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PACIFIC TRIAL ATTORNEYS

A Professional Corporation
Scott J. Ferrell, Bar No. 202091
sferrell@pacifictrialattorneys.com
Victoria C. Knowles, Bar No. 277231
vknowles@pacifictrialattorneys.com
4100 Newport Place Drive, Ste. 800
Newport Beach, CA 92660
Tel: (949) 706-6464
Fax: (949) 706-6469

Attorneys for Plaintiff

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE**

MIGUEL ESPARZA, individually and on
behalf of all others similarly situated,

Plaintiff,

THE ORVIS COMPANY, INC., a Vermont
entity, d/b/a WWW.ORVIS.COM,

Defendants.

CASE NO. **CVRI2500337**

**CLASS ACTION COMPLAINT FOR
VIOLATION OF CALIFORNIA BUS. &
PROF. CODE § 17501**

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NATURE OF ACTION

Defendant advertises fictitious regular prices (and corresponding phantom discounts) on products sold through its website at www.orvis.com (the “Website”). This practice allows Defendant to fabricate a fake “reference price”, and present the actual price as “discounted”, when it is not. The result is a sham price disparity that is *per se* illegal under California law.

THE PARTIES

1. Plaintiff is a citizen of California who purchased a product from Defendant’s website.

2. Defendant is a retailer that sells products nationwide and in California.

JURISDICTION AND VENUE

3. This Court has jurisdiction over all causes of action asserted herein.

4. Venue is proper in this County because some of the class members’ claims arose in this County.

5. Defendant is subject to jurisdiction under California’s “long-arm” statute found at California Code of Civil Procedure section 410.10 because the exercise of jurisdiction over Defendant is not “inconsistent with the Constitution of this state or the United States.” Indeed, Plaintiff believes that Defendant generates a minimum of eight percent of its national Website sales to Californians, such that the website “is the equivalent of a physical store in California.” Since this case involves false representations made on Defendant’s Website, and Plaintiff’s purchase was made through the Website from within California, California courts can “properly exercise personal jurisdiction” over the Defendant in accordance with the Court of Appeal opinion in *Thurston v. Fairfield Collectibles of Georgia*, 53 Cal.App.5th 1231 (2020).

GENERAL ALLEGATIONS

6. Defendant, through its Website, offers products for sale to California consumers.

7. Defendant advertises fictitious prices (and corresponding phantom discounts) on such products. This practice allows Defendant to fabricate a fake “reference” price, and present the actual price as “discounted”, when it is not.

8. Plaintiff purchased “Horseshoe Hills Fleece 1/4-Zip” from Defendant on January

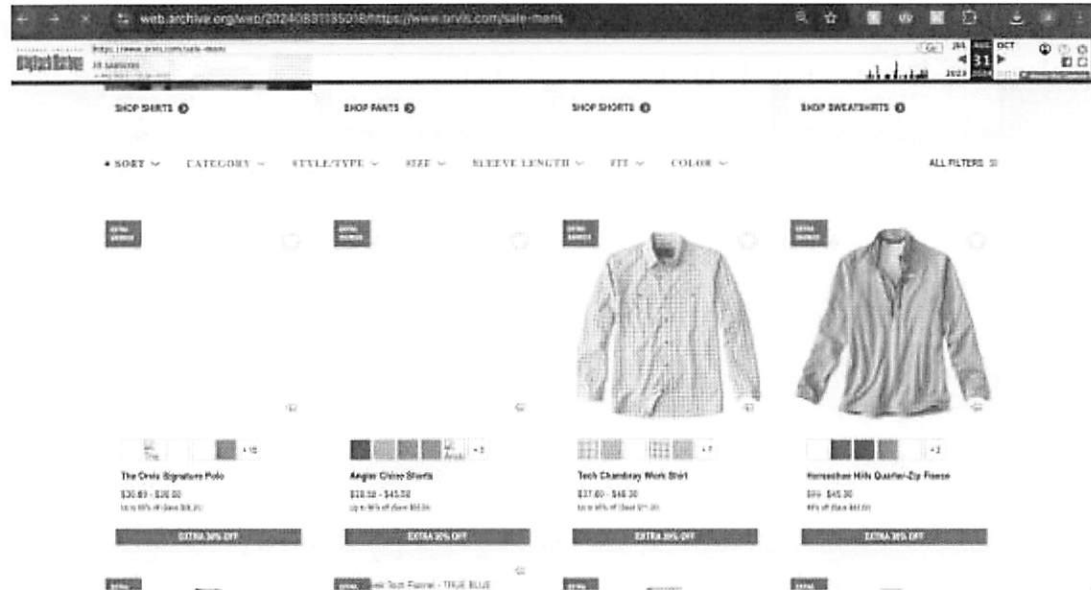
17, 2025, for the “discounted” price of \$35.60, which Defendant compared to a “strike-through” Reference Price of \$89.00, after visiting the page shown below:



9. The Reference Price described in the preceding paragraph was not the “prevailing market price” in the 90 days preceding the above access date. Likewise, the advertisement does not “clearly, exactly and conspicuously” state the date upon which the Reference Price was the prevailing market price.

10. Indeed, more than 90 days ago, Defendant was offering the exact same product for a discounted price with a similar “phantom discount” on August 31, 2024, as shown below and as documented by the “Wayback Machine.”¹

¹ The “Wayback Machine” is a digital archive of the World Wide Web that allows users to view past versions of websites. It automatically captures snapshots of webpages at various points in time, and stores them with timestamps. It is used to determine how a website looked in the past, analyze the evolution of a website, and retrieve information that may no longer be available on the current iteration of a website. Information retrieved via the Wayback Machine is generally treated as authoritative, subject to proper authentication. See *United States v. Kieffer*, 681 F.3d 1143, 1154 n.3 (10th Cir. 2012) (holding Wayback Machine downloads properly authenticated).



11. These pricing and advertising practices reflecting high-pressure fake sales are patently deceptive. They are intended to mislead customers into believing that they are getting a bargain by buying products from Defendant on sale and at a substantial and deep discount. The Reference Price is, therefore, an artificially inflated price. In turn, the advertised discounts are nothing more than phantom markdowns.

12. Plaintiff's counsel routinely monitored the product sales price on Defendant's website in the period between the two dates referenced in the preceding paragraph and has confirmed that the product was not offered for sale on Defendant's Website primarily at the Reference price during that period, such that the Reference price was not the "prevailing price" for the product during the period. In other words, the Reference Price was a fake price used in Defendant's deceptive marketing scheme.

13. Defendant knows that the prices are fake and artificially inflated and intentionally uses them in its deceptive pricing scheme on its Website to increase sales and profits by misleading consumers to believe that they are buying products at a substantial discount. Defendant thereby induces customers to buy products they never would have bought—or at the very least, to pay more for merchandise than they otherwise would have if Defendant was simply being truthful about its "sales."

14. The effectiveness of Defendant's deceitful pricing scheme is backed by

1 longstanding scholarly research. In the seminal article entitled *Comparative Price Advertising:*
2 *Informative or Deceptive?* (cited in *Hinojos v. Kohl's Corp.*, 718 F.3d 1098, 1106 (9th Cir.
3 2013)), Professors Dhruv Grewal and Larry D. Compeau write that, “[b]y creating an impression
4 of savings, the presence of a higher reference price enhances subjects’ perceived value and
5 willingness to buy the product.” Dhruv Grewal & Larry D. Compeau, *Comparative Price*
6 *Advertising: Informative or Deceptive?*, 11 J. PUB. POL’Y & MKTG. 52, 55 (1992). Therefore,
7 “empirical studies indicate that, as discount size increases, consumers’ perceptions of value and
8 their willingness to buy the product increase, while their intention to search for a lower price
9 decreases.” *Id.* at 56. For this reason, the Ninth Circuit in *Hinojos* held that a plaintiff making a
10 claim of deceptive pricing (strikingly similar to the claim at issue here) had standing to pursue
11 his claim against the defendant retailer. In doing so, the Court observed that “[m]isinformation
12 about a product’s ‘normal’ price is . . . significant to many consumers in the same way as a false
13 product label would be.” *Hinojos*, 718 F.3d at 1106.

14 15. Professors Compeau and Grewal reached similar conclusions in a 2002 article:
15 “decades of research support the conclusion that advertised reference prices do indeed enhance
16 consumers’ perceptions of the value of the deal.” Dhruv Grewal & Larry D. Compeau,
17 *Comparative Price Advertising: Believe It or Not*, 36 J. OF CONSUMER AFFAIRS 287 (2002). The
18 professors also found that “[c]onsumers are influenced by comparison prices even when the
19 stated reference prices are implausibly high.” *Id.*

20 16. In another scholarly publication, Professors Joan Lindsey-Mullikin and Ross D.
21 Petty concluded that “[r]eference price ads strongly influence consumer perceptions of value . . .
22 Consumers often make purchases not based on price but because a retailer assures them that a
23 deal is a good bargain. This occurs when . . . the retailer highlights the relative savings compared
24 with the prices of competitors.” Joan Lindsey-Mullikin & Ross D. Petty, *Marketing Tactics*
25 *Discouraging Price Search: Deception and Competition*, 64 J. OF BUS. RESEARCH 67 (2011).

26 17. Similarly, according to Professors Praveen K. Kopalle and Joan Lindsey-
27 Mullikin, “research has shown that retailer-supplied reference prices clearly enhance buyers’
28 perceptions of value” and “have a significant impact on consumer purchasing decisions.” Praveen
K. Kopalle & Joan Lindsey-Mullikin, *The Impact of External Reference Price on Consumer*

1 *Price Expectations*, 79 J. OF RETAILING 225 (2003).

2 18. The results of a 1990 study by Professors Jerry B. Gotlieb and Cyndy Thomas
3 Fitzgerald, came to the conclusion that “reference prices are important cues consumers use when
4 making the decision concerning how much they are willing to pay for the product.” Jerry B.
5 Gotlieb & Cyndy Thomas Fitzgerald, *An Investigation into the Effects of Advertised Reference*
6 *Prices on the Price Consumers Are Willing to Pay for the Product*, 6 J. OF APP’D BUS. RES. 1
7 (1990). This study also concluded that “consumers are likely to be misled into a willingness to
8 pay a higher price for a product simply because the product has a higher reference price.” *Id.*

9 19. The unmistakable inference to be drawn from this research and the Ninth Circuit’s
10 opinion in *Hinojos* is that the deceptive advertising through the use of false reference pricing
11 employed here by Defendant is intended to, and does in fact, influence customer behavior by
12 artificially inflating customer perceptions of a given item’s value and causing customers to spend
13 money they otherwise would not have, purchase items they otherwise would not have, and/or
14 spend more money for a product than they otherwise would have absent the deceptive
15 advertising.

16 **CLASS ACTION ALLEGATIONS**

17 20. Plaintiff brings this action on behalf of all persons similarly situated, and seeks
18 certification of the following class:

19 All persons who purchased one or more of Defendant’s products from
20 Defendant’s Website while in California within the statute of limitations period at
21 a purported discount from a higher reference price.

22 21. The above-described class of persons shall hereafter be referred to as the “Class.”
23 Excluded from the Class are any and all past or present officers, directors, or employees of
24 Defendants, any judge who presides over this action, and any partner or employee of Class
25 Counsel. Plaintiff reserves the right to expand, limit, modify, or amend this class definition,
26 including the addition of one or more subclasses, in connection with his motion for class
27 certification, or at any other time, based upon, *inter alia*, changing circumstances and/or new
28 facts obtained during discovery.

22. **Numerosity**. The Class is so numerous that joinder of all members in one action

1 is impracticable. The exact number and identities of the members of the Class is unknown to
2 Plaintiff at this time and can only be ascertained through appropriate discovery, but on
3 information and belief, Plaintiff alleges that there at least 50 members of the Class.

4 23. **Typicality**. Plaintiff's claims are typical of those of other members of the Class,
5 all of whom have suffered similar harm due to Defendant's course of conduct as described in this
6 Complaint.

7 24. **Adequacy of Representation**. Plaintiff is an adequate representative of the Class
8 and will fairly and adequately protect the interests of the Class. Plaintiff has retained attorneys
9 who are experienced in the handling of complex litigation and class actions, and Plaintiff and his
10 counsel intend to prosecute this action vigorously.

11 25. **Predominance of Common Questions of Law or Fact**. Common questions of
12 law and fact exist as to all members of the Class that predominate over any questions affecting
13 only individual members of the Class. These common legal and factual questions, which do not
14 vary among members of the Class, and which may be determined without reference to the
15 individual circumstances of any member of the Class, include, but are not limited to, the
16 following:

- 17 a) Whether, during the Class Period, Defendant advertised false Reference Prices
18 of its products offered on its Website.
19 b) Whether, during the Class Period, Defendant advertised price discounts from
20 false Reference Prices on products offered on its Website.
21 c) Whether Defendant's deceptive pricing scheme using false Reference Prices
22 constitutes false advertising in violation of the California False Advertising
23 Law under Business & Professions Code §§ 17501;

24 26. **Superiority**. A class action is superior to other available methods for the fair and
25 efficient adjudication of this controversy because individual litigation of the claims of all
26 members of the Class is impracticable.

27 27. **Ascertainability**. Defendant keeps computerized records of its sales and
28 customers through, among other things, databases storing customer orders, customer order
histories, customer profiles, customer loyalty programs, and general marketing programs.

1 Defendant has one or more databases through which a significant majority of members of the
2 Class may be identified and ascertained, and they maintain contact information, including email
3 addresses and home addresses (such as billing, mailing, and shipping addresses), through which
4 notice of this action is capable of being disseminated in accordance with due process
5 requirements.

6 **CAUSE OF ACTION**

7 **Violation of California's False Advertising Law**

8 **Cal. Bus. & Prof. Code §§ 17501, *et seq.***

9 28. The California False Advertising Law, codified at California Business &
10 Professions Code sections 17500, *et seq.* (the "FAL") provides, in relevant part, that "no price
11 shall be advertised as a former price of any advertised thing, unless the alleged former price was
12 the prevailing market price . . . within three months next immediately preceding the publication
13 of the advertisement or unless the date when the alleged former price did prevail is clearly,
14 exactly, and conspicuously stated in the advertisement." Cal Bus. & Prof. Code § 17501.

15 29. Simply stated, Section 17501 means if an item is "on sale" for 90 days or more,
16 the seller is violating Section 17501.

17 30. Here, the Product was not sold at the higher reference price in the 90 days prior
18 to Plaintiff's purchase.

19 31. As a direct and proximate result of Defendant's misleading and false
20 advertisements, Plaintiff and members of the Class have suffered injury in fact and have lost
21 money.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for relief and judgment as follows:

24 A. For an order certifying that the action be maintained as a class action, that Plaintiff
25 be designated the class representative, and that undersigned counsel be designated as class
26 counsel;

27 B. For all available legal, equitable, and declaratory relief;

28 C. For attorneys' fees and costs as allowed by law;

D. For such other and further relief, at law or equity, that may be proper.

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Dated: January 24, 2025

Respectfully submitted,

PACIFIC TRIAL ATTORNEYS, APC

By: 
Scott. J. Ferrell
Attorneys for Plaintiff