shipping Information</b>			
Mary Fitzpatrick 4n220 Fox Mill Blvd Saint Charles, IL 60175-7768 630-8427929		Mary Fitzpatrick 4n220 Fox Mill Blvd Saint Charles, IL 60175-7768 630-8427929			
<b>Product and Prescription Information</b>		<b>Quantity</b>	<b>Unit Price</b>	<b>Subtotal</b>	<b>Status</b>
<b>1-Day Acuvue Moist Multifocal 90PK (SKU: J23)</b>					
<b>Eye:</b> Left <b>Base Curve:</b> 8.4 <b>Diameter:</b> 14.3 <b>Power:</b> -5.50 <b>Addition:</b> Mid (+1.50D to +1.75D)		2	\$ 70.54	\$ 141.08	Shipped On 9/22/2022
<b>Patient:</b> Kevin Fitzpatrick <b>Doctor:</b> Lenscrafters <b>Doctor Phone:</b> 847- 760-6200					
<b>1-Day Acuvue Moist Multifocal 90PK (SKU: J23)</b>					
<b>Eye:</b> Right <b>Base Curve:</b> 8.4 <b>Diameter:</b> 14.3 <b>Power:</b> -6.00 <b>Addition:</b> Mid (+1.50D to +1.75D)		2	\$ 70.54	\$ 141.08	Shipped On 9/22/2022
<b>Patient:</b> Kevin Fitzpatrick <b>Doctor:</b> Lenscrafters <b>Doctor Phone:</b> 847- 760-6200					
<b>Free Lens Case</b>					
<b>Mail-In Rebate</b>					
<b>biofresh!22 Multi-Purpose Solution</b>					
				<b>Subtotal:</b>	\$ 303.13
				<b>Processing:</b>	\$ 102.96
				<b>Shipping:</b>	\$ 9.95
				<b>Total:</b>	\$ 416.04



1 obtained during discovery.

2 40. **Numerosity:** At this time, Plaintiff does not know the exact size of the Class;  
3 however, due to the nature of the trade and commerce involved, Plaintiff believes that the number  
4 of Class Members are into the thousands, and thus are so numerous that joinder of all Members is  
5 impractical. The number and identities of Class Members is administratively feasible and can be  
6 determined through appropriate discovery in the possession of the Defendant.

7 41. **Commonality:** There are questions of law or fact common to the Class, which  
8 include, but are not limited to, the following:

- 9 a. Whether during the class period, Defendant deceptively represented the price  
10 of the contact lenses available on their website;
- 11 b. Whether the “Taxes & fees” charge is deceptive and unfair when in actuality it  
12 is 100% a Processing fee;
- 13 c. Whether the “Taxes & fees” charge is deceptive and unfair when Plaintiff and  
14 putative class were not charged taxes on the products they purchased;
- 15 d. Whether Defendant’s Processing fee is unfair and deceptive when it is a fee  
16 unrelated to the costs of processing orders;
- 17 e. Whether Defendant’s alleged misconduct misled or had the tendency to mislead  
18 consumers;
- 19 f. Whether Defendant’s alleged conduct constitutes violations of the laws  
20 asserted;
- 21 g. Whether Plaintiff and Class Members were harmed by Defendant’s unfair,  
22 unlawful, deceptive, misleading, and/or false advertisements; and
- 23 h. Whether an injunction is necessary to prevent Defendant from continuing to  
24 deceptively represent the cost of the products they offer for sale on their  
website.

22 42. **Typicality:** Like Plaintiff, many other consumers ordered products from  
23 Defendant’s website based on Defendant’s deceptive advertisements. Plaintiff’s claims are typical  
24 of the claims of the Class because Plaintiff and each Class Member were injured by Defendant’s  
false and/or misleading advertising. Plaintiff and the Class have suffered the same or similar injury

1 as a result of Defendant’s false, deceptive, and misleading representations. Therefore, Plaintiff’s  
2 claims are typical of the claims of the Class and Class treatment is appropriate.

3 43. **Adequacy of Representation:** Plaintiff is committed to pursuing this action and  
4 has retained counsel competent who is experienced in prosecuting and resolving consumer class  
5 actions. Plaintiff will fairly and adequately represent the interests of the Class and does not have  
6 any interests adverse to those of the Class.

7 44. **Superiority:** The common questions of law and fact enumerated above  
8 predominate over questions affecting only individual members of the Class, and a class action is  
9 the superior method for fair and efficient adjudication of the controversy. The likelihood that  
10 individual members of the Class will prosecute separate actions is remote because the damages or  
11 other financial detriment suffered by individual Class Members may be relatively small compared  
12 to the burden and expense that would be entailed by individual litigation of the claims against  
13 Defendant.

14 **CAUSE OF ACTION**

15 **Violations of the Illinois Consumer Fraud and Deceptive Practices Act 815 ILCS 505/1, et.**  
16 **seq. (By Plaintiff and on Behalf of the Class)**

17 45. Plaintiff repeats and realleges each and every fact, matter, and allegation set forth  
18 above and incorporates them at this point by reference as though set forth in full.

19 46. Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act,  
20 (the “Act”) provides “Unfair methods of competition and unfair or deceptive acts or practices,  
21 including but not limited to the use or employment of any deception fraud, false pretense, false  
22 promise, misrepresentation or the concealment, suppression or omission of any material fact, with  
23 intent that others rely upon the concealment, suppression or omission of such material fact...are  
24 unlawful whether any person has in fact been misled, deceived, or damaged thereby.”

1           47.     In addition, Section 2 of the Act prohibits “the use or employment of any practice  
2 described in Section 2 of the ‘Uniform Deceptive Trade Practices Act,’ 815 ILCS 510/1, *et. seq.*  
3 (“UDTPA”). 815 ILCS 510/2 the UDTPA provides: (a) A person engages in a deceptive trade  
4 practice when, in the course of his or her business, vocation, or occupation, the person:

5                     (9) advertises goods or services with the intent not to sell them as advertised.

6           48.     The Act and UDTPA apply to Defendant’s acts as described herein because it  
7 applies to transactions involving the sale of goods or services to consumers.

8           49.     The products sold on Defendant’s website constitute “merchandise” within the  
9 meaning of 505/1(b) and its sale is within the meaning of “trade” or “commerce” under the Act.

10          50.     Plaintiff and the Class Members are each a “consumer” as defined by Section  
11 505/1(e) of the Act who purchased, or sought to purchase, contact lenses and supplementary  
12 products from Defendant’s website.

13          51.     Defendant, Plaintiff, and Class Members are all a “person” as defined by 505/1c of  
14 the Act.

15          52.     Defendant violated the Act and UDPTA by advertising artificially low prices for  
16 its contact lenses—advertising that its contact lenses were available for sale at one price, when in  
17 truth they were never available for sale at that deceptively low advertised price. Defendant’s  
18 advertising of artificially low prices has misled and unfairly induced Plaintiff and the Class  
19 Members to enter into transactions and to overpay for products. Plaintiff and the Class Members  
20 have been misled and unfairly induced to pay hidden fees above and beyond the product price  
21 advertised by Defendant, the Processing fee. Therefore, Plaintiff and the Class Members’ money  
22 was taken by Defendant as a result of Defendant’s false and misleading representations made in  
23 Defendant’s advertisements, as explained above.



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- D. Judgment for damages, including actual, statutory, treble and punitive, where applicable;
- E. Pre- and post-judgment interest on the amount recovered;
- F. Attorney’s fees and costs of this action; and
- G. For such other and further relief as may be just and proper, including but not limited to a preliminary and/or permanent order enjoining Defendant from engaging in the unlawful and unfair acts and practices.

Respectfully submitted,

MEYERS & FLOWERS, LLC

By: /s/ Matthew Herman  
Matthew Herman

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*Attorneys for Plaintiff MARY AGRELLA  
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