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10 Attorneys for Plaintiff

11 UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA

13 PAIGE VASSEUR, individually and on
14 behalf of all similarly situated persons,

15 Plaintiff,

16 v.

17 GARDEN OF LIFE LLC, a Delaware
18 limited liability company,

19 Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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

7 **I. NATURE OF THE ACTION**

8 1. Defendant violated California’s “prohibition on advertising non-existent
9 sales.” *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1106 (9th Cir. 2013). “[P]rice
10 advertisements matter.” *Id.*

11 2. This is a class action lawsuit brought to address Defendant’s misleading and
12 unlawful pricing, sales, and discounting practices on its website www.GardenofLife.com.
13 The products at issue are all goods that have at any time been offered on the website at a
14 sale or discounted price from a higher advertised reference price. The products consist of
15 vitamins and supplements sold under Defendant’s various in-house brands, including
16 Vitamin Code, Garden of Life Organics, Dr. Formulated, Raw Probiotics, Sport, Primal
17 Defense, Oceans 3, and Minami. Defendant advertises false, misleading, and inflated
18 comparison reference prices to deceive customers into a belief that the sale price is a
19 discounted bargain price.

20 3. Anyone visiting the website who buys an item on sale from a stricken former
21 or regular price is being misled. This is because that item has not been listed for sale or
22 sold *on the website*, in the recent past and for a substantial time, at the reference price. Yet
23 Defendant’s use of inflated reference prices, strikethrough pricing and discounting, and
24 purported limited time sales all lead reasonable consumers to believe that the products in
25 fact had been listed for sale or sold on the website, at the former and regular price, in the
26 recent past, for a substantial time period.

1 4. On information and belief, all or nearly all the reference prices on the website
2 are false and misleading. They are not former or regular prices at which the products were
3 offered on the website in the recent past for a substantial time. They are inflated prices
4 posted to lure consumers into purchasing items from Defendant.

5 5. Beyond that, on information and belief, Defendant's products sold on the
6 website not only have a market value lower than the promised former and regular price,
7 but the market value of the products is also lower than the discounted "sale" price. By
8 using false reference pricing and false limited time sales, Defendant artificially drives up
9 demand for the products, and by extension drives up the price of the products. As a result,
10 consumers received a product worth less than the price paid. To illustrate, assume a
11 company knows a product will sell in the marketplace at \$30. But to increase revenue and
12 capture market share, the company advertises the product as having a regular price of \$100
13 and being on "sale" at 60% off (i.e., \$60 off). Because consumers value products based
14 on the reference price and expect the reference price to reflect the regular and former price
15 without a discount, and a purported sale conveys savings, the company can sell that \$30
16 product for \$40.

17 6. As a result, consumers are deceived into spending money they otherwise
18 would not have spent, purchasing items they would not have purchased, and/or spending
19 more money for an item than they otherwise would have absent deceptive marketing.

20 **II. PARTIES**

21 7. Plaintiff Paige Vasseur is a resident of the State of California and County of
22 Los Angeles. She was present and resided in Los Angeles County at the time she made
23 her purchase from the website.

24 8. Defendant Garden of Life is a manufacturer and retailer of vitamins and
25 supplements. On information and belief, it is a Delaware limited liability company whose
26 members are all citizens of Delaware. On information and belief, Defendant is wholly
27
28

1 owned by Nestlé Health Science US, LLC, a Delaware limited liability company. Through
2 the website, Defendant sells its products to consumers in California.

3 **III. JURISDICTION AND VENUE**

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

9 10. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a
10 substantial part of the events or omissions giving rise to the claims herein occurred in this
11 judicial district. As set forth herein, Defendant owns and operates the website, and
12 marketed, sold, and shipped products to purchasers located in this district, including at
13 least one plaintiff.

14 11. Further, as set forth herein, Defendant has contacts in this district sufficient
15 to subject it to the personal jurisdiction of this district as if this district were a separate
16 state. Defendant continuously and systematically places goods into the stream of
17 commerce for distribution in California, maintains an interactive commercial website,
18 offers to ship products to California, and allows customers in California to order products.
19 Exercising jurisdiction over Defendant is fair, just, and reasonable considering the quality
20 and nature of Defendant's acts that occur in California and which affect interests located
21 in California. Defendant has purposefully availed itself of the privilege of conducting
22 activities in California and should reasonably anticipate being haled into court in
23 California.

24 **IV. GENERAL ALLEGATIONS**

25 **A. Company Background**
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1 12. Defendant describes itself as a brand and retailer of vitamins and supplements
2 that are superior to others in the marketplace.¹ Defendant states the following on its
3 “About Garden of Life” webpage: “What Sets Us Apart [¶] Empowering Extraordinary
4 Health® is not just a mission statement to be used on our website or advertisements. The
5 sole purpose of Garden of Life is and always will be to empower you, our consumers, with
6 the tools necessary to achieve extraordinary health. And, at the same time, ensure that we
7 are offering clean, traceable, clinically studied ingredients in the most sustainable way
8 possible.”²

9 13. “Our process is not the same as many nutritional supplement companies out
10 there. We believe in whole food ingredients, in traceability, in third-party certifications,
11 and in accountability. As fanatical as we are over what goes into our products, we are even
12 more obsessed about the things we keep out of them. You won’t find synthetic ingredients,
13 artificial flavors or colorings, binders or fillers. We’re uncompromising about your health.
14 That’s what we are all about.”³ Among other things, “Traceability is key to what makes
15 Garden of Life’s products so special.”⁴

16 14. Defendant, through its website, has sold millions of units of merchandise to
17 consumers in California.

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

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

21 15. Defendant’s business model relies on deceiving consumers with false or
22 misleading reference prices.
23
24

25 ¹ <https://www.gardenoflife.com/why-gol> (last accessed October 28, 2024).

26 ² *Id.*

27 ³ *Id.*

28 ⁴ *Id.*

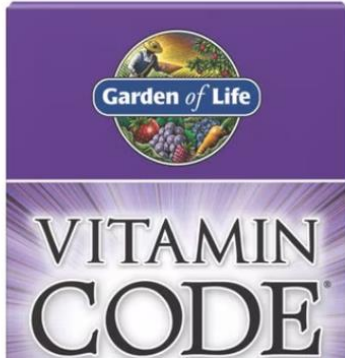
1 16. On any given date, most if not all products on the website are represented as
2 being discounted from a substantially higher reference price. On individual listing pages
3 and category listing pages, the supposed markdowns are represented to the consumer by
4 prominently displaying a “crossed-out” reference price in red font next to the sale price.
5 A representative example is shown below.

6 [Home](#) > [Vitamin Code Raw Zinc 60 Capsules](#)

7 Vitamin Code Raw Zinc 60 Capsules

8 **Item:** 658010116527

9  [Click on Image to Zoom In](#)



10 ~~\$15.99~~ **\$12.79**

11 ★★★★★ 237 Reviews

12 In Stock

13 One-time delivery \$12.79

14 Subscribe and **save 15%** **\$10.87**

15 Terms Apply. [Learn More.](#)

16 Free Shipping. 20% OFF after your 4th order.

17 Qty:

18 **Add to Cart**

19 17. To confirm that Defendant regularly offers products at a discount sitewide or
20 nearly sitewide, screenshots of the website randomly selected and collected by the Internet
21 Archive’s Wayback Machine were reviewed, covering 8 products. As shown below, each
22 of these products was always or nearly always advertised as being discounted from a
23 higher reference price over an extended period. In other words, the products were always
24 or nearly always on sale. Representative examples are shown below.

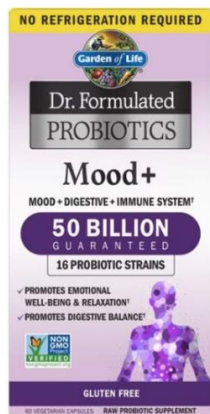
25 a. Dr. Formulated Probiotics Mood+ Shelf-Stable 60 Capsules

i. 10/25/2024: \$50.99 (reference price), \$40.79 (sale price)

Dr. Formulated Probiotics Mood+ Shelf-Stable 60 Capsules

Item: 658010120043

Click on Image to Zoom In



~~\$50.99~~ \$40.79

★★★★★ 179 Reviews

In Stock

Qty: 1

Add to Cart



Description

- Contains clinically studied *L. helveticus* R0052 and *B. longum* R0175 for emotional well-being[†]
- Contains 350mg of organic Ashwagandha and organic Alaskan blueberries for stress management[†]
- 16 raw probiotic strains; 50 Billion CFU[†] to promote digestive balance[†]
- Made with Ashwagandha, Alaskan blueberries and Acacia fiber

ii. 04/20/2024: \$50.99 (reference price), \$40.79 (sale price)

iii. 05/31/2023: \$50.99 (reference price), \$40.79 (sale price)

iv. 08/14/2022: \$47.99 (reference price), \$38.39 (sale price)

v. 05/28/2022: \$47.99 (reference price), \$38.39 (sale price)

vi. 10/23/2021: \$47.99 (reference price), \$38.39 (sale price)

vii. 06/13/2021: \$47.99 (reference price), \$38.39 (sale price)

viii. 01/22/2021: \$47.99 (reference price), \$38.39 (sale price)

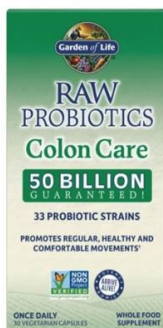
b. Raw Probiotics Color Care Cooler 30 Capsules

i. 10/25/2024: \$47.99 (reference price), \$38.39 (sale price)

Raw Probiotics Colon Care Cooler 30 Capsules

Item: 658010116657

Click on Image to Zoom In



~~\$47.99~~ \$38.39

★★★★★ 43 Reviews

In Stock

Qty: 1

Add to Cart



Description

- 50 billion live cultures in a once-daily small capsule
- 33 probiotic strains
- Clinically studied strains to promote regular, healthy and comfortable movements[†]

ii. 03/31/2023: \$47.99 (reference price), \$38.39 (sale price)

iii. 05/27/2022: \$44.99 (reference price), \$35.99 (sale price)

iv. 10/24/2021: \$44.99 (reference price), \$35.99 (sale price)

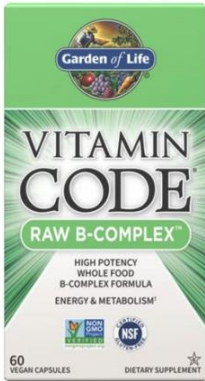
c. Vitamin Code Raw B-Complex Capsules 60 count

i. 10/25/2024: \$23.99 (reference price), \$19.19 (sale price)

Vitamin Code Raw B-Complex Capsules

Item: 658010113809

Click on Image to Zoom In



~~\$23.99~~ \$19.19

★★★★★ 225 Reviews

In Stock

60 ct

120 ct

Qty: 1

Add to Cart

Find in Store

Add to Wish List



Description

- Physical energy & metabolism†
- High Potencies of 8 B Vitamins
- 23 Powdered fruits and vegetables
- 1 In. Probiotic and Enzyme support healthy digestion†

ii. 10/05/2023: \$23.99 (reference price), \$19.19 (sale price)

iii. 10/26/2021: \$22.99 (reference price), \$18.39 (sale price)

iv. 04/14/2021: \$22.99 (reference price), \$18.39 (sale price)

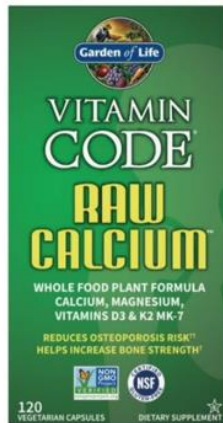
d. Vitamin Code Raw Calcium Capsules 120 Count

i. 10/25/2024: \$55.99 (reference price), \$44.79 (sale price)

Vitamin Code Raw Calcium Capsules

Item: 658010113908

Click on Image to Zoom In



~~\$55.99~~ \$44.79

★★★★★ 401 Reviews

In Stock

60 ct

120 ct

Qty: 1

Add to Cart

Find in Store

Add to Wish List



Description

- Whole Food Plant Calcium Formula with Magnesium, Vitamins D3 & K2 MK-7
- Reduces Osteoporosis Risk††
- Helps Increase Bone Strength†
- 1,100mg of Calcium per serving

- ii. 08/09/2024: \$55.99 (reference price), \$44.79 (sale price)
- iii. 02/28/2024: \$55.99 (reference price), \$44.79 (sale price)
- iv. 03/27/2023: \$55.99 (reference price), \$44.79 (sale price)
- v. 01/26/2023: \$55.99 (reference price), \$44.79 (sale price)
- vi. 12/28/2022: \$52.99 (reference price), \$42.39 (sale price)
- vii. 11/28/2022: \$52.99 (reference price), \$42.39 (sale price)
- viii. 05/27/2022: \$52.99 (reference price), \$42.39 (sale price)

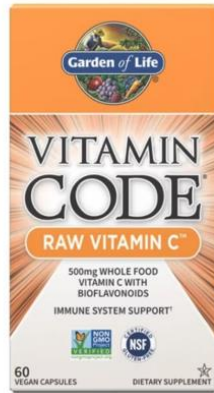
e. Vitamin Code Raw Vitamin C Capsules 60 Count

- i. 10/25/2024: \$21.99 (reference price), \$17.59 (sale price)

Vitamin Code Raw Vitamin C Capsules

Item: 658010113816

Click on Image to Zoom In



~~\$21.99~~ \$17.59

★★★★★ 316 Reviews

In Stock

60 ct

120 ct

Qty: 1

Add to Cart

Find in Store

Add to Wish List



Description

- 500mg Whole Food Vitamin C with Bioflavonoids
- Immune System Support†
- Healthy Heart†
- Healthy Skin and Eyes†

- ii. 05/20/2024: \$21.99 (reference price), \$17.59 (sale price)
- iii. 09/23/2023: \$21.99 (reference price), \$17.59 (sale price)
- iv. 03/23/2023: \$21.99 (reference price), \$17.59 (sale price)
- v. 01/21/2022: \$20.99 (reference price), \$16.79 (sale price)
- vi. 10/17/2021: \$20.99 (reference price), \$16.79 (sale price)
- vii. 05/12/2021: \$20.99 (reference price), \$16.79 (sale price)
- viii. 03/02/2021: \$16.79 (offering price – no reference price advertised)

f. Sport Organic Plant-Based Protein Powder Vanilla

- i. 10/25/2024: \$59.99 (reference price), \$47.99 (sale price)

SPORT Organic Plant-Based Protein Powder - Vanilla

Item: 658010119436

Click on Image to Zoom In



~~\$59.99~~ **\$47.99**

★★★★☆ 306 Reviews

In Stock

Qty: 1

Add to Cart



Description

- 30g organic plant-based protein
- 5.5g BCAAs
- 5g glutamine & glutamic acid
- Organic performance blend
- Organic muscle recovery blend
- 2 Billion CFU *B. lactis*
- No banned substances for sport

- ii. 06/16/2024: \$59.99 (reference price), \$47.99 (sale price)
- iii. 03/26/2023: \$59.99 (reference price), \$47.99 (sale price)
- iv. 08/14/2022: \$56.99 (reference price), \$45.59 (sale price)
- v. 05/27/2022: \$56.99 (reference price), \$45.59 (sale price)
- vi. 10/04/2021: \$56.99 (reference price), \$45.59 (sale price)
- vii. 04/19/2021: \$56.99 (reference price), \$45.59 (sale price)

g. Vitamin Code Raw Zinc Capsules 60 Count

- i. 10/25/2024: \$15.99 (reference price), \$12.79 (sale price)

Vitamin Code Raw Zinc 60 Capsules

Item: 658010116527

Click on Image to Zoom In



~~\$15.99~~ **\$12.79**

★★★★☆ 236 Reviews

In Stock

- One-time delivery \$12.79
- Subscribe and save 15% **\$10.87** Terms Apply. Learn More. Free Shipping. 20% OFF after your 4th order.

Qty: 1

Add to Cart

Find in Store

Add to Wish List



Description

- Immune system support[†]
- Skin and eye health support[†]

- ii. 03/23/2023: \$15.99 (reference price), \$12.79 (sale price)

- iii. 06/07/2022: \$14.99 (reference price), \$11.99 (sale price)
- iv. 05/27/2022: \$14.99 (reference price), \$11.99 (sale price)
- v. 10/24/2021: \$14.99 (reference price), \$11.99 (sale price)
- vi. 06/13/2021: \$14.99 (reference price), \$11.99 (sale price)
- vii. 04/11/2021: \$14.99 (reference price), \$11.99 (sale price)
- viii. 01/22/2021: \$14.99 (reference price), \$11.99 (sale price)

h. Dr. Formulated Women’s Probiotics Daily 30 Capsules

- i. 10/25/2024: \$45.99 (reference price), \$36.79 (sale price)

Dr. Formulated Probiotics Once Daily Women's Shelf-Stable 30 Capsules

Item: 658010118323

Click on Image to Zoom In

- ii. 09/24/2024: \$45.99 (reference price), \$36.79 (sale price)
- iii. 05/25/2024: \$45.99 (reference price), \$36.79 (sale price)
- iv. 05/21/2024: \$45.99 (reference price), \$36.79 (sale price)
- v. 03/16/2024: \$45.99 (reference price), \$36.79 (sale price)
- vi. 02/23/2024: \$45.99 (reference price), \$36.79 (sale price)
- vii. 01/23/2024: \$45.99 (reference price), \$36.79 (sale price)

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

1 price and the adjacent discounted price convey that the product was listed or sold *on the*
2 *website* at the reference price, in the recent past and for a substantial time, but is now being
3 listed and sold to the customer at a meaningful discount. Reasonable consumers also
4 expect that the product is valued in the market at the former or regular price.

5 19. However, on information and belief, this reference price is a falsely inflated
6 price because Defendant never or almost never lists or sells items at the reference price.
7 Instead, the reference price is intended to mislead customers into believing that the
8 displayed reference price is a former or regular price at which Defendant usually lists and
9 sells the item in the recent past. As a result, Defendant falsely conveys to customers that
10 they are receiving a substantial markdown or discount.

11 20. On information and belief, this is not a new or isolated sales practice by
12 Defendant, but continued regularly throughout at least 2024, 2023, 2022, 2021, and years
13 earlier.

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

16 21. Separately, the reference prices advertised on the website are not the
17 prevailing market prices of the products.

18 22. Some of Defendant's discounted products are concurrently sold on the
19 website and through other online retailers. For these products, on information and belief,
20 Defendant's advertised reference prices are higher than the prevailing market prices for
21 the identical products. Because Defendant consistently sells the products at issue at prices
22 significantly (i.e., 30% or more) lower than its advertised former prices, there is no
23 reasonable basis to believe that Defendant consistently sells its products at prices below
24 the prevailing market prices. Economic principles dictate that in competitive markets the
25 actual prices offered by vendors selling the same item tend to converge on the market
26 price.

27 23. For example:
28

- 1 a. On October 25, 2024, the Garden of Life Dr. Formulated Probiotics Mood+
- 2 Shelf-Stable 60 Capsules was offered on Defendant's website with a
- 3 strikethrough reference price of \$50.99 and sale price of \$40.79. That same
- 4 day, the product was offered on Amazon.com (by Amazon) for \$30.66.
- 5 b. On October 25, 2024, the Vitamin Code Raw Calcium Capsules 120 Count
- 6 (a product purchased by Plaintiff) was offered on Defendant's website with
- 7 a \$55.99 strikethrough reference price and a \$44.79 sale price. That same
- 8 day, the product was offered on Amazon.com (by Amazon) for \$35.27.
- 9 Moreover, according to a third-party pricing tracker, the average price for the
- 10 product on Amazon.com (by Amazon) during the preceding 90 days was
- 11 \$37.96 and Amazon's price during that period was always less than
- 12 Defendant's \$55.99 reference price.



- 20 c. On October 25, 2024, the Vitamin Code Raw Vitamin C Capsules 60 Count
- 21 was offered on Defendant's website with a \$21.99 strikethrough reference
- 22 price and a \$17.59 sale price. That same day, the product was offered on
- 23 Amazon.com (by Amazon) for \$15.39 with a \$19.99 "List Price." Moreover,
- 24 according to a third-party pricing tracker, the average price for the product
- 25 on Amazon.com (by Amazon) during the preceding 90 and 180 days was
- 26 \$15.59 and \$17.05, respectively. And from January 2021 to the present,
- 27
- 28

Amazon’s price was almost always less than Defendant’s \$21.99 reference price.



d. On October 25, 2024, the Vitamin Code CoQ10 Strawberry Flavor Gummies 60 Count was offered on Defendant’s website with a \$23.99 strikethrough reference price and a \$19.19 sale price. That same day, the product was offered on Amazon.com (by Amazon) for \$16.79 with no stated “List Price,” and Walmart.com for \$20.24.

24. Moreover, regardless of third-party retailers’ prices, on information and belief Defendant’s items are frequently sold through Defendant’s website. For example, if a consumer searches Google for “Vitamin Code vitamins,” as of October 28, 2024 the first sponsored hit and first organic hit is GardenofLife.com. (The second organic hit is Amazon.com.)

25. Beyond that, on information and belief, some of Defendant’s discounted products are sold exclusively on the website. For these products, the prevailing market price is the price advertised on the website—not the fictitious reference price.⁵

26. On information and belief, Defendant’s advertised reference prices are unsubstantiated and based on an undisclosed formula, or are outdated, or are cherrypicked and thus not representative of the prevailing market prices. On information and belief,

⁵ For example, on October 28, 2024, 30 items were offered on Defendant’s website under the “multivitamins” category but only 28 items were offered by Amazon under that category.

1 Defendant does not independently verify that the reference prices are the prevailing market
2 prices at which the products are listed for sale by Defendant or other retailers for a
3 substantial period of time and in substantial quantities. On information and belief,
4 Defendant does not update the references prices on a daily basis.

5 **C. Plaintiff's Purchase from the Website**

6 *Plaintiff Vasseur*

7 27. In or about November 2023, Plaintiff Vasseur purchased a Vitamin Code
8 Raw Calcium 120 Capsules (SKU 658010113908) from Defendant's website. Based on
9 and consistent with archived copies of the website, Plaintiff Vasseur saw on the listing
10 page a former or regular price of \$55.99 per unit in strikethrough text, and an adjacent sale
11 price of \$44.79. She proceeded to purchase the product with the understanding that she
12 was receiving all advertised discounts off the former and regular prices charged by
13 Defendant, and the product's market value was the \$55.99 reference price advertised by
14 Defendant.

15 28. Plaintiff Vasseur thus viewed and relied on the website's purported current
16 and limited-time discount. She relied on the above representations that the product (1) had
17 a former and regular price of the stated reference price, (2) had been offered for sale *on*
18 *the website* at the stated reference price, in the recent past, on a regular basis, and for a
19 substantial time, and (3) was truly on sale and being sold at a substantial discount, such
20 that the product was valued at the false reference price.

21 29. The pricing history for this product is detailed above at paragraphs 17d and
22 23b. As shown above, the product's reference price was false and misleading.

23 30. The product Plaintiff purchased was not substantially marked down or
24 discounted, and any discount she was receiving had been grossly exaggerated, as shown
25 above.

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

4 32. Plaintiff would not have purchased the item at the advertised price, or would
5 not have paid as much as she did, had Defendant been truthful. Plaintiff was persuaded to
6 make her purchase because of the misleading sale based on false reference prices.

7 33. Plaintiff continues to be interested in purchasing vitamins and supplements
8 like that offered by Defendant on the website at discounted prices, but she will be unable
9 to trust and rely on Defendant's advertising, and so will not purchase the products from
10 Defendant's website. Absent injunctive relief, Plaintiff cannot know whether Defendant's
11 former and regular prices represent honest prices at which the products were listed for sale
12 on the website on a regular basis for a reasonably substantial period of time, or if
13 Defendant's sales are perpetual. Likewise, absent injunctive relief, she cannot know
14 whether Defendant's former and regular prices are the prevailing market prices.

15 **D. Research Shows That Reference Price Advertising Influences Consumer**
16 **Behavior and Perceptions of Value**

17 34. Academic studies support the effectiveness of Defendant's deceptive pricing
18 scheme.

19 35. "By creating an impression of savings, the presence of a higher reference
20 price enhances subjects' perceived value and willingness to buy the product."⁶ Thus,
21 "empirical studies indicate that, *as discount size increases, consumers' perceptions of*
22 *value and their willingness to buy the product increase, while their intention to search for*
23 *a lower price decreases.*"⁷ Indeed, the Ninth Circuit observed that "[m]isinformation
24

25
26 ⁶ Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative*
27 *or Deceptive?*, 11 J. Pub. Pol'y & Mktg. 52, 55 (Spring 1992).

28 ⁷ *Id.* at 56 (emphasis added).

1 about a product’s ‘normal’ price is . . . significant to many consumers in the same way as
2 a false product label would be.” *Hinojos*, 718 F.3d at 1106.

3 36. “[D]ecades of research support the conclusion that advertised reference
4 prices do indeed enhance consumers’ perceptions of the value of the deal.”⁸ According to
5 academic studies, “[c]onsumers are influenced by comparison prices even when the stated
6 reference prices are implausibly high.”⁹

7 37. Another academic journal explains that “[r]eference price ads strongly
8 influence consumer perceptions of value Consumers often make purchases not based
9 on price but because a retailer assures them that a deal is a good bargain. This occurs when
10 . . . the retailer highlights the relative savings compared with the prices of competitors . .
11 . [T]hese bargain assurances (BAs) change consumers’ purchasing behavior and may
12 deceive consumers.”¹⁰

13 38. “[R]esearch has shown that retailer-supplied reference prices clearly enhance
14 buyers’ perceptions of value” and “have a significant impact on consumer purchasing
15 decisions.”¹¹

16 39. “[R]eference prices are important cues consumers use when making the
17 decision concerning how much they are willing to pay for the product.”¹² This study also
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20 ⁸ Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Believe It
Or Not*, J. of Consumer Affairs, Vol. 36, No. 2, at 287 (Winter 2002).

21 ⁹ *Id.*

22 ¹⁰ Joan Lindsey-Mullikin & Ross D. Petty, *Marketing Tactics Discouraging Price
23 Search: Deception and Competition*, 64 J. of Bus. Research 67 (January 2011).

24 ¹¹ Praveen K. Kopalle & Joan Lindsey-Mullikin, *The Impact of External Reference
25 Price On Consumer Price Expectations*, 79 J. of Retailing 225 (2003).

26 ¹² Jerry B. Gotlieb & Cyndy Thomas Fitzgerald, *An Investigation Into the Effects
27 of Advertised Reference Prices On the Price Consumers Are Willing To Pay For the
28 Product*, 6 J. of App’d Bus. Res. 1 (1990).

1 concluded that “consumers are likely to be misled into a willingness to pay a higher price
2 for a product simply because the product has a higher reference price.”¹³

3 40. One study quantified this economy injury, concluding that “fake list prices
4 have a strong influence on purchase outcomes, with a *1-dollar increase in the list price*
5 *having the same positive effect on purchase likelihood as a 77-cent decrease in the actual*
6 *selling price.*”¹⁴

7 41. Accordingly, research confirms that deceptive advertising through false
8 reference pricing is intended to, and does, influence consumer behavior by artificially
9 inflating consumer perceptions of an item’s value and causing consumers to spend money
10 they otherwise would not have, purchase items they otherwise would not have, and/or
11 purchase products from a specific retailer.

12 **E. Consumers Suffered Economic Harm**

13 42. Consumers paid a “price premium” for the products. If the reference prices
14 were omitted from the product listings, then consumers would not have paid as much as
15 they did for the products (or would not have purchased the products), and Defendant
16 would not have been able to charge the prices it ultimately did.

17 43. Defendant’s products sold on the website not only have a market value lower
18 than the promised regular prices, but the value of the products is lower than the “sale”
19 prices. By using false reference pricing and false discounts, Defendant artificially drives
20 up demand for the products, and by extension drives up the price of the products. As a
21 result, consumers received a product worth less than the price paid. Reasonable
22 consumers would not have paid the prices charged had they known that the products were
23 rarely, if ever, offered for sale on the website at the reference prices. Similarly, reasonable
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25

26 ¹³ *Id.*

27 ¹⁴ Donald Ngwe, *Fake Discounts Drive Real Revenues in Retail*, Harvard Bus. Sch.
28 (Oct. 14, 2017).

1 consumers would not have paid the prices charged had they known that the reference
2 prices were higher than the prevailing market prices.

3 44. Again, an example illustrates the point. Assume a company knows a product
4 will sell in the marketplace at \$30. But to increase revenue, the company advertises the
5 product as having a “regular” price of \$100 and being on “sale” at 60% off (i.e., \$60 off).
6 Because consumers value products based on the regular price, and a sale conveys
7 additional savings, the company can sell that \$30 product for \$40. Defendant has done so.

8 45. Furthermore, Defendant’s discounted products sold on the website have a
9 market value lower than the promised “regular” price, and as a result, consumers were
10 harmed. As explained above, the reference prices are false, the products rarely (if ever)
11 are offered or sold at the reference prices on the website, the products are always available
12 for less than the reference prices, and the reference prices are not the predominant retail
13 prices charged in the marketplace. Consumers therefore did not receive the benefit of their
14 bargain.

15 **F. Defendant’s Deceptive Pricing Practice Violates Federal Law**

16 46. The Federal Trade Commission Act (“FTCA”) prohibits “unfair or deceptive
17 acts or practices in or affecting commerce[.]” 15 U.S.C. § 45(a)(1). Under FTC
18 regulations, false former pricing schemes like the ones employed by Defendant are
19 deceptive practices that violate the FTCA.

20 47. Pursuant to 16 C.F.R. § 233.1, entitled Former Price Comparisons:

21
22 (a) One of the most commonly used forms of bargain advertising is to offer a
23 reduction from the advertiser’s own former price for an article. If the *former price*
24 is the actual, bona fide price at which the article was offered to the public on a
25 *regular basis* for a *reasonably substantial period of time*, it provides a legitimate
26 basis for the advertising of a price comparison. Where the former price is genuine,
27 the bargain being advertised is a true one. If, on the other hand, the former price
28 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.

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

8 (c) The following is an example of a price comparison based on a fictitious former
9 price. John Doe is a retailer of Brand X fountain pens, which cost him \$5 each. His
10 usual markup is 50 percent over cost; that is, his regular retail price is \$7.50. In
11 order subsequently to offer an unusual “bargain,” Doe begins offering Brand X at
12 \$10 per pen. He realizes that he will be able to sell no, or very few, pens at this
13 inflated price. But he doesn’t care, for he maintains that price for only a few days.
14 Then he “cuts” the price to its usual level—\$7.50—and advertises: “Terrific
15 Bargain: X Pens, Were \$10, Now Only \$7.50!” *This is obviously a false claim*. The
16 advertised “bargain” is not genuine.

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

23 48. The FTCA also prohibits the pricing scheme employed by Defendant
24 regardless of whether the product advertisements and representations use the words
25 “regular,” “original,” or “former” price. Under 16 C.F.R. § 233.1:
26

27 (e) If the former price is set forth in the advertisement, *whether accompanied or*
28 *not* by descriptive terminology such as “Regularly,” “Usually,” “Formerly,” etc.,
the advertiser should make certain that the former price is not a fictitious one. If the
former price, or the amount or percentage of reduction, is not stated in the
advertisement, as when the ad merely states, “Sale,” the advertiser must take care
that the amount of reduction is not so insignificant as to be meaningless. It should
be sufficiently large that the consumer, if he knew what it was, would believe that
a genuine bargain or saving was being offered. An advertiser who claims that an
item has been “Reduced to \$9.99,” when the former price was \$10, is misleading

1 the consumer, who will understand the claim to mean that a much greater, and not
2 merely nominal, reduction was being offered.

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

5
6 [Retailers] should not represent that they are selling at “factory” prices when they
7 are not selling at the prices paid by those purchasing directly from the manufacturer.

8 ...

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

12 **G. Class Action Allegations**

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

16
17 **California Class:**

18 All persons in California who purchased one or more items from
19 www.GardenofLife.com, during the Class Period, at a discount from a higher
20 reference price.

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

27 52. The “Class Period” is the time period beginning on the date established by
28 the Court’s determination of any applicable statute of limitations, after consideration of

1 any tolling, discovery, concealment, and accrual issues, and ending on the date of entry of
2 judgment.¹⁵

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

7 54. **Numerosity.** The Class is so numerous that joinder of all members in one
8 action is impracticable. The exact number and identities of the members of the Class is
9 unknown to Plaintiff at this time and can only be ascertained through appropriate
10 discovery, but on information and belief, Plaintiff alleges that there are in excess of 5,000
11 members of the Class.

12 55. **Typicality.** Each Plaintiff's claims are typical of those of other members of
13 the Class, all of whom have suffered similar harm due to Defendant's course of conduct
14 as described herein.

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

19 57. **Existence and Predominance of Common Questions of Law or Fact.**
20 Common questions of law and fact exist as to all members of the Class that predominate
21 over any questions affecting only individual members of the Class. These common legal
22 and factual questions, which do not vary among members of the Class, and which may be
23 determined without reference to the individual circumstances of any member of the Class,
24 include, but are not limited to, the following:

25
26
27 ¹⁵ The Class Period begins at minimum 4 years from the date of filing of this action,
28 but based on tolling, may extend beyond that date.

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

26 58. **Superiority.** A class action is superior to other available methods for the fair
27 and efficient adjudication of this controversy because individual litigation of the claims of
28

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

17 59. **Substantial Similarity.** The products at issue in the action are substantially
18 similar in all material respects. Namely, the products were all advertised with a false
19 reference price, a strikethrough reference price, and a false sale price. The products are
20 also all sold by Defendant on the website and fall under the umbrella of vitamins and
21 supplements.
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1 **V. TOLLING OF THE STATUTE OF LIMITATIONS AND DELAYED**
2 **DISCOVERY**

3 60. All applicable statutes of limitations have been tolled by the delayed
4 discovery doctrine. Plaintiff and Class members could not have reasonably discovered
5 Defendant’s practice of running perpetual sales, based on deceptive reference prices and
6 deceptive sale prices, at any time prior to commencing this class action litigation.

7 61. A reasonable consumer viewing the website on multiple occasions would
8 simply believe that a product is currently on sale. Short of visiting and checking the
9 website daily for many months, a reasonable consumer would not suspect that Defendant’s
10 sales and pricing practices were false and misleading. Nor would a reasonable consumer
11 be able to ascertain the market value of the products being sold absent extensive
12 investigation.

13 62. Plaintiff did not learn of Defendant’s deceptive practices alleged herein until
14 shortly before commencing this action and retaining the undersigned counsel.

15 63. As a result, any and all applicable statutes of limitations otherwise applicable
16 to the allegations herein have been tolled.

17 **FIRST CAUSE OF ACTION**

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

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

21 64. Plaintiff restates the preceding allegations as if set forth herein.

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

26 ***Fraudulent***

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

3 67. Reasonable consumers are likely to be deceived by Defendant’s conduct as
4 alleged above. Defendant affirmatively misrepresented the reference prices of products
5 which, in turn, misled and deceived consumers into believing that they were buying
6 products at discounted prices. Defendant’s deceptive marketing gave consumers the false
7 impression that its products were regularly listed or sold on the website for a substantially
8 higher price. Additionally, and in the alternative, Defendant’s deceptive marketing gave
9 consumers the false impression that its products were worth the reference price in the
10 marketplace.

11 68. Defendant’s representations that its products were on sale, that the sale was
12 limited in time, that the products had a specific former and regular price, and that
13 consumers were receiving discounts, were false and misleading.

14 69. Defendant had a duty to disclose the truth about its pricing deception,
15 including that the reference prices advertised on its website were not, in fact, prices at
16 which Defendant’s items were listed or sold on the website in the recent past for a
17 reasonably substantial period of time, but in truth, the products never (or rarely) were
18 offered or sold at the reference prices. Reasonable consumers were likely to be deceived
19 by this material omission.

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

23 71. Defendant’s representations were materially misleading to Plaintiff and other
24 reasonable consumers. Consumers are heavily influenced by price, including price
25 reductions of purported limited duration, as employed by Defendant.

26 72. Plaintiff relied on Defendant’s misleading representations and omissions, as
27 detailed above, believing that she was receiving a genuine discount of limited duration
28

1 from a prevailing and genuine regular and former price, and that the product was valued
2 in the market at the reference price.

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

7 74. Had the omitted information been disclosed, Plaintiff would have been aware
8 of it and reasonably would have behaved differently. Among other things, Plaintiff would
9 not have purchased the item she purchased from Defendant, or, at minimum, would not
10 have paid as much as she did.

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

13 ***Unfairness***

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

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

22 78. Defendant’s conduct was and continues to be of no benefit to reasonable
23 consumers. It is misleading, unfair, unlawful, and is injurious to consumers. It is also
24 against public policy, as it harms fair competition. For example, the federal Lanham Act
25 includes prohibitions on “commercial advertising or promotion” that “misrepresents the
26 nature, characteristics, qualities, or geographic origin of his or her or another person’s
27 goods, services, or commercial activities.” 41 U.S.C. § 1125(a). Similarly, the FTCA and
28

1 implementing regulations prohibit advertising a former price “for the purpose of
2 establishing a fictitious [] price on which a deceptive comparison might be based” (16
3 C.F.R. § 233.1) and prohibit “offer[ing] an advance sale under circumstances where they
4 do not in good faith expect to increase the price at a later date” (16 C.F.R. § 233.5).
5 Defendant is siphoning sales away from sellers who compete fairly on price and do not
6 promote fake former prices and fake sales of limited duration. Further, there is no benefit
7 to consumers who pay a sale price that is actually a regular price.

8 79. The harm to Plaintiff and members of the California Class outweighs the
9 utility of Defendant’s practices. There were reasonably available alternatives to further
10 Defendant’s legitimate business interests, other than the unfair conduct described herein.

11 80. As a result of Defendant’s unfair business acts and practices, Defendant has
12 and continues to unfairly obtain money from Plaintiff and members of the proposed Class.

13 ***Unlawful***

14 81. A cause of action may be brought under the “unlawful” prong of the UCL if
15 a practice violates another law. Such action borrows violations of other laws and treats
16 these violations as unlawful practices independently actionable under the UCL.

17 82. By engaging in false advertising, as well as the false, deceptive, and
18 misleading conduct alleged above, Defendant engaged in unlawful business acts and
19 practices in violation of the UCL, including violations of state and federal laws and
20 regulations. Specifically, as detailed herein, Defendant violated 16 C.F.R. §§ 233.1 and
21 233.5, and California Business & Professions Code section 17501.

22 * * *

23 83. In the alternative to those claims seeking remedies at law, Plaintiff and class
24 members allege that there is no plain, adequate, and complete remedy that exists at law to
25 address Defendant’s unlawful and unfair business practices. The legal remedies available
26 to Plaintiff are inadequate because they are not “equally prompt and certain and in other
27 ways efficient” as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214
28

1 (1937); *see also United States v. Bluit*, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct. 6, 1992)
2 (“The mere existence’ of a possible legal remedy is not sufficient to warrant denial of
3 equitable relief.”); *Quist v. Empire Water Co.*, 2014 Cal. 646, 643 (1928) (“The mere fact
4 that there may be a remedy at law does not oust the jurisdiction of a court of equity. To
5 have this effect, the remedy must also be speedy, adequate, and efficacious to the end in
6 view ... It must reach the whole mischief and secure the whole right of the party in a
7 perfect manner at the present time and not in the future.”). For example, equitable claims
8 may be tried by the court, whereas legal claims are tried by jury, and the need for a jury
9 trial may result in delay and additional expense. Additionally, unlike damages, the Court’s
10 discretion in fashioning equitable relief is very broad and can be awarded in situations
11 where the entitlement to damages may prove difficult. *Cortez v. Purolator Air Filtration*
12 *Products Co.*, 23 Cal.4th 163, 177-180 (2000) (restitution under the UCL can be awarded
13 “even absent individualized proof that the claimant lacked knowledge of the overcharge
14 when the transaction occurred.”). Thus, restitution would allow recovery even when
15 normal consideration associated with damages would not. *See, e.g., Fladeboe v. Am. Isuzu*
16 *Motors Inc.*, 150 Cal. App. 4th 42, 68 (2007) (noting that restitution is available even in
17 situations where damages may not be available). Furthermore, the standard, showing, and
18 necessary elements for a violation of the UCL “unlawful” and “unfair” prongs are different
19 from those that govern legal claims.

20 84. Plaintiff, on behalf of herself and the members of the Class, seeks restitution
21 and restitutionary disgorgement of all moneys received by Defendant through the conduct
22 described above.

23 85. Plaintiff, on behalf of herself and the members of the Class, seeks an
24 injunction from this Court prohibiting Defendant from engaging in the patterns and
25 practices described herein, including putting a stop to the deceptive advertisements and
26 false reference prices in connection with the sale of products on the website. Plaintiff and
27
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1 class members are entitled to injunctive relief. On information and belief, the
2 dissemination of Defendant’s false and misleading advertising is ongoing.

3 **SECOND CAUSE OF ACTION**

4 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW, CAL. BUS. &**
5 **PROF. CODE § 17500, et seq.**

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

7 86. Plaintiff restates the preceding allegations as if set forth herein.

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

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

18
19 For the purpose of this article the worth or value of any thing advertised is the
20 prevailing market price, wholesale if the offer is at wholesale, retail if the offer is
21 at retail, at the time of publication of such advertisement in the locality wherein the
advertisement is published.

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

26
27 89. As used in Cal Bus. & Prof. Code § 17501:
28

- 1 ● The term “prevailing market price” refers to the “retail [price] if the offer is
2 at retail.” *Id.*
- 3 ● The term “advertised thing” refers to the exact same product offered—*not* an
4 equivalent or similar product. *People v. Superior Ct. (J.C. Penney Corp.)*,
5 34 Cal. App. 5th 376, 412 (2019) (“if the advertisement specifies a precise
6 item—say, by reference to name, brand, or other distinctive features . . . the
7 market and therefore the market price is potentially determined on the basis
8 of sales of *that item only.*”) (emphasis added).
- 9 ● The term “‘former price’ . . . includes but is not limited to the following words
10 and phrases when used in connection with advertised prices; ‘formerly—,’
11 ‘regularly—,’ ‘usually—,’ ‘originally—,’ ‘reduced from __,’ ‘was __ now
12 __,’ ‘__% off.’” 4 Cal. Code Regs., § 1301.
- 13 ● The “the three-month period is properly construed as a ‘*rolling*’ period, that
14 is, one whose beginning and end changes each day, thus requiring a *daily*
15 *recalculation* of the prevailing market price during the three-month period.”
16 *People v. Superior Ct. (J.C. Penney Corp.)*, 34 Cal. App. 5th 376, 416 n.26
17 (2019) (emphasis added).

18 90. Defendant violated Cal Bus. & Prof. Code § 17500.

19 91. Defendant violated Cal Bus. & Prof. Code § 17501.

20 92. As explained above, Defendant advertised false and misleading reference
21 prices for the products on the website, including to Plaintiff. Defendant rarely, if ever,
22 offered products on the website at the reference prices within the three months
23 immediately preceding the publication of the reference prices. Additionally, the reference
24 prices shown were not the prevailing market prices for the products in the three months
25 immediately preceding the publication.

26 93. Defendant did not verify that the advertised reference prices were the
27 prevailing market prices within the preceding three months. On information and belief,
28 Defendant had no policies or procedures to verify and update the reference prices on a
daily basis.

1 94. Defendant’s deceptive marketing practice gave consumers the false
2 impression that their products were regularly offered and sold for a substantially higher
3 price in the recent past than they were and, thus, led to the false impression that
4 Defendant’s products were worth more than they were.

5 95. Defendant knew that its advertised reference prices for the products sold on
6 its website were untrue and/or misleading. Defendant knew that such products had rarely,
7 if ever, been offered or sold on the website at the reference prices.

8 96. As a direct and proximate result of Defendant’s misleading and false
9 advertisements, Plaintiff and members of the Class have suffered injury in fact and have
10 lost money. Plaintiff requests restitution and an injunction prohibiting Defendant from
11 continuing its false and misleading advertising practices in violation of California law in
12 the future.

13 97. Plaintiff and Class members are entitled to injunctive relief. On information
14 and belief, the dissemination of Defendant’s false and misleading advertising is ongoing.

15 98. In the alternative to those claims seeking remedies at law, Plaintiff and Class
16 members allege that there is no plain, adequate, and complete remedy that exists at law to
17 address Defendant’s unlawful and unfair business practices. The legal remedies available
18 to Plaintiff are inadequate because they are not “equally prompt and certain and in other
19 ways efficient” as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214
20 (1937); *see also United States v. Bluit*, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct. 6, 1992)
21 (“The mere existence’ of a possible legal remedy is not sufficient to warrant denial of
22 equitable relief.”); *Quist v. Empire Water Co.*, 2014 Cal. 646, 643 (1928) (“The mere fact
23 that there may be a remedy at law does not oust the jurisdiction of a court of equity. To
24 have this effect, the remedy must also be speedy, adequate, and efficacious to the end in
25 view ... It must reach the whole mischief and secure the whole right of the party in a
26 perfect manner at the present time and not in the future.”). For example, equitable claims
27 may be tried by the court, whereas legal claims are tried by jury, and the need for a jury
28

1 trial may result in delay and additional expense. Additionally, unlike damages, the Court's
2 discretion in fashioning equitable relief is very broad and can be awarded in situations
3 where the entitlement to damages may prove difficult. *Cortez v. Purolator Air Filtration*
4 *Products Co.*, 23 Cal.4th 163, 177-180 (2000) (restitution under the UCL can be awarded
5 "even absent individualized proof that the claimant lacked knowledge of the overcharge
6 when the transaction occurred."). Thus, restitution would allow recovery even when
7 normal consideration associated with damages would not. *See, e.g., Fladeboe v. Am. Isuzu*
8 *Motors Inc.*, 150 Cal. App. 4th 42, 68 (2007) (noting that restitution is available even in
9 situations where damages may not be available). Furthermore, the standard, showing, and
10 necessary elements for a violation of the FAL under Cal Bus. & Prof. Code § 17501 are
11 different from those that govern legal claims.

12 **THIRD CAUSE OF ACTION**

13 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,** 14 **CAL. CIV. CODE § 1750, et seq.** 15 **(On Behalf of the California Class)**

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

17 100. The Consumer Legal Remedies Act, Cal. Civ. Code sections 1750 *et seq.* (the
18 "CLRA"), is a California consumer protection statute which allows plaintiffs to bring
19 private civil actions for "unfair methods of competition and unfair or deceptive acts or
20 practices undertaken by any person in a transaction . . . which results in the sale or lease
21 of goods or services to any consumer." Cal. Civ. Code § 1770(a).

22 101. Plaintiff and each member of the Class are "consumers" as defined by
23 California Civil Code section 1761(d). Defendant's sale of products on the website to
24 Plaintiff and the Class were "transactions" within the meaning of California Civil Code
25 section 1761(e). The products purchased by Plaintiff and the class are "goods" within the
26 meaning of California Civil Code section 1761(a).

1 102. Defendant violated and continues to violate the CLRA by engaging in the
2 following practices prohibited by California Civil Code section 1770(a) in transactions
3 with Plaintiff and the Class which were intended to result in, and did result in, the sale of
4 Defendant's products:

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

13 103. Regarding section 1770(a)(13), Defendant made false or misleading
14 statements of fact concerning the "existence of" and the "amounts of price reductions"
15 because (a) no true price reductions existed as Defendant's products were rarely, if ever,
16 offered for sale and/or sold *on the website* at the higher reference prices, let alone in the
17 recent past on a regular basis, (b) the advertised reference prices are not prevailing market
18 prices because, on information and belief, the products were not predominantly offered or
19 sold in the market at the reference prices for a reasonably substantial period of time in the
20 recent past, and (c) Defendant falsely represents the products as on sale for limited time
21 when in truth the sale never expires or is immediately followed by a similar sale.

22 104. Regarding sections 1770(a)(9), (7), and (5), Defendant advertised products
23 on the website with the "intent not to sell" them as advertised and misrepresented product
24 characteristics and standards because, as explained herein, (a) the false reference prices
25 on the website misled and continue to mislead customers into believing (i) the products
26 were previously offered for sale and/or sold *on the website* at the higher reference prices
27 on a regular basis for a reasonably substantial period of time in the recent past, and (ii)
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1 were valued in the market at the advertised “regular” price, and (b) Defendant falsely
2 represents the products as on sale for limited time when in truth the sale never expires or
3 is immediately followed by a similar sale.

4 105. In addition, Defendant had a duty to conspicuously disclose the truth about
5 its pricing deception, including that the reference prices advertised on the website were
6 not prices at which Defendant’s items were listed or sold on the website in the recent past
7 on a regular basis for a reasonably substantial period of time, and in truth, Defendant’s
8 products are typically not offered or sold on the website (and/or in the marketplace) at the
9 advertised reference prices. Defendant also failed to disclose that the expiration of any
10 given sale would be followed by a substantially equivalent sale. Reasonable consumers
11 were likely to be deceived by Defendant’s failure to disclose material information.

12 106. Plaintiff and the Class reasonably relied on Defendant’s representations.
13 Absent Defendant’s misrepresentations, Plaintiff and the Class would not have purchased
14 the items they purchased from Defendant, or, at the very least, they would not have paid
15 as much for the items as they did. Plaintiff and the Class’s reliance was a substantial factor
16 in causing them harm.

17 107. Had the omitted information been disclosed, Plaintiff and the Class
18 reasonably would have been aware of it and behaved differently. Among other things,
19 Plaintiff and the Class would not have purchased the items they purchased from Defendant
20 or, at the very least, would not have paid as much for the items as they did.

21 108. Plaintiff, through counsel, is providing notice to Defendant pursuant to Cal.
22 Civ. Code § 1782(a) via certified mailing on October 28, 2024. As such, Plaintiff claims
23 no damages pursuant to this count, but will timely amend this Complaint after expiration
24 of the response period to seek money damages and punitive damages under the CLRA.
25 At this time, Plaintiff seeks only injunctive or other equitable relief under the CLRA as
26 described above.

1 **FOURTH CAUSE OF ACTION**

2 **FRAUD (INTENTIONAL MISREPRESENTATION AND OMISSION)**

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

4 109. Plaintiff restates the preceding allegations as if set forth herein.

5 110. Plaintiff pleads this claim under California law.

6 111. Defendant made false or misleading statements of fact concerning the
7 existence of and the amounts of price reductions because, as explained herein, (a) the
8 reference prices advertised on the website misled and continue to mislead customers into
9 believing the products were previously offered for sale and/or sold *on the website* at the
10 higher reference prices on a regular basis for a reasonably substantial period of time, and
11 (b) Defendant falsely represents the products as on sale for limited time when in truth the
12 sale never expires or a new substantially equivalent sale is promptly instituted after the
13 expiration of an existing sale.

14 112. Defendant had a duty to conspicuously disclose the truth about its pricing
15 deception, including that (1) the reference prices advertised and published on the website
16 were not prices at which Defendant's items had been offered and/or sold on the website
17 in the recent past on a regular basis for a reasonably substantial period of time, (2)
18 Defendant's products rarely (if ever) were offered or sold anywhere at the advertised
19 reference prices on a regular basis for a reasonably substantial period of time, and (3) the
20 expiration of any given sale would be followed by a substantially equivalent sale.

21 113. Defendant knew that its representations were false when made, or at the very
22 least, were made recklessly and without regard for their truth. Defendant knew that the
23 items Plaintiff and the Class purchased had rarely, if ever, been offered or sold on the
24 website (and/or in the marketplace) at the substantially higher reference price in the recent
25 past.

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

3 115. Defendant's conduct was made with the intent to maximize its profits at the
4 detriment of reasonable consumers.

5 116. Plaintiff and the Class reasonably relied on Defendant's representations.
6 Absent Defendant's misrepresentations, Plaintiff and the Class would not have purchased
7 the items they purchased from Defendant, or, at the very least, they would not have paid
8 as much for the items as they ultimately did. Plaintiff and the Class's reliance was a
9 substantial factor in causing them harm.

10 117. Had the omitted information been disclosed, Plaintiff and the Class
11 reasonably would have behaved differently. Among other things, they would not have
12 purchased the items they purchased from Defendant or, at the very least, would not have
13 paid as much for the items as they ultimately did.

14 118. As a direct and proximate result of the above, Plaintiff and the Class have
15 suffered damages in an amount to be proven at trial.

16 119. Plaintiff and the Class are also entitled to punitive or exemplary damages.
17 Defendant, through its senior executives and officers, undertook the illegal acts
18 intentionally or with conscious disregard of the rights of Plaintiff and the Class, and did
19 so with fraud, malice, and/or oppression. Based on the allegations above, Defendant's
20 actions were fraudulent because Defendant intended to and did deceive and injure Plaintiff
21 and the Class. Based on the allegations above, Defendant's conduct was made with malice
22 because Defendant acted with the intent to and did cause injury to Plaintiff and the Class,
23 and because Defendant willfully and knowingly disregarded the rights of Plaintiff and the
24 Class.

1 **FIFTH CAUSE OF ACTION**

2 **UNJUST ENRICHMENT/QUASI-CONTRACT**

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

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

5 121. Plaintiff pleads this claim under California law and in the alternative to her
6 remaining claims.

7 122. California law permits a standalone claim for unjust enrichment, allowing the
8 court to construe the cause of action as a quasi-contract claim. *Astiana v. Hain Celestial*
9 *Group, Inc.*, 783 F.3d 753, 756 (9th Cir. 2015).

10 123. California law recognizes a right to disgorgement of profits resulting from
11 unjust enrichment, even where an individual has not suffered a corresponding loss. *In re*
12 *Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 599 (9th Cir. 2020).

13 124. California law requires disgorgement of unjustly earned profits regardless of
14 whether a defendant's actions caused a plaintiff to directly expend his or her own financial
15 resources or whether a defendant's actions directly caused the plaintiff's property to
16 become less valuable.

17 125. Under California law, a stake in unjustly earned profits exists regardless of
18 the plaintiff's actual loss.

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

25 127. Plaintiff and members of the Class also conferred a monetary benefit on
26 Defendant in the form of Defendant's profits generated by the deceptive marketing
27 scheme. Defendant profited from inappropriately and artificially inflated prices.
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1 128. On behalf of the Class, Plaintiff seeks restitution from Defendant and an
2 order disgorging all deceptively obtained payments and profits.

3 129. Plaintiff and the Class seek this equitable remedy because their legal
4 remedies are inadequate. An unjust enrichment theory provides the equitable
5 disgorgement of profits even where an individual has not suffered a corresponding loss in
6 the form of money damages.

7 **SIXTH CAUSE OF ACTION**

8 **NEGLIGENT MISREPRESENTATION**

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

10 130. Plaintiff restates the preceding allegations as if set forth herein.

11 131. Plaintiff pleads this claim under California law.

12 132. Defendant made false or misleading statements of fact concerning the
13 existence of and the amounts of price reductions because, as explained herein, (a) the false
14 reference prices on the website misled and continue to mislead customers into believing
15 the products were previously offered for sale and/or sold *on the website* at the higher
16 reference prices on a regular basis for a reasonably substantial period of time, and (b)
17 Defendant falsely represents the products as on sale for limited time when in truth a new
18 substantially equivalent sale is promptly instituted after the expiration of an existing sale
19 or the sale never expires.

20 133. Defendant had a duty to conspicuously disclose the truth about its pricing
21 deception, including that (1) the reference prices advertised and published on the website
22 were not prices at which Defendant's items had been offered and/or sold on the website
23 in the recent past on a regular basis for a reasonably substantial period of time, (2)
24 Defendant's products rarely (if ever) were offered or sold anywhere at the advertised
25 reference prices on a regular basis for a reasonably substantial period of time, and (3) the
26 expiration of any given sale would be followed by a substantially equivalent sale.

1 134. Defendant knew or should have known that its representations were false
2 when made. Defendant knew that the items Plaintiff and the Class purchased had rarely,
3 if ever, been offered or sold on the website at the substantially higher reference price in
4 the recent past. Defendant knew its sales were falsely advertised as being of limited
5 duration. And Defendant knew or should have known that the reference prices were not
6 the prevailing market prices.

7 135. Defendant had no good faith or reasonable basis to believe that its
8 representations were true when made.

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

13 137. Defendant engaged in this fraud to the Plaintiff and the Class's detriment to
14 increase Defendant's own sales and profits.

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

20 139. Had the omitted information been disclosed, Plaintiff and the Class
21 reasonably would have behaved differently. Among other things, they would not have
22 purchased the items they purchased from Defendant or, at the very least, would not have
23 paid as much for the items as they did.

24 140. As a direct and proximate result of the above, Plaintiff and the Class have
25 suffered damages in an amount to be proven at trial.

26 **PRAYER FOR RELIEF**

1 WHEREFORE, Plaintiff, individually and on behalf of the proposed Class,
2 respectfully prays for following relief:

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

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff, individually and on behalf of the proposed Class, demand a trial by jury
21 for all claims so triable.

22 Dated: October 30, 2024

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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