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

TIFFANY TRAN and KASANDRA HILL,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

NOOD VENTURES LLC and DOES 1–10,

Defendant.

**Civil Action No.:**

**CLASS ACTION COMPLAINT FOR  
DAMAGES**

**ACTION SEEKING STATEWIDE OR  
NATIONWIDE RELIEF**

**DEMAND FOR JURY TRIAL**

Plaintiffs Tiffany Tran and Kasandra Hill, individually and on behalf of all others similarly situated, bring this Class Action Complaint against Defendant Nood Ventures LLC (“Defendant” or “Nood”) and make the following allegations based upon information and belief, except as to allegations specifically pertaining to Plaintiffs, which are based on personal knowledge.

**NATURE OF THE ACTION**

1. This is a case concerning deceptive representations and omissions made by Defendant because of its misleading and unlawful pricing, sales, and discounting practices on its websites, which directly violate California a California statute and as a result deceive the reasonable consumer.

2. Defendant Nood sells and markets skin care and hair removal products online through the Nood website, trynood.com/.

1           3.       The products at issue are all goods that have been offered at any time on Nood's  
2 website, at a sale or discounted price from a supposedly higher reference price displayed to the  
3 consumers in the product ad, where that higher price was not actually offered in compliance with  
4 the law (the "Products").

5           4.       Defendant's website lists various items on sale or discount, and picture a stricken  
6 purported former or prevailing market price next to the current supposed "sale" price. However, the  
7 former or prevailing market price listed next to the sales price is not actually the former or prevailing  
8 market price at which the product was sold in the previous three months. Instead, it is a false or  
9 inflated price used to trick consumers into believing they are receiving a discount on their purchase.  
10 It is false because the item has not been listed for sale or sold on the website in the previous three  
11 months at the listed former price.

12           5.       Section 17500 of California's False Advertising Law prohibits businesses from  
13 making statements they know or should know to be untrue or misleading. Cal. Bus. & Prof. Code §  
14 17500. This includes statements falsely suggesting that a product is on sale, when it actually is not.

15           6.       Section 17501 of California's False Advertising Law provides that "[n]o price shall  
16 be advertised as a former price ... unless the alleged former price was the prevailing market price  
17 ... within three months next immediately preceding" the advertisement. Cal. Bus. & Prof. Code §  
18 17501. Therefore, the statute specifically prohibits this type of fake discount, where the advertised  
19 former price is not the prevailing price during the specified timeframe.

20           7.       Upon investigation, all or nearly all of the reference higher prices on the website are  
21 false and misleading. They are not former or prevailing market prices at which the products were  
22 offered on the websites during the previous three (3) months.

23           8.       Plaintiffs—like other customers across the United States—fell prey to Defendant's  
24 false, deceptive, and misleading discount scheme. As a result, Defendant has earned money selling  
25 products at misrepresented discounts that do not actually exist.

26           9.       When purchasing the Products, Plaintiffs relied on Defendant's misrepresentations  
27 that the Products were on sale and were previously sold at the former strikethrough price listed next  
28 to the sale price. However, these products were not actually sold at the former or regular price listed

1 on the website within the previous three months before the purchase. Therefore, the discount was  
2 false.

3 10. Defendant's conduct violated and continues to violate the California Unfair  
4 Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*; California's False Advertising  
5 Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, *et seq.*; and the California Consumer Legal  
6 Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.* Defendant's conduct also constitutes  
7 negligent misrepresentation, and has unjustly enriched Defendant by the sale of these Products.

8 11. Accordingly, Plaintiffs bring this civil action to put an end to Defendant's illegal  
9 conduct. Through this class action lawsuit, Plaintiffs seek monetary damages, restitution, and  
10 declaratory and injunctive relief on behalf of the proposed Class.

### 11 **PARTIES**

12 12. Plaintiff Tiffany Tran is a citizen and resident of Irvine, Orange County, California.

13 13. Plaintiff Kasandra Hill is a citizen and resident of Santee, San Diego County,  
14 California.

15 14. Defendant Nood Ventures LLC is a Texas limited liability company with its principal  
16 place of business at 1109 E 5<sup>th</sup> Street, Suite 1301, Austin, Texas 78792. Defendant's member is  
17 Samuel Garst, a resident of Texas. Defendant is an online retailer that sells products in California  
18 and across the United States.

19 15. Defendants Does 1–10 were responsible in some manner for the injuries and damages  
20 caused to Plaintiffs and the Class, but their identities and/or roles are not yet known.  
21

### 22 **JURISDICTION AND VENUE**

23 16. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §  
24 1332(d)(2) because this is a class action in which (1) there are at least 100 members, (2) the matter  
25 in controversy exceeds \$5,000,000 exclusive of interest and costs, and (3) Plaintiffs and members  
26 of the putative Class are citizens of a state that is different from the states in which Defendant is a  
27 citizen.  
28

17. This Court has personal jurisdiction over Defendant because it has contacts with California that are so continuous and systematic that it is essentially at home in this state. Defendant sold Nood products to consumers in California, including Plaintiffs. Defendant regularly conducts and solicits business in California, provides products to persons in California, maintains an interactive commercial website, offers to ship products, and does ship products to California, allows customers in California to order products, and derives substantial revenue from customers in California.

18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' and the Class Members' claims occurred in this District, and Defendant is subject to the Court's personal jurisdiction.

### **BACKGROUND FACTS**

19. Defendant markets and sells skin care and hair removal products on its website.

20. Defendant claims on its website that it is trusted by more than 750,000 customers:



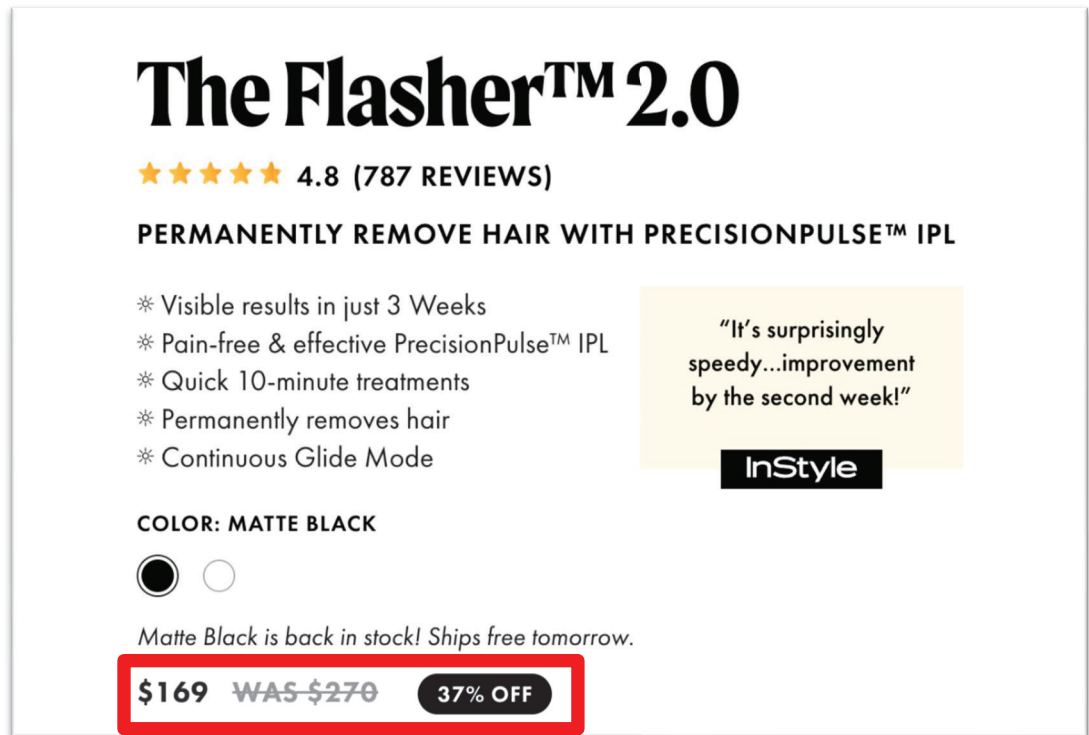
21. Defendant, through its website, has sold hundreds of thousands of units of merchandise to customers in California and nationwide.

#### **I. Nood's Fake Discount Scheme**

22. Defendant creates the false impression that its Products' regular or former prices are higher than they truly are.

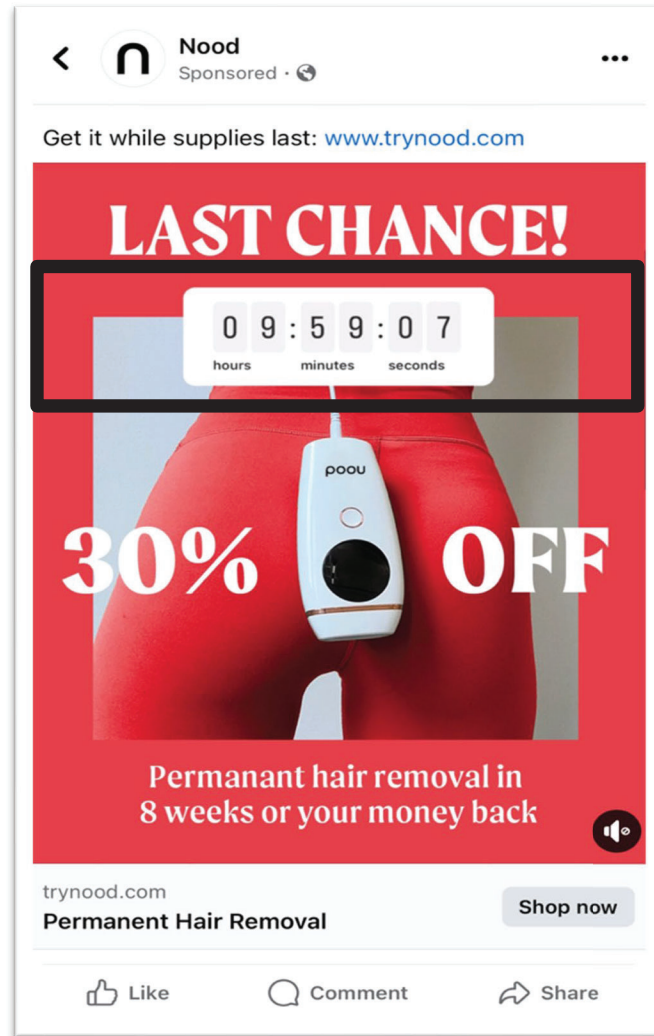
23. On any given day, most if not all products on Defendant's various websites are represented as being discounted from a substantially higher reference price. On individual listing

pages and category listing pages, the supposed mark-downs are represented to consumers by (1) prominently displaying a “crossed-out” or strikethrough reference price next to a sale price, (2) stating “\_\_\_\_% off” adjacent to the higher reference price, and/or (3) depicting the sale price in bold text adjacent to the reference price. Example screenshots are provided below:



24. Defendant also advertises limited-time discounts from former prices. The include, for example, discounts offering “X% off” on the Flasher 2.0 product and “X% off sitewide” for a limited time period—even displaying a count-down clock to induce purchases:

[Image on next page].



25. Far from being time-limited, however, Defendant's discounts are routinely available on the website. These pricing and advertising practices are deceptive and pressure consumers, like Plaintiffs, into purchasing products from Defendant at an inflated price, or that they would not have purchased without the deception. Defendant intends to mislead consumers into believing that they are getting a bargain by buying products from its website on sale and at a substantial and deep discount. For many, if not all products, Defendant did not offer or sell the products on the website

1 at the reference price for the three months immediately preceding the listing of the sale. Therefore,  
2 the reference price is artificially inflated and the advertised discounts are deceiving.

3 26. The above photos are just a few examples from Defendant's website that show how  
4 it consistently lists its false discounts on the website.

5 27. The below sections describe further the types of deceptive sales schemes instituted  
6 by Defendant's on its website.

7 ***A. Plaintiffs Purchased Products that Were Falsely Advertised as Having Discounts***

8 28. On October 15, 2022, Plaintiff Tran purchased a Flasher 2.0 for her personal use  
9 directly from Nood's website at a sales price of \$189, which was advertised as a "sale" from the  
10 original "retail price" with a line striking out "was \$270," with a representation of "30% off" boldly  
11 displayed next to it. She made this purchase while living in Orange County, California.

12 29. On December 24, 2023, Plaintiff Hill purchased a Flasher 2.0 for her personal use  
13 directly from Nood's website at a sales price of \$169, which was advertised as a "sale" from the  
14 original "retail price" with a line striking out "was \$270," with a representation of "37% off" boldly  
15 displayed next to it. She made this purchase while living in San Diego County, California.

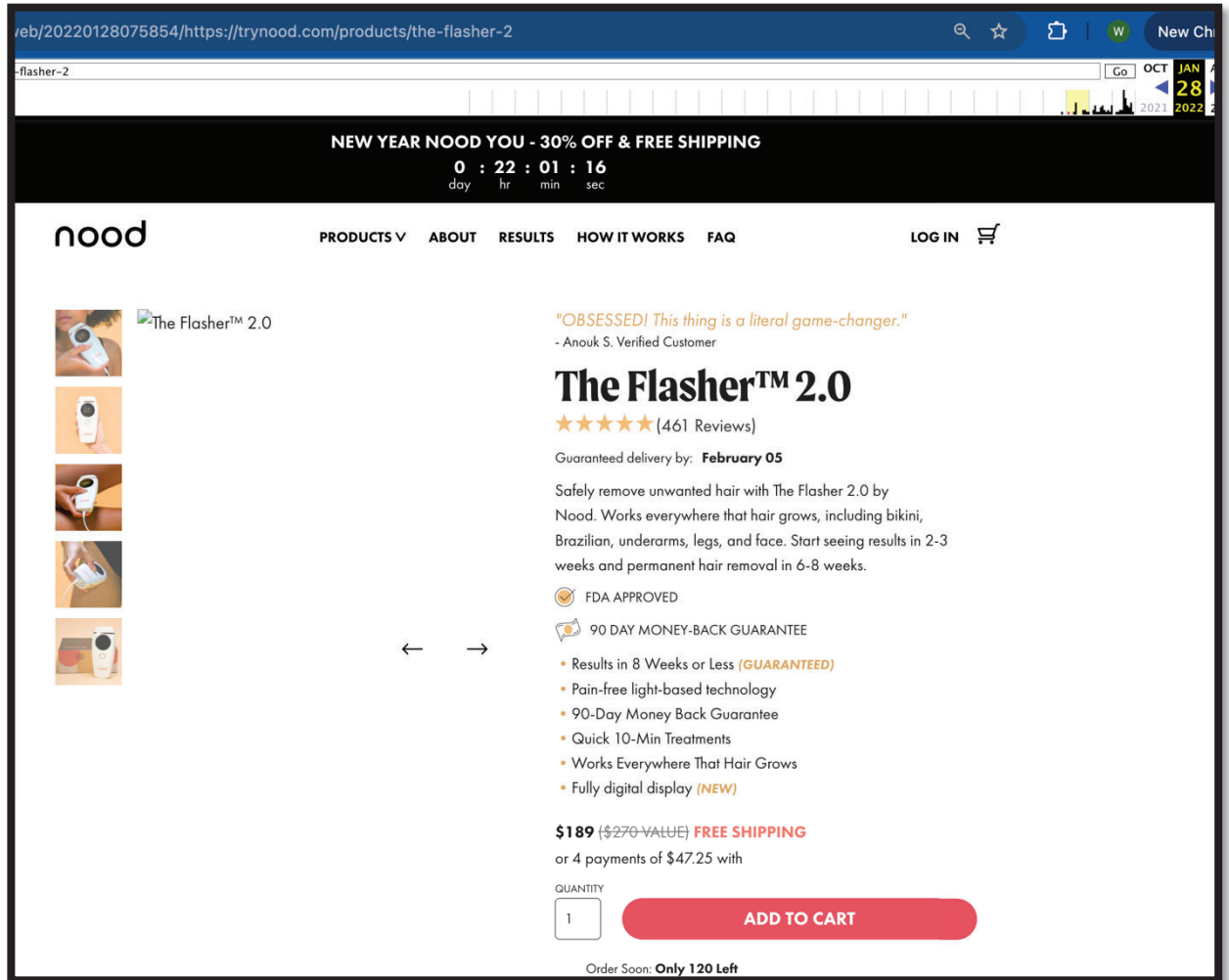
16 30. However, based on historical data of the Product being sold, \$270 has never been the  
17 price, let alone the prevailing price, of the Product.

18 31. At the time Plaintiffs purchased Product, the price of the Product purchased by  
19 Plaintiffs generally hovered between \$159 to \$189 and had remained in that range for at least two  
20 years.

21 32. As evidenced by the images below, Defendant did not list or sell this product for the  
22 \$270 strikethrough reference price for at least the three (3) months prior to Plaintiff Tran's purchase  
23 on October 15, 2022. Below are images from Defendant's website from January 2022 to October  
24 2022:

25 [Images on Next Page].  
26  
27  
28

1 January 28, 2022





April 7, 2022

e-flasher-2

Go JAN APR 07 2021 2022 2

FOR A LIMITED TIME - GET 30% OFF & FREE SHIPPING

10 : 44 : 25  
hr min sec

nood PRODUCTS ▾ ABOUT RESULTS HOW IT WORKS FAQ RETURNS LOG IN

The Flasher™ 2.0

"OBSESSED! This thing is a literal game-changer."  
- Anouk S. Verified Customer

## The Flasher™ 2.0

★★★★★ (461 Reviews)

Guaranteed delivery by: **April 15**

Safely remove unwanted hair with The Flasher 2.0 by Nood. Works everywhere that hair grows, including bikini, Brazilian, underarms, legs, and face. Start seeing results in 2-3 weeks and permanent hair removal in 6-8 weeks.

FDA APPROVED

90 DAY MONEY-BACK GUARANTEE

- Results in 8 Weeks or Less (**GUARANTEED**)
- Pain-free light-based technology
- 90-Day Money Back Guarantee
- Quick 10-Min Treatments
- Works Everywhere That Hair Grows
- Fully digital display (**NEW**)

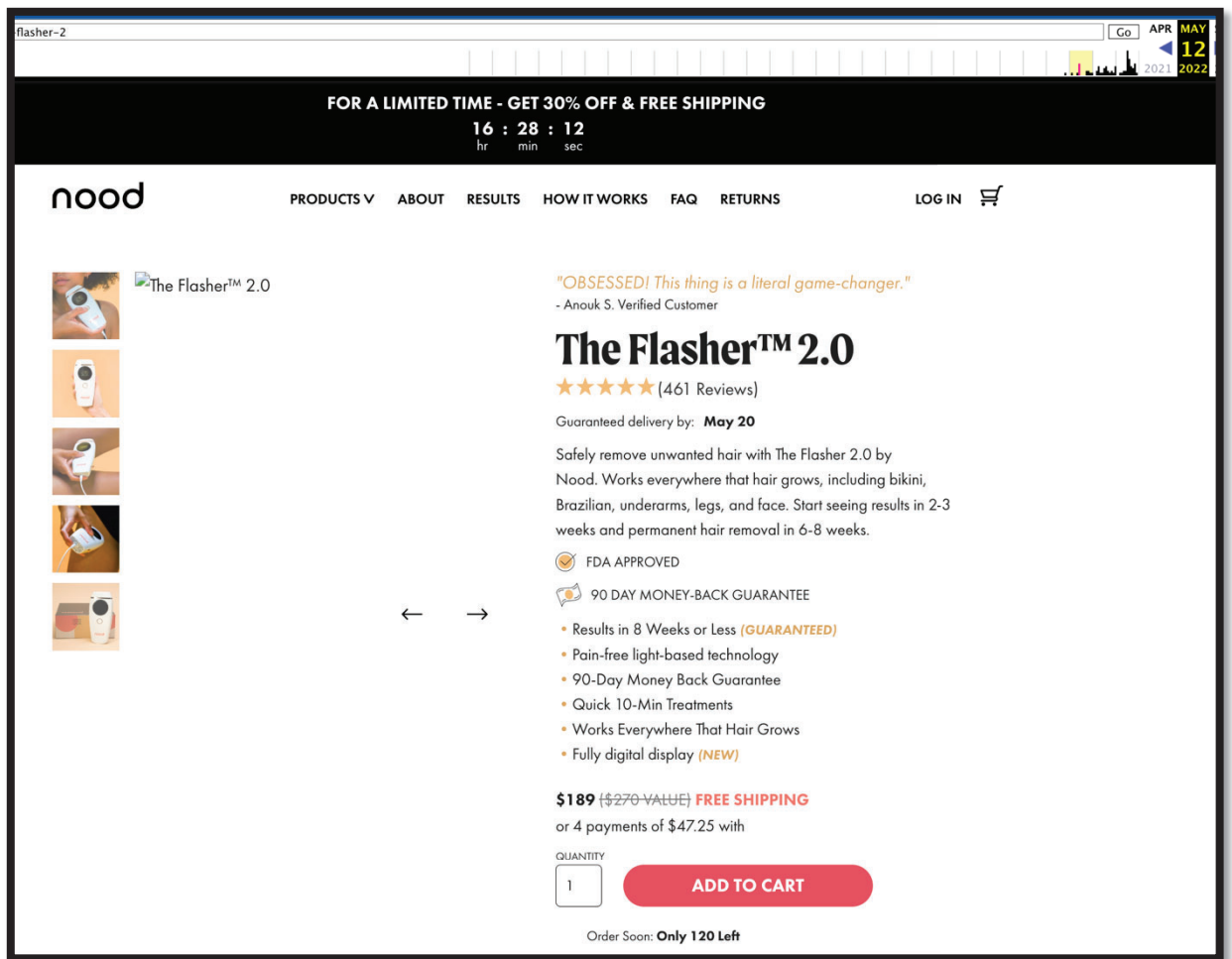
**\$189** (\$270 VALUE) **FREE SHIPPING**  
or 4 payments of \$47.25 with

QUANTITY

**ADD TO CART**

Order Soon: **Only 120 Left**

May 12, 2022



September 13, 2022

The screenshot shows the product page for 'The Flasher™ 2.0' on the Nood website. The page layout includes a navigation bar with links for PRODUCTS, HOW IT WORKS, RESULTS, FAQs, ABOUT, and RETURNS, along with a LOG IN button and a shopping cart icon. The product title 'The Flasher™ 2.0' is prominently displayed, accompanied by a five-star rating from 379 reviews. A customer testimonial quote is featured above the title. The page highlights a guaranteed delivery date of September 21 and describes the device's functionality for hair removal. Key features listed include FDA approval, a 90-day money-back guarantee, and results in 8 weeks or less. The price is shown as \$189, with a free shipping offer and a 30% discount on the cart. A quantity selector and an 'ADD TO CART' button are visible at the bottom of the product section.

com/products/the-flasher-2

Go MAY SEP OCT 13 2021 2022 2023

nood PRODUCTS ▼ HOW IT WORKS RESULTS FAQs ABOUT RETURNS LOG IN

The Flasher™ 2.0

"OBSESSED! This thing is a literal game-changer."  
- Anouk S. Verified Customer

**The Flasher™ 2.0**

★★★★★ (379 Reviews)

Guaranteed delivery by: **September 21**

Safely remove unwanted hair with The Flasher 2.0 by Nood. Works everywhere that hair grows, including bikini, Brazilian, underarms, legs, and face. Start seeing results in 2-3 weeks and permanent hair removal in 6-8 weeks.

FDA APPROVED

90 DAY MONEY-BACK GUARANTEE

- Results in 8 Weeks or Less (**GUARANTEED**)
- Pain-free light-based technology
- 90-Day Money Back Guarantee
- Quick 10-Min Treatments
- Works Everywhere That Hair Grows
- Fully digital display (**NEW**)

**\$189** (\$270 VALUE) **FREE SHIPPING**  
or 4 payments of \$47.25 with

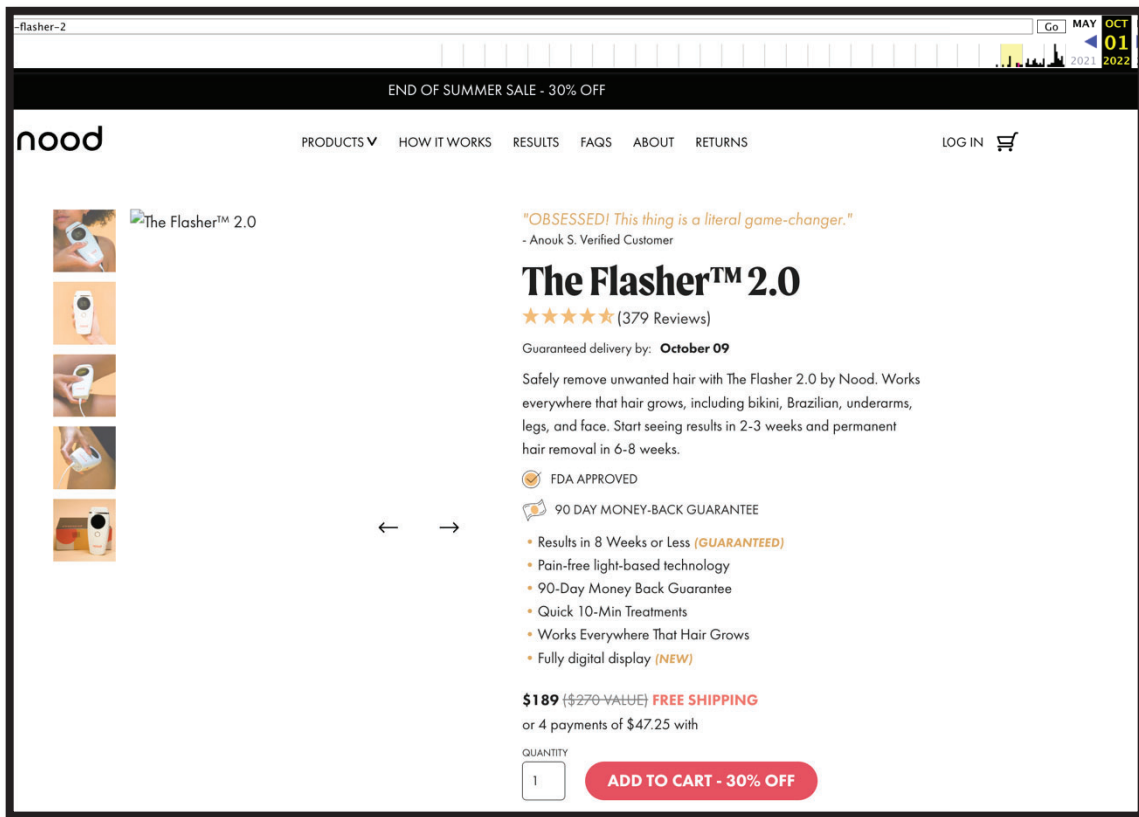
Pay in 4 interest-free installments of \$47.25 with **shop Pay**

[Learn more](#)

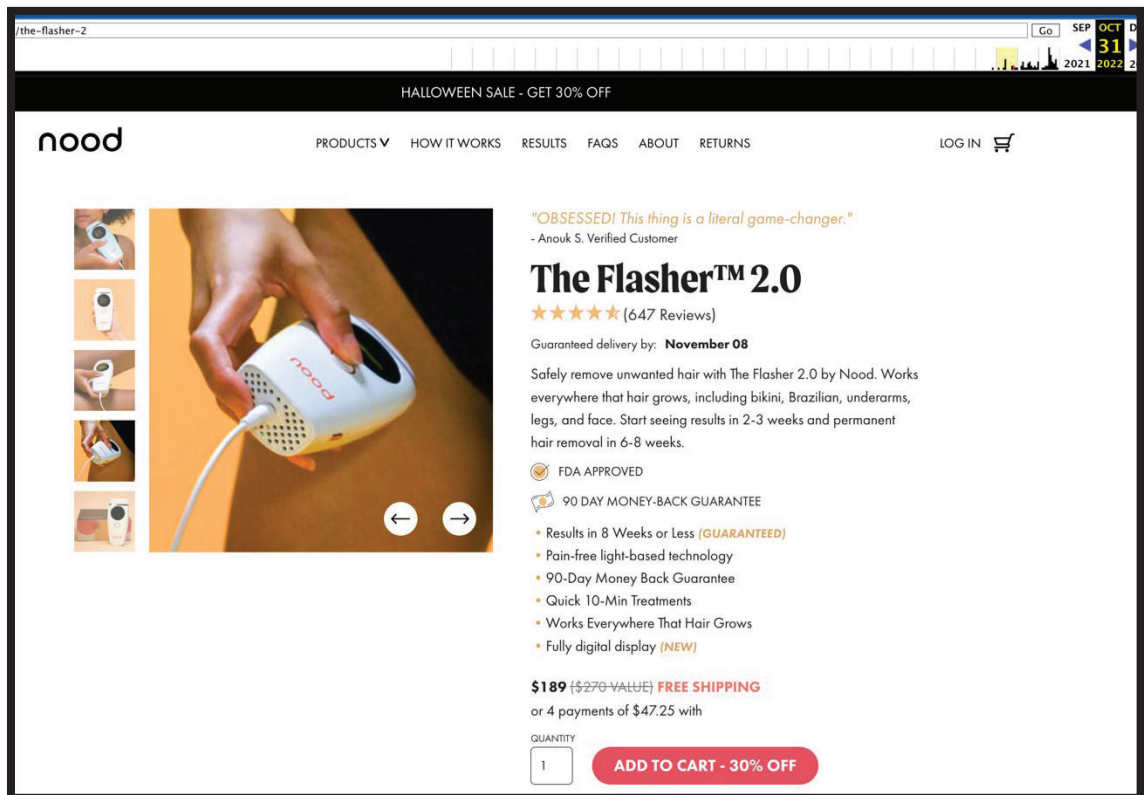
QUANTITY  
1

**ADD TO CART - 30% OFF**

October 1, 2022

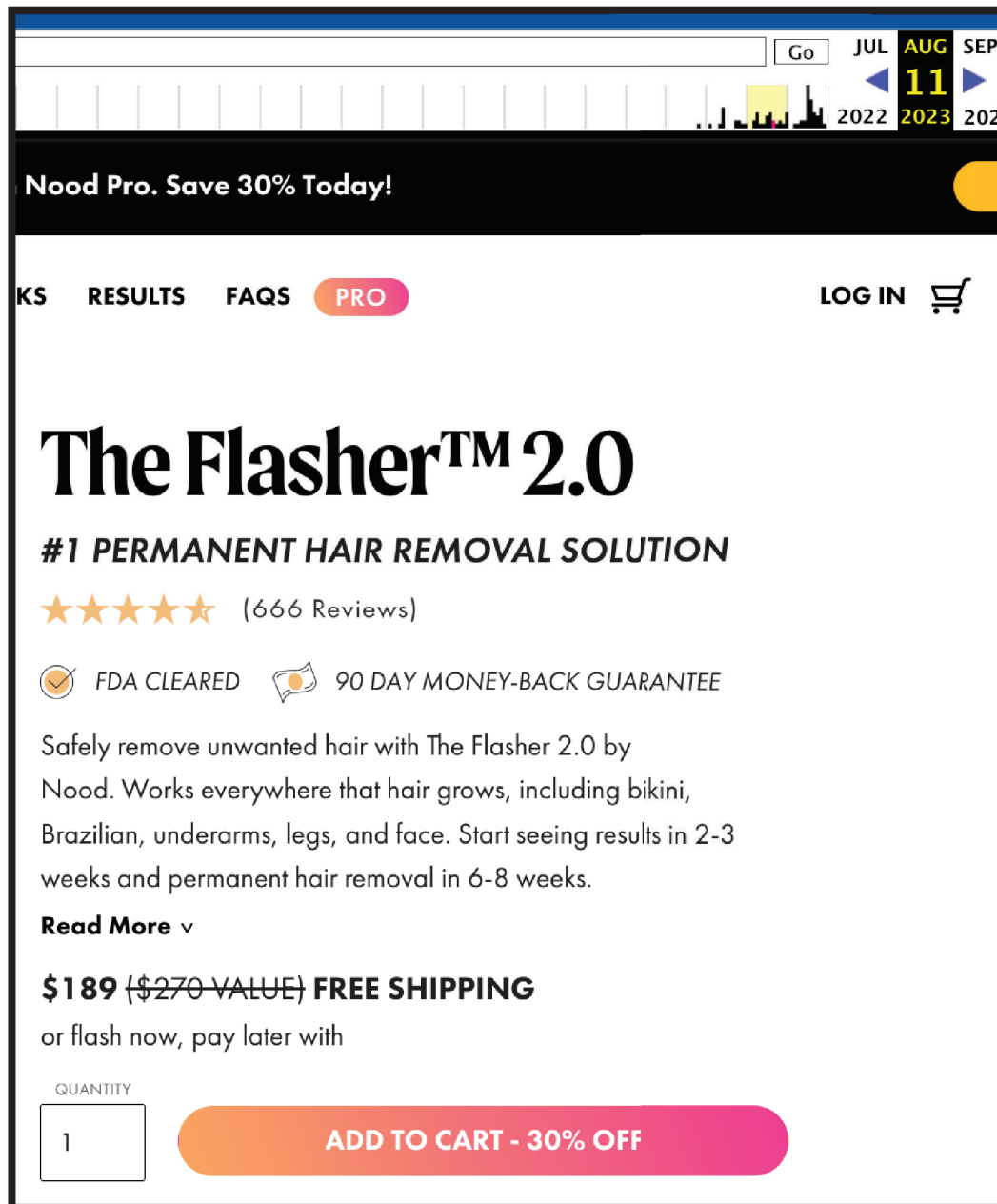


October 31, 2022



33. Defendant also did not list or sell this product for the \$270 strikethrough reference price for at least the three (3) months prior to Plaintiff Hill's purchase on December 24, 2023. Below are images from Defendant's website from August 2023 to December 2023:

August 11, 2023



September 23, 2023

Go AUG SEP 23 2022 2023 20

TRA \$10 OFF BY USING CODE: FLASH10

WORKS RESULTS FAQS PRO LOGIN

# The Flasher™ 2.0

## #1 PERMANENT HAIR REMOVAL SOLUTION

★★★★★ (666 Reviews)

FDA CLEARED 90 DAY MONEY-BACK GUARANTEE

Safely remove unwanted hair with The Flasher 2.0 by Nood. Works everywhere that hair grows, including bikini, Brazilian, underarms, legs, and face. Start seeing results in 2-3 weeks and permanent hair removal in 6-8 weeks.

**Read More** v

**\$189 (\$270 VALUE) FREE SHIPPING**

or flash now, pay later with

QUANTITY

1

**ADD TO CART - 30% OFF**

October 8, 2023

Go AUG OCT NO  
2022 2023 20

**\$10 OFF BY USING CODE: FLASH10**

WORKS RESULTS FAQS PRO LOG IN

# The Flasher™ 2.0

★★★★★ (665 Reviews)

**PERMANENTLY REMOVE HAIR WITH PRECISIONPULSE™ IPL**

- \* Visible results in just 3 Weeks
- \* Pain-free & effective PrecisionPulse™ IPL
- \* Quick 10-minute treatments
- \* Permanently removes hair
- \* Continuous Glide Mode

"It's surprisingly speedy...improvement by the second week!"

**InStyle**

**COLOR: GLOSS WHITE**

**\$189** ~~WAS \$270~~ **30% OFF**

or flash now, pay later with

- 1 + **ADD TO CART**

November 14, 2023

Go OCT NOV 14 2022 2023 2024

AN EXTRA \$20 OFF KITS WITH CODE SENDNOODS

T WORKS RESULTS FAQS LOG IN

# The Flasher™ 2.0

PERMANENTLY REMOVE HAIR WITH PRECISIONPULSE™ IPL

- \* Visible results in just 3 Weeks
- \* Pain-free & effective PrecisionPulse™ IPL
- \* Quick 10-minute treatments
- \* Permanently removes hair
- \* Continuous Glide Mode

"It's surprisingly speedy...improvement by the second week!"

InStyle

COLOR: GLOSS WHITE

\$179 ~~WAS \$270~~ 33% OFF

or flash now, pay later with

- 1 + ADD TO CART

DERMATOLOGIST TESTED LIFETIME FLASH GUARANTEE FDA-CLEARED TECHNOLOGY 90 DAY MONEY-BACK GUARANTEE FREE SHIPPING



December 18, 2023

KS RESULTS FAQS LOG IN

# The Flasher™ 2.0

PERMANENTLY REMOVE HAIR WITH PRECISIONPULSE™ IPL

- \* Visible results in just 3 Weeks
- \* Pain-free & effective PrecisionPulse™ IPL
- \* Quick 10-minute treatments
- \* Permanently removes hair
- \* Continuous Glide Mode

"It's surprisingly speedy...improvement by the second week!"

**InStyle**

COLOR: GLOSS WHITE (LOW STOCK)

☐ ☒

Gloss White is on backorder. Ships free December 18th.

Gloss White - \$169.00 USD ▼

**\$169** ~~WAS \$270~~ **37% OFF**

or flash now, pay later with

- 1 + ADD TO CART

1           34. As evidenced by Defendant's own website, the Nood Flasher 2.0 was not listed or  
2 sold at the strikethrough reference price of \$270 within the three months (and likely longer) prior to  
3 either Plaintiff's purchase. In fact, Defendant instituted a similar discount during the preceding three  
4 months of each purchase, using the same false reference prices.

5           35. Defendant falsely represented that the Product had a certain regular or former price  
6 (the reference price) and that Plaintiffs were receiving a substantial discount. In truth, the Products  
7 Plaintiffs purchased were not substantially marked down or discounted, and any discount they were  
8 receiving was exaggerated.

9           36. Plaintiffs relied on Defendant's representations on the website that the Product was  
10 being offered at a discount and that previously the Product was listed and sold on the website at the  
11 stated reference price. Plaintiffs would not have purchased the Product if they had known the  
12 Product was not discounted as advertised, and that they were not receiving the advertised discount.

13           37. Upon information and belief, Defendant enacts the same false discount scheme with  
14 many, if not all, of the products listed on its website.

15           38. Based on Defendant's numerous advertisements, reasonable consumers would  
16 reasonably believe that the reference prices Defendant advertises are Defendant's former prices (that  
17 is, the price at which the goods were actually offered for sale and sold at before the supposedly  
18 limited time offer went into effect). In other words, reasonable consumers would reasonably believe  
19 that the reference prices Defendant advertises represent the amount that consumers formerly had to  
20 pay for Defendant's goods, before the purportedly limited-time sale began.

21           39. Reasonable consumers would also believe that the reference prices Defendant  
22 advertises represent the true comparison price for the Products, and are the prevailing price for those  
23 Products, and that they are receiving reductions from those regular prices in the amounts advertised.  
24 In truth, however, Defendant persistently offers sales at lower prices and only gives the false  
25 appearance of discounts off the purportedly regular prices it advertises. As a result, Defendant's  
26 price and purported discount advertising is false. The regular prices Defendant advertises are not  
27 actually Defendant's regular or former prices, or the prevailing prices for the Products Defendant  
28 sells, and do not represent the true comparison price for the Products, because Defendant's Products

1 are consistently available for less than that, and customers did not have to formerly pay that amount  
 2 to get those items within the statutory time period, or longer. The purported discounts Defendant  
 3 advertises are not the true discount the customer is receiving, and are often not a discount at all.

4 ***B. The Reference Prices Are Not the Prevailing Market Price of the Products, Including***  
 5 ***During the Rolling 90-day Period Prior to the Offering and/or Purchase***

6 40. Defendant is the manufacturer of the Products, and on information and belief the vast  
 7 majority of the Products are sold by Defendant directly to consumers (at a purportedly discount  
 8 price), on its website.

9 41. Defendant is a direct-to-consumer brand that sells its Products online. As the primary  
 10 seller of the Product, Defendant sets the prevailing market price—most sales are made at  
 11 Defendant’s prices, because Defendant is the one making the sales.

12 42. In short, because the Product is most commonly sold by Defendant on its website, it  
 13 is most commonly sold for the discounted prices that are always available from Defendant. To the  
 14 extent the Products are sold through a third-party seller, the third-party seller’s prices for the Product  
 15 are not the prevailing market price.<sup>1</sup> Upon information and belief, many, if not all, of the Nood  
 16 products that are sold anywhere are sold by Defendant on its website.

17 **II. Research Shows That Reference Price Advertising Influences Consumer Behavior and**  
 18 **Perceptions of Value**

19 43. The effectiveness of Defendant’s deceitful pricing scheme is backed by longstanding  
 20 research.

21 44. “By creating an impression of savings, the presence of a higher reference price  
 22 enhances subjects’ perceived value and willingness to buy the product.”<sup>2</sup> Thus, “empirical studies  
 23 indicate that, as discount size increases, consumers’ perceptions of value and their willingness to

---

24 <sup>1</sup> Plaintiff’s investigation revealed that the Product was also listed on Amazon. On Amazon, as on Nood’s  
 25 own website, the regularly-listed, prevailing market price of the Product in the relevant time period during  
 26 and preceding each Plaintiff’s purchase was far less than Nood’s \$270 reference price, as demonstrated by  
 27 the price-tracking website “Camelcamelcamel” (<https://camelcamelcamel.com/product/B099H8B6SZ?tp=all>).

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

1 buy the product increase, while their intention to search for a lower price decreases.”<sup>3</sup> For this  
 2 reason, the Ninth Circuit in *Hinjos* held that a plaintiff making a claim of deceptive pricing (similar  
 3 to the claim at issue here) had standing to pursue his claim against the Defendant retailer. In doing  
 4 so, the Court observed that “[m]isinformation about a product’s ‘normal’ price is . . . significant to  
 5 many consumers in the same way as a false product label would be.” *Hinojos v. Kohl’s Corp.*, 718  
 6 F.3d 1098, 1106 (9th Cir. 2013).

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

11 46. Further, consumers are more likely to buy the product if they believe that the product  
 12 is on sale and that they are getting a product with a higher regular price and/or market value at a  
 13 substantial discount.

14 47. Consumers that are presented with discounts are substantially more likely to make  
 15 the purchase. “Nearly two-thirds of consumers surveyed admitted that a promotion or a coupon often  
 16 closes the deal, if they are wavering or are undecided on making a purchase.”<sup>6</sup> And, “two-thirds of  
 17 consumers have made a purchase they weren’t originally planning to make solely based on finding  
 18 a coupon or discount,” while “80% [of consumers] said they feel encouraged to make a first-time  
 19 purchase with a brand that is new to them if they found an offer or discount.”<sup>7</sup>

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21 <sup>3</sup> *Id.* at 56.

22 <sup>4</sup> Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Believe It or Not*, J. of Consumer  
 23 Affairs, Vol. 36, No. 2, at 287 (Winter 2002).

24 <sup>5</sup> *Id.*

25 <sup>6</sup> Khalid Saleh, *How Discounts Affect Online Consumer Buying Behavior*, Invesp, June 16, 2024,  
<https://www.invespcro.com/blog/how-discounts-affect-online-consumer-buying-behavior/> (last visited  
 26 September 11, 2024).

27 <sup>7</sup> RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases Online, Especially  
 28 Among Millennial Buyers PR NEWswire (April 25, 2018), <https://www.prnewswire.com/news-releases/retailmenot-survey-deals-and-promotional-offers-drive-incremental-purchases-online-especially-among-millennial-buyers-300635775.html#:~:text=In%2DLanguage%20News->  
 (footnote continued)

1           48. Another academic journal explains that “[r]eference price ads strongly influence  
2 consumer perceptions of value ... Consumers often make purchases not based on price but because  
3 a retailer assures them that a deal is a good bargain. This occurs when ... the retailer highlights the  
4 relative savings compared with the prices of competitors ... [T]hese bargain assurances (BAs)  
5 change consumers’ purchasing behavior and may deceive consumers.”<sup>8</sup>

6           49. “[R]esearch has shown that retailer-supplied reference prices clearly enhance buyers’  
7 perceptions of value” and “have a significant impact on consumer purchasing decisions.”<sup>9</sup>

8           50. “[R]eference prices are important cues consumers use when making the decision  
9 concerning how much they are willing to pay for the product.”<sup>10</sup> This study also concluded that  
10 “consumers are likely to be misled into a willingness to pay a higher price for a product simply  
11 because the product has a higher reference price.”<sup>11</sup>

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

17           ***A. Consumers Suffered Harm***

18           52. Based on Defendant’s advertisements, reasonable consumers would expect that the  
19 listed reference prices are the regular or former prices at which Defendant usually sells its Products.  
20  
21

22  
23 [RetailMeNot%20Survey%3A%20Deals%20and%20Promotional%20Offers%20Drive%20Incremental%20Purchases%20Online,finding%20a%20coupon%20or%20discount](#). (last visited September 11, 2024).

24 <sup>8</sup> Joan Lindsey-Mullikin & ross D. Petty, *Marketing Tactics Discouraging Price Search: Deception and Competition*, 64 J. of Bus. Research 67 (January 2011).

25 <sup>9</sup> Praveen K. Kopalle & Joan Lindsey-Mullikin, *The Impact of External Reference Price On Consumer Price Expectations*, 79 J. of Retailing 225 (2003).

26 <sup>10</sup> Jerry B. Gotlieb & Cyndy Thomas Fitzgerald, *An Investigation Into The Effects of Advertised References Prices On the Price Consumers Are Willing To Pay For the Product*, 6 J. of App’d Bus. Res. 1 (1990).

27 <sup>11</sup> *Id.*  
28

53. Reasonable consumers would also expect that, if they purchase during the sale, they will receive an item whose actual regular or former price is the advertised regular or former price and that they will receive the advertised discount from the regular or former purchase price.

54. Plaintiffs and consumers paid a “price premium” for the Products. If the reference prices were omitted from the product listings, the Plaintiffs would not have purchased the Products.

55. Also, as further described above, Plaintiffs and consumers are more likely to buy the Products if they believe that the product is on sale and that they are getting Products with a higher regular or former price at a substantial discount.

56. Thus, Defendant’s advertisements harm consumers by inducing them to make purchases based on false information. In addition, by this same mechanism, Defendant’s advertisements artificially increase consumer demand for Defendant’s Products. This puts upward pressure on the prices that Defendant can charge for its Products. As a result, Defendant can charge a price premium for its Products that it would not be able to charge absent the misrepresentations described above.

### III. Defendant’s Deceptive Pricing Practices Violate Federal and California State Law

57. The Federal Trade Commission Act (“FTCA”) prohibits “unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a)(1). Under 16 C.F.R. § 233.1, which is titled Former Price Comparisons, the FTC prohibits such misleading price comparisons as the ones employed by Defendant:

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

(b) A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the

1 recent, regular course of her business, honestly and in good faith – and, of  
 2 course, not for the purpose of establishing a fictitious higher price on which a  
 deceptive comparison might be based.

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

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

15 16 C.F.R. § 233.1 (emphasis added).

16 58. The FTCA expressly prohibits the advertising of fictitious former prices, like the  
 17 scheme employed by Defendant, regardless of whether the product advertisements and  
 18 representations use the words “regular,” “original,” or “former” price:

19 (e) If the former price is set forth in the advertisement, whether accompanied or not  
 20 by descriptive terminology such as “Regularly,” “Usually,” “Formerly,” etc., the  
 21 advertiser should make certain that the former price is not a fictitious one. If the  
 22 former price, or the amount or percentage of reduction, is not stated in the  
 23 advertisement, as when the ad merely states, “Sale,” the advertiser must take  
 24 care that the amount of reduction is not so insignificant as to be meaningless. It  
 25 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 the consumer, who will understand the claim to mean that a  
 much greater, and not merely nominal, reduction was being offered.

26 16 C.F.R. § 233.1.

27 59. Defendant’s pricing scheme directly violates the FTCA.



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

61. Section 17501 of California's False Advertising Law provides that "[n]o price shall be advertised as a former price ... unless the alleged former price was the prevailing market price ... within three months next immediately preceding" the advertisement. Cal. Bus. & Prof. Code § 17501.

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

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

64. Here, as described in detail above, Defendant makes untrue and misleading statements about its prices. Defendant advertises regular prices that are not its regular prices, or its former prices, and were not the prevailing market price in the three months immediately preceding the advertisement. In addition, Defendant advertised goods or services with the intent not to sell them as advertised, for example, by advertising goods having certain former prices without the intent to sell goods having those former prices. Defendant made false and misleading statements of fact concerning the reason for, existence of, and amounts of price reductions, including the existence of steep discounts, and the amounts of price reductions resulting from those discounts. And Defendant engaged in unlawful and deceptive business practices.

#### **CLASS ALLEGATIONS**

65. Plaintiffs bring this action individually and on behalf of all others similarly situated. The proposed class is defined as:

#### **California Class:**

All persons residing in the State of California who, during the applicable limitations



1 period, purchased one or more items from trynood.com, at a represented discount  
2 from a higher reference price.

3 66. Excluded from the Class is Defendant, its subsidiaries and affiliates, officers,  
4 directors, the members of their immediate families, and any entity in which any Defendant has a  
5 controlling interest, to include the legal representatives, heirs, successors, or assigns of any such  
6 excluded party. Also excluded are the judicial officer(s) to whom this action is assigned, and the  
7 members of their immediate families.

8 67. Plaintiffs reserve the right to modify or amend the definition of the proposed Class  
9 if necessary, before this Court determines whether certification is appropriate.

10 68. This case is properly brought as a class action under Fed. R. Civ. P. 23 and all  
11 requirements are met for the reasons set forth in the following paragraphs.

12 69. *Numerosity*. The members of the Class are so numerous that separate joinder of each  
13 member is impracticable. Upon information and belief, and subject to discovery, the Class consists  
14 of many thousands of members, the identity of whom are within the exclusive knowledge of  
15 Defendant and can be ascertained only by resorting to Defendant's records, discovery, and other  
16 third-party sources.

17 70. *Commonality*. There are numerous questions of law and fact common to the Class  
18 relating to Defendant's business practices challenged herein, and those common questions  
19 predominate over any questions affecting only individual Class members. The common questions  
20 include, but are not limited to:

- 21 ○ Whether Defendant's labeling, advertising, and marketing of the Products is false  
22 and misleading;
- 23 ○ Whether Defendant advertised false reference prices on Products offered;
- 24 ○ Whether Defendant advertised price discounts from the false reference prices on  
25 the Products offered;
- 26 ○ Whether the Products listed on Defendant's website were offered at their  
27 reference price within the three months preceding purchases by Plaintiffs and  
28 class members;

- Whether Defendant's misrepresentations were material to reasonable consumers;
- Whether Defendant engaged in unlawful or unfair conduct prohibited by the California UCL;
- Whether Defendant engaged in conduct prohibited by the California FAL;
- Whether Defendant violated the CLRA's prohibition on unfair methods of competition and/or unfair and deceptive practices;
- Whether Defendant violated the FTCA;
- Whether Defendant harmed the Plaintiffs and members of the Class;
- the proper measure of damages; and
- the declaratory and injunctive relief to which the Class is entitled.

71. *Typicality.* Plaintiff's claims are typical of the claims of the other Class members in that they arise out of the same wrongful business practices engaged in by Defendant, as described herein.

72. *Adequacy of Representation.* Plaintiffs are adequate representatives of the Class because Plaintiffs have sustained damage as a result of Defendant's uniform conduct. In addition:

- Plaintiffs are committed to the vigorous prosecution of this action individually and on behalf of and all others similarly situated and have retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers against financial institutions;
- There is no hostility of interest between Plaintiffs and the unnamed Class members;
- Plaintiffs anticipate no difficulty in the management of this litigation as a class action; and
- Plaintiffs' legal counsel has the financial and legal resources to meet the substantial costs and legal work associated with this type of litigation.

73. *Predominance.* The questions of law and fact common to the Class as set forth in the "commonality" allegation above predominate over any individual issues. As such, the "commonality" allegations are restated and incorporated herein by reference.

74. *Superiority.* A class action is superior to other available methods and highly desirable for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation and since the financial resources of Defendant are significant, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and Defendant's misconduct will proceed without remedy. In addition, even if Class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard that might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

75. All conditions precedent to bringing this action have been satisfied and/or waived.

**FIRST CAUSE OF ACTION**  
**VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL")**  
**(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**  
**(On behalf of Plaintiffs and the California Class)**

76. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

77. Plaintiffs and Defendant are "persons" within the meaning of the UCL. Cal. Bus. & Prof. Code § 17200.

78. The UCL defines unfair competition to include any "unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200.

79. Defendant violated the UCL by engaging in "unlawful, unfair, and fraudulent business acts or practices" and engaging in "unfair, deceptive, untrue or misleading advertising," including advertising false and deceptive reference prices on its Products. Cal. Bus. & Prof. Code § 17200.

**a. *Unlawful Prong***

1           80. As a result of engaging in the conduct alleged in this Complaint, Defendant has  
 2 violated the UCL's proscription against engaging in "unlawful" conduct by virtue of their violations  
 3 of the following laws:

4           (1) **California Bus. & Prof. Code § 17501**: As further detailed in this  
 5 Complaint, Defendant violated California's False Advertising Law, Cal. Bus. & Prof.  
 6 Code §§ 17500 and 17501.

7           (2) **The Federal Trade Commission Act**: As detailed in this Complaint,  
 8 Defendant violated 16 C.F.R. §§ 233.1 and 233.5.

9           (3) **Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1770(a)**: As  
 10 alleged below, Defendant's conduct, individually and collectively, violates section  
 11 1770(a)(5), (7), (9), and (13) of the CLRA. Therefore, Defendant has also violated the  
 12 UCL's "unlawful" provision.

13           81. Plaintiffs reserve the right to allege other violations of law, which constitute other  
 14 unlawful business acts or practices. Such conduct is ongoing and continues to this date. Unless  
 15 restrained and enjoined, Defendant will continue to engage in the unlawful conduct described herein.

16           82. Defendant's conduct caused and continues to cause substantial injury to Plaintiffs  
 17 and the Class. As described herein, Defendant made false and deceptive advertisements and  
 18 representations regarding the reference prices on the Products it claimed were on sale. But for  
 19 Defendant's unlawful and unfair conduct, Plaintiffs and Class members would not have purchased  
 20 the Products.

21           83. Plaintiffs have suffered injury in fact and have lost money as a result of Defendant's  
 22 conduct.

23           84. Accordingly, Plaintiffs and Class Members seek restitution from Defendant of all  
 24 money obtained from Plaintiffs and the Class as a result of Defendant's unlawful acts.

25           **b. Unfair Prong**

26           85. As a result of engaging in the conduct alleged herein, Defendant has violated the  
 27 UCL's proscription against "unfair" business practices.

1           86. Under the UCL, a business act or practice is “unfair” if the Defendant’s conduct is  
2 substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive,  
3 and unscrupulous, as the benefits for committing such acts or practices are outweighed by the gravity  
4 of the harm to the alleged victims.

5           87. Defendant’s unfair conduct alleged in the Complaint is illegal, deceptive, unethical,  
6 and unscrupulous. Under federal and state law, making false and deceptive claims about products  
7 being marketed and sold to consumers violates the UCL.

8           88. Defendant’s deceptive marketing gave consumers the false impression that their  
9 products were regularly listed or sold on the websites for a substantially higher price in the recent  
10 past than they were and, thus, led to the false impression that Defendant’s products were being sold  
11 at a discount to a regular price.

12           89. Furthermore, these acts and practices offend public policy by violating the CLRA  
13 and the California False Advertising Law (“FAL”), Cal. Bus. & Prof. Code 17500, *et seq.*

14           90. Defendant’s conduct was and continues to be of no benefit to purchasers of the  
15 Products, as it is misleading, unfair, unlawful, and is injurious to consumers.

16           91. Therefore, Defendant’s conduct was and continues to be “unfair.”

17           92. Defendant’s violations of the UCL continue to this day. Unless restrained and  
18 enjoined, Defendant will continue to engage in the unfair conduct described herein. Plaintiffs would  
19 buy again from the Nood website if they knew that the pricing misrepresentations were halted and  
20 if they had the opportunity to evaluate the actual prevailing price and actual discount prices of the  
21 Product.

22           93. Defendant’s conduct caused and continues to cause substantial injury to Plaintiffs,  
23 as well as the Class members.

24           94. The harm to Plaintiffs and members of the Class outweighs the utility of Defendant’s  
25 practices. There were reasonably available alternatives to further Defendant’s legitimate business  
26 interests, other than the unfair conduct described herein.

27           95. Accordingly, Plaintiffs and the Class seek restitution from Defendant of all money  
28 obtained from Plaintiffs and the Class members as a result of Defendant’s unfair competition.

1        ***c. Fraudulent Prong***

2            96. As a result of engaging in the conduct alleged herein, Defendant has violated the  
3 UCL's proscription against "fraudulent" business practices.

4            97. Under the UCL, a business act or practice is "fraudulent" if it actually deceives or is  
5 likely to deceive members of the consuming public. Defendant affirmatively misrepresented the  
6 reference prices of products which, in turn, misled and deceived consumers into believing that they  
7 were buying products at substantially discounted prices. Defendant's deceptive marketing gave  
8 consumers the false impression that its products were regularly listed or sold on the website for a  
9 substantially higher price in the previous three months. Because Defendant misled Plaintiffs and  
10 members of the Class, Defendant's conduct was "fraudulent."

11           98. Defendant's advertisements concerning the reference price of Products on its  
12 websites were fraudulent business acts in violation of the UCL. These acts were reasonably likely  
13 to deceive consumers, and in fact did deceive Plaintiffs and induce them into purchasing  
14 Defendant's Products.

15           99. Defendant knew its Products were not actually sold at the higher reference price for  
16 a three month period of time preceding Plaintiffs' and Class Members' purchases.

17           100. Defendant had a duty to disclose the truth about its pricing deception, including that  
18 the reference prices advertised on its website were not, in fact, prices at which Defendant's items  
19 were listed or sold on the website in the previous three months, but in truth, the products never (or  
20 rarely) were offered or sold at the reference prices.

21           101. Defendant made these statements with the intention that Plaintiffs would see them  
22 and rely on them to purchase their Products, and, in fact, Plaintiffs did rely on Defendant's  
23 fraudulent misrepresentations on Defendant's websites when purchasing the Products.

24           102. If not for Defendant's fraudulent acts and practices, Plaintiffs would not have  
25 purchased the Products.

26           103. As a result, Plaintiffs and Class Members suffered substantial injury and lost money  
27 due to Defendant's conduct.

28

104. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein. As a result of Defendant's fraudulent business acts and practices, Defendant has and/or continues to fraudulently obtain money from Plaintiffs and Class Members.

105. Plaintiffs request that this Court cause Defendant to restore this unlawfully, unfairly, and fraudulently obtained money to them, and members of the Class, to disgorge the profits Defendant made on these transactions, and to enjoin Defendant from violating the UCL or violating it in the same fashion in the future.

**SECOND CAUSE OF ACTION**  
**VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW ("FAL")**  
**Cal. Bus. & Prof. Code §§ 17500, *et seq***  
**(On behalf of Plaintiffs and the California Class)**

106. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

107. This Claim is brought on behalf of the California class, which is referred to in this section as the "Class."

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

109. The California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500, *et seq.*, by states, in part, that:

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, **which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...**

Cal. Bus. & Prof. Code § 17500. (emphasis added).



110. The FAL also provides that:

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

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

Cal. Bus. & Prof. Code § 17501. (emphasis added).

111. As used in the FAL:

(a) The term “prevailing market price” refers to the “retail [price] if the offer is at retail.”

(b) The term “advertised thing” refers to the exact same product offered—*not* an equivalent or similar product. *People v. Superior Ct. (J.C. Penney Corp.)*, 24 Cal App. 5th 376, 412 (2019) (“if the advertisement specifies a precise item—say, by reference to name, brand, or other distinctive features ... the market and therefore the market price is potentially determined on the basis of sales of *that item only*.”) (emphasis added).

(c) The term “ ‘former price’ ... includes but is not limited to the following words and phrases when used in connection with advertised prices: ‘formerly—,’ ‘regularly—,’ ‘usually—,’ ‘originally—,’ ‘reduced from \_\_,’ ‘was \_\_ now \_\_,’ ‘\_\_ % off.’” 4 Cal. Code Regs., § 1301 (emphasis added).

(d) The “three-month period is properly construed as a ‘rolling’ period, that is, one whose beginning and end changes each day, thus requiring a daily recalculation of the prevailing market price during the three-month period.” *People v. Superior Ct. (J.C. Penney Corp.)*, 24 Cal App. 5th 376, 416 n.26 (2019) (emphasis added).

112. As alleged more fully above, Defendant advertises former prices along with discounts on its websites. Defendant does this, for example, by crossing out a higher price (e.g.



1 ~~\$150~~) and displaying it next to a lower, discounted price. Reasonable consumers would understand  
 2 prices denoted as regular prices from which time-limited discounts are calculated to denote “former”  
 3 prices, i.e., the prices that Defendant charges before the discount went into effect.

4 113. The reference prices advertised as former or regular prices on Defendant’s websites  
 5 are not former or regular prices under the FAL. Defendant rarely, if ever, offered Products on the  
 6 websites at the reference prices within three months immediately preceding the publication of the  
 7 reference prices. Additionally, the reference prices shown were not the prevailing market prices for  
 8 the Products in the three months immediately preceding the publication.

9 114. Defendant’s misrepresentations were intended to induce reliance, and Plaintiffs saw,  
 10 read, and reasonably relied on the false reference prices when purchasing Defendant’s Products.  
 11 Defendant’s misrepresentations were a substantial factor in the Plaintiff’s purchase decisions.

12 115. Plaintiffs relied on Defendant’s false advertisements with regard to the Products, at  
 13 the time of purchase.

14 116. As a result of Defendant’s violation of the FAL, Plaintiffs and Class Members  
 15 suffered substantial injury and lost money.

16 117. Pursuant to Cal. Bus. & Prof. Code § 17535, this Court has the power to award such  
 17 equitable relief, including but not limited to an order declaring the reference prices listed on  
 18 Defendant’s Products’ to be unlawful, an order enjoining Defendant from engaging in any such  
 19 further unlawful conduct, and an order directing Defendant to refund to Plaintiffs and Class  
 20 Members all monies wrongfully collected as a result of its false advertisements.

21 **THIRD CAUSE OF ACTION**  
 22 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT (“CLRA”)**  
 23 **(Cal. Civ. Code §§ 1750, *et seq.*)**  
**(On behalf of Plaintiffs and the California Class)**

24 118. Plaintiffs hereby incorporate by reference the allegations contained in the preceding  
 25 paragraphs of this Complaint.

26 119. Plaintiffs and members of the Class are “consumers,” as that term is defined by Civil  
 27 Code § 1761(d), because they purchased Products for personal, family, or household purposes.

1           120. Plaintiffs and Class members have engaged in a “transaction” with Defendant, as that  
2 term is defined by Civil Code § 1761(e).

3           121. The conduct alleged in this Complaint constitutes unfair methods of competition and  
4 unfair and deceptive acts and practices for purposes of the CLRA, and was undertaken by Defendant  
5 in transactions intended to result in, and which resulted in, the sale of goods or services to  
6 consumers.

7           122. As described more fully above, Defendant made and disseminated untrue and  
8 misleading statements of fact in its advertisements to class members. Defendant did this by using  
9 fake reference prices, i.e., reference prices that are not the prevailing market price, and/or were not  
10 the prevailing market price within the three months preceding the publication of the discount, and  
11 advertising fake discounts.

12           123. As a result of Defendant’s conduct, Plaintiffs and Class members purchased  
13 Defendant’s Products for their use.

14           124. By engaging in the conduct described herein, Defendant has violated the following  
15 subdivision of California Code § 1770(a) by:

16           (5) Representing that goods or services have sponsorship, approval,  
17 characteristics, ingredients, uses, benefits, or quantities which they do not have  
18 ...

19           (7) Representing that goods or services are of a particular standard, quality, or  
20 grade, or that goods are of a particular style or model, if they are of another.

21           (9) Advertising goods or services with intent not to sell them as advertised.

22           (13) Making false or misleading statements of fact concerning reasons for,  
23 existence of, or amounts of price reductions.

24           125. Regarding section 1770(a)(13), Defendant made false or misleading statements of  
25 fact concerning the “existence of” and the “amounts of price reductions” because (a) no true price  
26 reductions existed in that Defendant’s Products were rarely, if ever, offered for sale and/or sold on  
27 the websites at the higher reference prices, let alone on a regular basis within the three months  
28 immediately preceding the publication of the reference prices, (b) the reference prices Defendant

1 advertised in connection with its Products are not prevailing market prices because, on information  
2 and belief, the Products were not sold elsewhere at the reference prices on a regular basis within the  
3 three months immediately preceding the publication of the reference prices, and (c) Defendant  
4 falsely represents the Products as on sale for a limited time when in truth it appears they are  
5 perpetually sold at the advertised “sale” prices.

6 126. With regards to sections 1770(a)(5), (7), and (9), Defendant advertised and  
7 represented Products on the websites with the “intent not to sell” them as advertised and  
8 misrepresenting product characteristics and standards because, as explained herein, the false  
9 reference prices advertised in connection with products offered on the website misled and continue  
10 to mislead customers into believing the Products were previously offered for sale and/or sold on the  
11 websites at the higher reference prices during the three months preceding the advertisement.

12 127. Defendant intended for Plaintiffs and the Class to rely on its aforementioned unfair  
13 and deceptive acts and practices, including the misrepresentations and omissions alleged above.

14 128. Defendant’s violations of the CLRA proximately caused injury in fact to Plaintiffs  
15 and the Class.

16 129. Plaintiffs reasonably relied on Defendant’s representations. Absent Defendant’s  
17 misrepresentations, Plaintiffs would not have purchased the items he purchased from Defendant.  
18 Plaintiffs’ reliance was a substantial factor in causing him harm.

19 130. Pursuant to Cal. Civ. Code § 1782(d), Plaintiff, individually and on behalf of the  
20 Class, seek a Court order enjoining the above-described wrongful acts and practices of Defendant  
21 and for restitution and disgorgement.

22 131. On or about July 29, 2024, pursuant to Cal. Civ. Code § 1782(a), Defendant was sent  
23 in writing, by certified mail, notice of the violations of Section 1770 of the CLRA, which notification  
24 demanded that Defendant rectify the problems associated with the actions detailed above and give  
25 notice to all affected consumers of its intent to so act.

26 132. Plaintiffs sent a CLRA notification letter and Defendant failed to rectify or agree to  
27 rectify the problems associated with the actions detailed above or give notice to all consumers within  
28

1 30 days of receipt of the CLRA notice. Accordingly, Plaintiffs seek damages, as permitted and  
2 appropriate.

3 **REQUEST FOR RELIEF**

4 WHEREFORE, Plaintiffs and members of the Class, respectfully request that the Court:

- 5 a. Certify this case as a class action, designating Plaintiffs as class representatives and  
6 designating the undersigned as Class Counsel;
- 7 b. Declaring that Defendant's conduct violates the statutes set forth above;
- 8 c. Award Plaintiffs and the Class actual damages in an amount according to proof;
- 9 d. Award Plaintiffs and the Class restitution in an amount to be proven at trial;
- 10 e. Award Plaintiffs and the Class pre-judgment interest in the amount permitted by law;
- 11 f. Award Plaintiffs and their attorneys fees and costs as permitted by law;
- 12 g. Declare Defendant's practices outlined herein to be unlawful;
- 13 h. Grant equitable and/or injunctive relief, including to enjoin Defendant from engaging  
14 in the practices outlined herein;
- 15 i. Grant Plaintiffs and the Class a trial by jury;
- 16 j. Grant leave to amend these pleadings to conform to evidence produced at trial; and
- 17 k. Grant such other relief as the Court deems just and proper, including all forms of  
18 relief provided for under the UCL, CLRA, and FAL.

19 **JURY DEMAND**

20 Plaintiffs, by counsel, demand a trial by jury.

21  
22 Dated: January 9, 2025

Respectfully submitted,

23 **ZIMMERMAN REED LLP**

24 Caleb Marker

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17 \* *Pro Hac Vice* application to be submitted

18 *Counsel for Plaintiffs and the Proposed Class*