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Superior Court of California,  
County of San Diego  
12/11/2025 12 58 02 PM

Clerk of the Superior Court  
By M Manneh ,Deputy Clerk

6 Attorneys for Plaintiff and the Putative Class  
7

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO**

10  
11 JESSICA ARGUETA, individually and on behalf  
of all others similarly situated,

Case No. 25CU066215C

12 Plaintiff,

**CLASS ACTION COMPLAINT FOR: (1)  
VIOLATION OF CAL. BUS. & PROF. CODE  
§ 17500 ET SEQ.; AND (2) CONSUMERS  
LEGAL REMEDIES ACT, CAL. CIVIL  
CODE § 1750 ET SEQ.**

13 v

14 LOVELY SKIN, INC , a Nebraska corporation,  
15 d/b/a WWW.LOVELYSKIN.COM,

16 Defendant.

Action Filed.  
Trial Date. TBA

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**I. NATURE OF ACTION**

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

**II. PARTIES**

2 Plaintiff is a citizen of California who purchased a product identified below from  
3 Defendant’s Website

3 Defendant is a Nebraska corporation. Plaintiff is informed and believes and thereon  
4 alleges that Defendant’s principal place of business is in the state of Nebraska based on the Terms of  
5 Service on the Website identifying the Website’s mailing address as 14651 South 210th Street,  
6 Gretna, NE 68028 Defendant is an online retailer that sells skincare and beauty products nationwide and  
7 in California Defendant has substantial contacts with and receives substantial benefits and income from  
8 and through the state of California

**III. JURISDICTION AND VENUE**

4 As a court of general jurisdiction, this Court has jurisdiction over all claims presented to  
5 it

5 Defendant is subject to jurisdiction under California’s “long-arm” statute because the  
6 exercise of jurisdiction over Defendant is not “inconsistent with the Constitution of this state or the  
7 United States ” Defendant engaged in intentional acts by operating its Website and making it available  
8 to California residents, deceptively advertising its products via its Website to California residents  
9 including Plaintiff, expressly aiming its conduct toward California residents by conducting substantial  
10 business with residents of the State of California via its Website, and causing economic harm to  
11 California residents that Defendant knew would be likely to be suffered in California Plaintiff is  
12 informed and believes and thereon alleges that Defendant generates a minimum of eight percent of its  
13 revenues from its Website based upon interactions with Californians, such that the Website “is the

1 equivalent of a physical store in California ” *Thurston v Fairfield Collectibles of Georgia*, 53 Cal App  
2 5th 1231, 1235 (2020), *review denied*, No. S264780 (Dec 9, 2020).

3 6 Venue is proper in this County because Defendant is not a citizen or resident of  
4 California, meaning that venue is proper in any County that plaintiff selects

5 **IV. FACTUAL ALLEGATIONS**

6 7 Defendant, through its Website, offers products for sale to California consumers

7 8 Defendant advertises fictitious prices (and corresponding phantom discounts) on such  
8 products This practice allows Defendant to fabricate a fake “reference” price, and present the actual  
9 price as “discounted,” when it is not

10 9 On October 10, 2025, Plaintiff purchased a product called “DermaNail Nail Conditioner”  
11 (the “Product”) from Defendant’s Website for the allegedly discounted price of \$36.09, which Defendant  
12 compared to a strike-through reference price of \$37.99, after visiting a webpage advertising the Product

13 10 Plaintiff read and relied upon the strike-through reference pricing advertising the Product  
14 that she purchased before completing his online purchase of the Product via the Website

15 11 Courts have construed strikethrough prices as representing former prices despite the lack  
16 of specific words indicating the regular price *See, e.g., Jacobs v La-Z-Boy, Inc*, 2024 WL 5194976,  
17 at \*5 (C D Cal Nov 14, 2024) (Staton, J), *Vizcarra v Michaels Stores, Inc*, 710 F Supp 3d 718, 725  
18 (N D Cal 2024), *Phillips v Brooklyn Bedding LLC*, 2024 WL 2830663, at \*4 (N D Cal 2024) (Lin,  
19 J), *Munning v Gap, Inc*, 2016 WL 6393550, at \*5 (N D Cal Oct 28, 2016), *see also Calcagno v*  
20 *Kipling Apparel Corp*, 2024 WL 3261205, at \*7 (S D Cal July 1, 2024) (Bashant, J) (“a former price  
21 need not be identified by the words ‘formerly’ or ‘regularly’ to be actionable”)

22 12 The alleged former price or reference price described in the preceding paragraph was not  
23 the “prevailing market price” in the three month period (*i.e.*, July, August, and September 2025)  
24 preceding the above access date within the meaning of section 17501 of the California Business and  
25 Professions Code Likewise, the advertisement does not “clearly, exactly and conspicuously” state the  
26 date upon which the alleged former price or reference price was the prevailing market price within the  
27 meaning of that same statute

1 13 For example, on September 2, 2025, Defendant offered the exact same product for an  
2 allegedly discounted price of \$36 09 compared to a purported reference price of \$37 99, as documented  
3 by the “Wayback Machine ”<sup>1,2</sup>

4 14 Even before such three month period, Defendant consistently offered the Product at a  
5 price below its strike-through reference price of \$37.99 For example, on February 9, 2014, Defendant  
6 offered the exact same product for the price of \$28 50, as documented by the “Wayback Machine ”<sup>3</sup>

7 15 On March 25, 2014, Defendant offered the exact same product for the price of \$28 50, as  
8 documented by the “Wayback Machine ”<sup>4</sup>

9 16 On May 25, 2014, Defendant offered the exact same product for the price of \$30 00, as  
10 documented by the “Wayback Machine ”<sup>5</sup>

11 17 On June 22, 2014, Defendant offered the exact same product for the price of \$30 00, as  
12 documented by the “Wayback Machine ”<sup>6</sup>

13 18 On June 25, 2014, Defendant offered the exact same product for the price of \$30 00, as  
14 documented by the “Wayback Machine ”<sup>7</sup>

15 19 On July 1, 2014, Defendant offered the exact same product for an allegedly discounted  
16 price of \$22 50 compared to a purported reference price of \$30 00, as documented by the “Wayback  
17 Machine ”<sup>8</sup>

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21 <sup>1</sup> The “Wayback Machine” is a digital archive of the World Wide Web that allows users to view past versions of websites  
22 <https://web.archive.org/> (last visited November 13, 2025) It automatically captures snapshots of webpages at various points  
23 in time, and stores them with timestamps It is used to determine how a website looked in the past, analyze the evolution of  
24 a website, and retrieve information that may no longer be available on the current iteration of a website Information retrieved  
25 via the Wayback Machine is generally treated as authoritative “In this district, the contents of web pages available through  
26 the Wayback machine are generally proper subjects of judicial notice ‘as facts that can be accurately and readily determined  
27 from sources whose accuracy cannot reasonably be questioned[ ]’” *Valenzuela v The Kroger Co* , 2024 WL 1336959, at \*3  
28 n 7 (C D Cal Mar 28, 2024) (Gee, J ) (citations omitted)

<sup>2</sup> <https://web.archive.org/web/20250902062150/https://www.lovelyskin.com/o/dermanail-nail-conditioner>

<sup>3</sup> <https://web.archive.org/web/20140209094333/https://www.lovelyskin.com/o/dermanail-nail-conditioner>

<sup>4</sup> <https://web.archive.org/web/20140325133359/https://www.lovelyskin.com/c/dermanail>

<sup>5</sup> <https://web.archive.org/web/20140525045330/https://www.lovelyskin.com/c/dermanail>

<sup>6</sup> <https://web.archive.org/web/20140622081347/https://www.lovelyskin.com/o/dermanail-nail-conditioner>

<sup>7</sup> <https://web.archive.org/web/20140625082123/https://www.lovelyskin.com/c/dermanail>

<sup>8</sup> <https://web.archive.org/web/20140701134018/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

1           20     On July 24, 2014, Defendant offered the exact same product for an allegedly discounted  
2 price of \$36.09 compared to a purported reference price of \$37.99, as documented by the "Wayback  
3 Machine"<sup>9</sup>

4           21     On September 21, 2014, Defendant offered the exact same product for the price of  
5 \$30.00, as documented by the "Wayback Machine"<sup>10</sup>

6           22     On November 15, 2014, Defendant offered the exact same product for the price of \$30.00,  
7 as documented by the "Wayback Machine"<sup>11</sup>

8           23     On November 20, 2014, Defendant offered the exact same product for an allegedly  
9 discounted price of \$36.09 compared to a purported reference price of \$37.99, as documented by the  
10 "Wayback Machine"<sup>12</sup>

11           24     On December 24, 2014, Defendant offered the exact same product for an allegedly  
12 discounted price of \$36.09 compared to a purported reference price of \$37.99, as documented by the  
13 "Wayback Machine"<sup>13</sup>

14           25     On February 11, 2015, Defendant offered the exact same product for an allegedly  
15 discounted price of \$36.09 compared to a purported reference price of \$37.99, as documented by the  
16 "Wayback Machine"<sup>14</sup>

17           26     On February 19, 2015, Defendant offered the exact same product for the price of \$30.00,  
18 as documented by the "Wayback Machine"<sup>15</sup>

19           27     On March 15, 2015, Defendant offered the exact same product for an allegedly  
20 discounted price of \$36.09 compared to a purported reference price of \$37.99, as documented by the  
21 "Wayback Machine"<sup>16</sup>

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25 <sup>9</sup> <https://web.archive.org/web/20140724214033/https://www.lovelyskin.com/c/dermanail>

26 <sup>10</sup> <https://web.archive.org/web/20140921060432/https://www.lovelyskin.com/c/dermanail>

27 <sup>11</sup> <https://web.archive.org/web/20141115113157/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

28 <sup>12</sup> <https://web.archive.org/web/20141120133431/https://www.lovelyskin.com/c/dermanail>

<sup>13</sup> <https://web.archive.org/web/20141224235920/https://www.lovelyskin.com/c/dermanail>

<sup>14</sup> <https://web.archive.org/web/20150211181721/https://www.lovelyskin.com/c/dermanail>

<sup>15</sup> <https://web.archive.org/web/20150219060818/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

<sup>16</sup> <https://web.archive.org/web/20150315013425/http://www.lovelyskin.com/c/dermanail>

1 28 On March 16, 2015, Defendant offered the exact same product for an allegedly  
2 discounted price of \$24 00 compared to a purported reference price of \$30 00, as documented by the  
3 "Wayback Machine"<sup>17</sup>

4 29 On April 13, 2015, Defendant offered the exact same product for an allegedly discounted  
5 price of \$36 09 compared to a purported reference price of \$37 99, as documented by the "Wayback  
6 Machine"<sup>18</sup>

7 30 On September 4, 2015, Defendant offered the exact same product for an allegedly  
8 discounted price of \$24 00 compared to a purported reference price of \$30 00, as documented by the  
9 "Wayback Machine"<sup>19</sup>

10 31 On September 8, 2015, Defendant offered the exact same product for an allegedly  
11 discounted price of \$24 00 compared to a purported reference price of \$30 00, as documented by the  
12 "Wayback Machine"<sup>20</sup>

13 32 On October 6, 2015, Defendant offered the exact same product for the price of \$30 00,  
14 as documented by the "Wayback Machine"<sup>21</sup>

15 33 On March 15, 2016, Defendant offered the exact same product for an allegedly  
16 discounted price of \$24 00 compared to a purported reference price of \$30 00, as documented by the  
17 "Wayback Machine"<sup>22</sup>

18 34 On April 6, 2016, Defendant offered the exact same product for the price of \$30 00, as  
19 documented by the "Wayback Machine"<sup>23</sup>

20 35 On April 13, 2016, Defendant offered the exact same product for the price of \$30 00, as  
21 documented by the "Wayback Machine"<sup>24</sup>

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25 <sup>17</sup> <https://web.archive.org/web/20150316110943/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

<sup>18</sup> <https://web.archive.org/web/20150413012825/http://www.lovelyskin.com/c/dermanail>

<sup>19</sup> <https://web.archive.org/web/20150904191619/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

<sup>20</sup> <https://web.archive.org/web/20150908101554/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

<sup>21</sup> <https://web.archive.org/web/20151006160935/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

<sup>22</sup> <https://web.archive.org/web/20160315144016/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

<sup>23</sup> <https://web.archive.org/web/20160406134724/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

<sup>24</sup> <https://web.archive.org/web/20160413184629/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

1 36. On April 17, 2016, Defendant offered the exact same product for the price of \$30 00, as  
2 documented by the "Wayback Machine" <sup>25</sup>

3 37 On May 13, 2016, Defendant offered the exact same product for the price of \$30 00, as  
4 documented by the "Wayback Machine" <sup>26</sup>

5 38 On May 18, 2016, Defendant offered the exact same product for the price of \$30 00, as  
6 documented by the "Wayback Machine" <sup>27</sup>

7 39 On May 20, 2016, Defendant offered the exact same product for the price of \$30 00, as  
8 documented by the "Wayback Machine" <sup>28</sup>

9 40 On May 7, 2017, Defendant offered the exact same product for an allegedly discounted  
10 price of \$31 34 compared to a purported reference price of \$32 99, as documented by the "Wayback  
11 Machine" <sup>29</sup>

12 41 On June 28, 2017, Defendant offered the exact same product for an allegedly discounted  
13 price of \$31 34 compared to a purported reference price of \$32 99, as documented by the "Wayback  
14 Machine." <sup>30</sup>

15 42 On July 17, 2017, Defendant offered the exact same product for an allegedly discounted  
16 price of \$31 34 compared to a purported reference price of \$32 99, as documented by the "Wayback  
17 Machine" <sup>31</sup>

18 43 On September 24, 2020, Defendant offered the exact same product for an allegedly  
19 discounted price of \$31 34 compared to a purported reference price of \$32 99, as documented by the  
20 "Wayback Machine" <sup>32</sup>

24 <sup>25</sup> <https://web.archive.org/web/20160417093016/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

25 <sup>26</sup> <https://web.archive.org/web/20160513122358/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

26 <sup>27</sup> <https://web.archive.org/web/20160518200309/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

27 <sup>28</sup> <https://web.archive.org/web/20160520005242/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

28 <sup>29</sup> <https://web.archive.org/web/20170507062148/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

<sup>30</sup> <https://web.archive.org/web/20170628222408/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

<sup>31</sup> <https://web.archive.org/web/20170717073831/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

<sup>32</sup> <https://web.archive.org/web/20200924171246/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

1           44     On November 26, 2020, Defendant offered the exact same product for an allegedly  
2 discounted price of \$31 34 compared to a purported reference price of \$32 99, as documented by the  
3 “Wayback Machine”<sup>33</sup>

4           45     On March 7, 2021, Defendant offered the exact same product for an allegedly discounted  
5 price of \$31 34 compared to a purported reference price of \$32 99, as documented by the “Wayback  
6 Machine”<sup>34</sup>

7           46     On February 13, 2024, Defendant offered the exact same product for an allegedly  
8 discounted price of \$27 60 compared to a purported reference price of \$34 50, as documented by the  
9 “Wayback Machine”<sup>35</sup>

10           47     On December 9, 2024, Defendant offered the exact same product for an allegedly  
11 discounted price of \$35 14 compared to a purported reference price of \$36 99, as documented by the  
12 “Wayback Machine”<sup>36</sup>

13           48     In other words, the product has never been documented for sale at its reference price of  
14 \$37 99 by the “Wayback Machine”

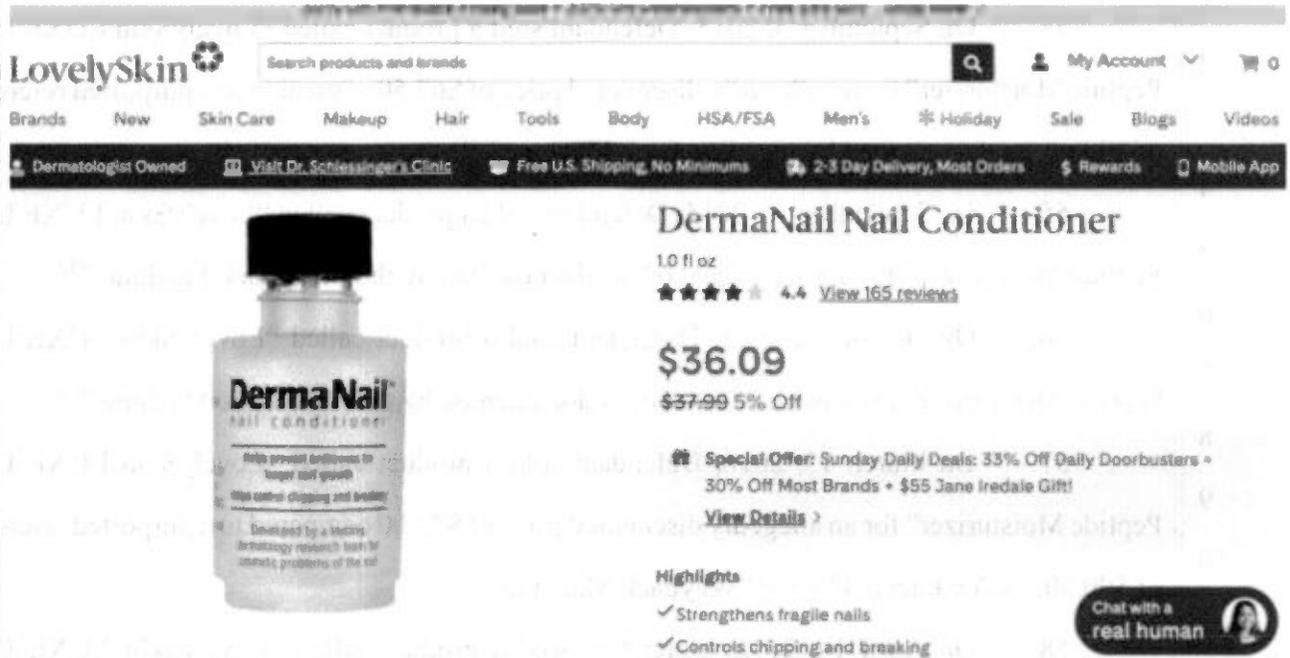
15           49     As of November 23, 2025, the product is still listed at an allegedly discounted price of  
16 \$36 09 compared to a purported reference price of \$37 99

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27 <sup>33</sup> <https://web.archive.org/web/20201126091303/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

<sup>34</sup> <https://web.archive.org/web/20210307050642/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

<sup>35</sup> <https://web.archive.org/web/20240213121136/http://www.lovelyskin.com/o/dermanail-nail-conditioner>

<sup>36</sup> <https://web.archive.org/web/20241209031250/http://www.lovelyskin.com/o/dermanail-nail-conditioner>



50. Defendant’s unlawful strike-through reference pricing scheme is not limited to the Product itself. For example, on July 25, 2015, Defendant sold a product called “LovelySkin LUXE Ultra-Rich Peptide Moisturizer” for an allegedly discounted price of \$66.50 compared to a purported reference price of \$95.00, as documented by the “Wayback Machine.”<sup>37</sup>

51. On August 6, 2015, Defendant sold a product called “LovelySkin LUXE Ultra-Rich Peptide Moisturizer” for a price of \$90.00, as documented by the “Wayback Machine.”<sup>38</sup>

52. On August 12, 2015, Defendant sold a product called “LovelySkin LUXE Ultra-Rich Peptide Moisturizer” for an allegedly discounted price of \$66.50 compared to a purported reference price of \$95.00, as documented by the “Wayback Machine.”<sup>39</sup>

53. On August 26, 2015, Defendant sold a product called “LovelySkin LUXE Ultra-Rich Peptide Moisturizer” for an allegedly discounted price of \$66.50 compared to a purported reference price of \$95.00, as documented by the “Wayback Machine.”<sup>40</sup>

<sup>37</sup> <https://web.archive.org/web/20150725022638/http://www.lovelyskin.com/c/lovelyskin-luxe>

<sup>38</sup> <https://web.archive.org/web/20150806000036/https://www.lovelyskin.com/o/lovelyskin-luxe-ultra-rich-peptide-moisturizer>

<sup>39</sup> <https://web.archive.org/web/20150812095133/http://www.lovelyskin.com/c/lovelyskin-luxe>

<sup>40</sup> <https://web.archive.org/web/20150826061148/http://www.lovelyskin.com/c/lovelyskin-luxe>

1 54 On September 5, 2015, Defendant sold a product called “LovelySkin LUXE Ultra-Rich  
2 Peptide Moisturizer” for an allegedly discounted price of \$67 50 compared to a purported reference price  
3 of \$90 00, as documented by the “Wayback Machine ”<sup>41</sup>

4 55 On September 10, 2015, Defendant sold a product called “LovelySkin LUXE Ultra-Rich  
5 Peptide Moisturizer” for a price of \$90 00, as documented by the “Wayback Machine ”<sup>42</sup>

6 56 On October 6, 2015, Defendant sold a product called “LovelySkin LUXE Ultra-Rich  
7 Peptide Moisturizer” for a price of \$90 00, as documented by the “Wayback Machine ”<sup>43</sup>

8 57 On March 15, 2016, Defendant sold a product called “LovelySkin LUXE Ultra-Rich  
9 Peptide Moisturizer” for an allegedly discounted price of \$72 00 compared to a purported reference price  
10 of \$90 00, as documented by the “Wayback Machine ”<sup>44</sup>

11 58 On April 14, 2016, Defendant sold a product called “LovelySkin LUXE Ultra-Rich  
12 Peptide Moisturizer” for a price of \$90 00, as documented by the “Wayback Machine ”<sup>45</sup>

13 59 On April 17, 2016, Defendant sold a product called “LovelySkin LUXE Ultra-Rich  
14 Peptide Moisturizer” for a price of \$90 00, as documented by the “Wayback Machine ”<sup>46</sup>

15 60 On May 18, 2016, Defendant sold a product called “LovelySkin LUXE Ultra-Rich  
16 Peptide Moisturizer” for a price of \$90 00, as documented by the “Wayback Machine ”<sup>47</sup>

17 61 On June 30, 2017, Defendant sold a product called “LovelySkin LUXE Ultra-Rich  
18 Peptide Moisturizer” for an allegedly discounted price of \$67 50 compared to a purported reference price  
19 of \$90 00, as documented by the “Wayback Machine ”<sup>48</sup>

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21 <sup>41</sup> <https://web.archive.org/web/20150905235203/https://www.lovelyskin.com/o/lovelyskin-luxe-ultra-rich-peptide-moisturizer>

22 <sup>42</sup> <https://web.archive.org/web/20150910041823/https://www.lovelyskin.com/o/lovelyskin-luxe-ultra-rich-peptide-moisturizer>

23 <sup>43</sup> <https://web.archive.org/web/20151006160946/https://www.lovelyskin.com/o/lovelyskin-luxe-ultra-rich-peptide-moisturizer>

24 <sup>44</sup> <https://web.archive.org/web/20160315145317/https://www.lovelyskin.com/o/lovelyskin-luxe-ultra-rich-peptide-moisturizer>

25 <sup>45</sup> <https://web.archive.org/web/20160414032244/https://www.lovelyskin.com/o/lovelyskin-luxe-ultra-rich-peptide-moisturizer>

26 <sup>46</sup> <https://web.archive.org/web/20160417063157/https://www.lovelyskin.com/o/lovelyskin-luxe-ultra-rich-peptide-moisturizer>

27 <sup>47</sup> <https://web.archive.org/web/20160518181038/https://www.lovelyskin.com/o/lovelyskin-luxe-ultra-rich-peptide-moisturizer>

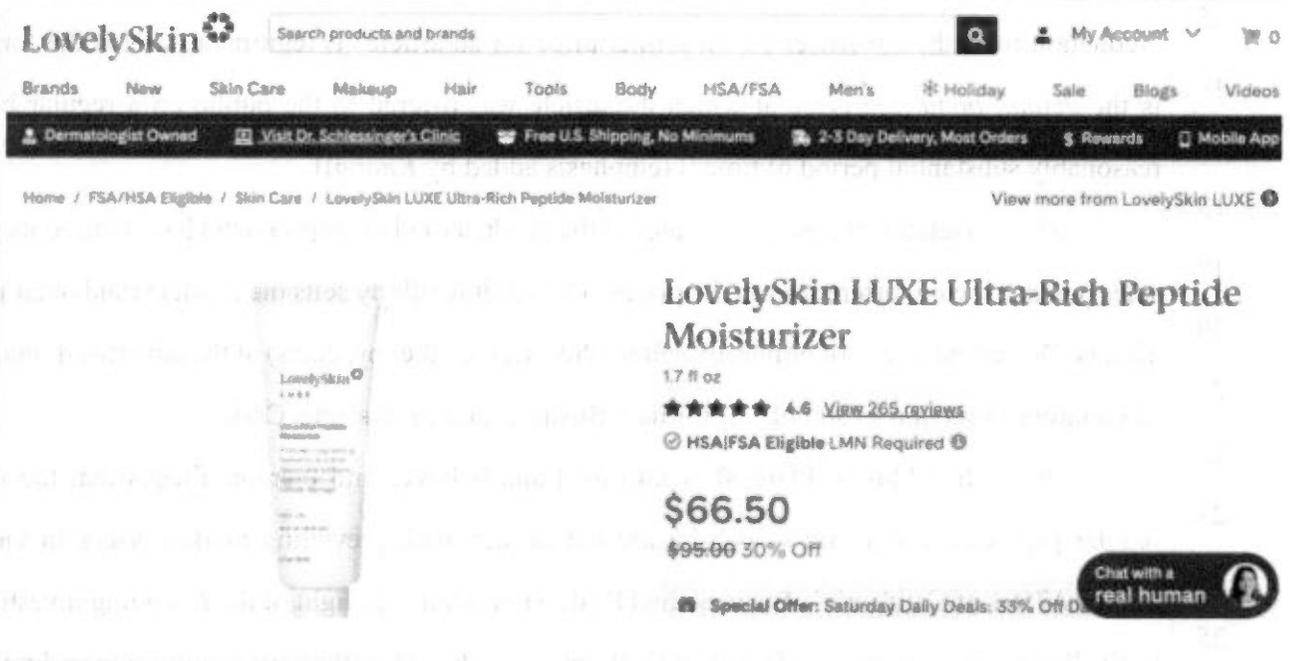
28 <sup>48</sup> <https://web.archive.org/web/20170630144323/https://www.lovelyskin.com/o/lovelyskin-luxe-ultra-rich-peptide-moisturizer>

1 62. On October 21, 2021, Defendant sold a product called “LovelySkin LUXE Ultra-Rich  
2 Peptide Moisturizer” for an allegedly discounted price of \$74.00 compared to a purported reference price  
3 of \$92.50, as documented by the “Wayback Machine.”<sup>49</sup>

4 63. On February 4, 2024, Defendant sold a product called “LovelySkin LUXE Ultra-Rich  
5 Peptide Moisturizer” for an allegedly discounted price of \$76.00 compared to a purported reference price  
6 of \$95.00, as documented by the “Wayback Machine.”<sup>50</sup>

7 64. On January 24, 2025, Defendant sold a product called “LovelySkin LUXE Ultra-Rich  
8 Peptide Moisturizer” for an allegedly discounted price of \$76.00 compared to a purported reference price  
9 of \$95.00, as documented by the “Wayback Machine.”<sup>51</sup>

10 65. Currently, as of November 22, 2025, the “LovelySkin LUXE Ultra-Rich Peptide  
11 Moisturizer”<sup>52</sup> is being sold for an allegedly discounted price of \$66.50 compared to a purported  
12 reference price of \$95.00—a price at which the moisturizer has never been sold for in any scrapes of the  
13 “Wayback Machine”:  
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26 <sup>49</sup> <https://web.archive.org/web/20211021174624/https://www.lovelyskin.com/o/lovelyskin-luxe-ultra-rich-peptide-moisturizer>

27 <sup>50</sup> <https://web.archive.org/web/20240204030233/https://www.lovelyskin.com/c/moisturizers-shop-by-product-type-skin-care>

28 <sup>51</sup> <https://web.archive.org/web/20250124135853/https://www.lovelyskin.com/o/lovelyskin-luxe-ultra-rich-peptide-moisturizer>

1           66     The foregoing pricing and advertising practices reflecting high-pressure fake sales are  
2 patently deceptive. They are intended to mislead customers into believing that they are getting a bargain  
3 by buying products from Defendant on sale and at a substantial and deep discount. The reference price  
4 is, therefore, an artificially inflated price. In turn, the advertised discounts are nothing more than  
5 phantom markdowns.

6           67     “An advertised discount off a seller’s regular price can be deceptive where (1) the alleged  
7 sale price does not in fact differ from the regular price at which the product is ordinarily sold, or (2) ‘the  
8 alleged original price constituted a false valuation of the product.’” *Knapp v Art.com, Inc.*, No. 16-cv-  
9 00768-WHO, 2016 WL 3268995, at \*3 (N.D. Cal. June 15, 2016) (quoting 1A Calmann on Unfair  
10 Competition, Tr. & Mono. § 5.59 (4th ed. 2015) and citing *Hinojos v Kohl’s Corp.*, 718 F.3d 1098,  
11 1102 (9th Cir. 2013) (noting that the plaintiff alleged both (1) “that he purchased several items that were  
12 advertised as being substantially reduced from their ‘original’ or ‘regular’ prices but that were, in reality,  
13 routinely sold by [the defendant] at the advertised ‘sale’ prices,” and (2) “that the advertised ‘original’  
14 or ‘regular’ prices did not reflect prevailing retail market prices”), 16 C.F.R. § 233.1(a) (an advertised  
15 “reduction from the advertiser’s own former price for an article” is legitimate where “the former price  
16 is the *actual, bona fide price* at which the article was offered to the public on a regular basis for a  
17 reasonably substantial period of time”) (emphasis added by *Knapp*)).

18           68     Defendant’s perpetual sales of the Product (and other products) have caused its purported  
19 sales prices to be no different from the prices at which it regularly sells the Product (and other products).  
20 That is, Defendant does not ordinarily sell its Product (or other products) at the advertised regular prices  
21 in violation of section 17500 of California’s Business and Professions Code.

22           69     In addition, Plaintiff is informed and believes and thereon alleges that the advertised  
23 regular prices on Defendant’s Website are out of step with prevailing market prices in violation of  
24 section 17501 of California’s Business and Professions Code. In light of the foregoing investigation of  
25 (i) the Product’s sales price on Defendant’s Website conducted by Plaintiff’s counsel regarding the three-  
26 month period before Plaintiff’s purchase of the Product referenced in the preceding paragraphs, (ii) the  
27 time period before such pertinent three-month period began, and (iii) the time period after Plaintiff’s  
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1 purchase of the Product, Plaintiff is informed and believes and thereon alleges that the Product purchased  
2 by Plaintiff was not offered for sale on Defendant's Website in the majority of daily offerings at the  
3 reference price during the requisite statutory three-month period, such that the reference price was not  
4 the "prevailing market price" for the Product during the requisite statutory three-month period *People*  
5 *v Superior Court*, 34 Cal App 5th 376, 414 (2019) ("[T]he requisite market price is reasonably viewed  
6 as the **common or predominant price** during that [pertinent three-month] period For that reason, in a  
7 typical case, a retailer may avoid liability under the statute by advertising a former price that obtains on  
8 **all or most of the days** within the pertinent three-month period") (emphasis added), (recognizing the  
9 "statistical 'mode' price of an advertised item – that is, the most commonly occurring price – as an  
10 objective standard for determining the prevailing three-month market price for that item and explaining  
11 that "the most straightforward application of the concept of the mode to the facts alleged here is to  
12 identify the three-month prevailing price for an item as **the price offered in the majority of the 'daily**  
13 **offerings' for the period, if there is one, and otherwise as the most frequently occurring price in those**  
14 **offerings**") (emphasis added)

15 70 Defendant knows that the prices for the Product are fake and artificially inflated and  
16 intentionally uses them in its deceptive pricing scheme on its Website to increase sales and profits by  
17 misleading consumers to believe that they are buying products at a substantial discount Defendant  
18 thereby induces customers to buy products they never would have bought—or at the very least, to pay  
19 more for merchandise than they otherwise would have if Defendant was simply being truthful about its  
20 "sales "

21 71 Defendant used strike-through pricing for the Product and other products to indicate that  
22 such products were on "sale," which provided a false sense of urgency to consumers including Plaintiff  
23 because, in reality, the sale price that was advertised to Plaintiff and other consumers was routinely  
24 offered 16 C.F.R. § 233.5 ("[Retailers] should not make a 'limited' offer which, in fact, is not  
25 limited")

26 72 The effectiveness of Defendant's deceitful pricing scheme is supported by longstanding  
27 scholarly research In the seminal article entitled *Comparative Price Advertising Informative or*  
28

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

12 73 Professors Compeau and Grewal reached similar conclusions in a 2002 article “decades  
13 of research support the conclusion that advertised reference prices do indeed enhance consumers’  
14 perceptions of the value of the deal” Dhruv Grewal & Larry D Compeau, *Comparative Price*  
15 *Advertising Believe It or Not*, 36 J OF CONSUMER AFFAIRS 287 (2002) The professors also found that  
16 “[c]onsumers are influenced by comparison prices even when the stated reference prices are implausibly  
17 high” *Id*

18 74 In another scholarly publication, Professors Joan Lindsey-Mullikin and Ross D Petty  
19 concluded that “[r]eference price ads strongly influence consumer perceptions of value Consumers  
20 often make purchases not based on price but because a retailer assures them that a deal is a good bargain  
21 This occurs when the retailer highlights the relative savings compared with the prices of  
22 competitors” Joan Lindsey-Mullikin & Ross D Petty, *Marketing Tactics Discouraging Price Search*  
23 *Deception and Competition*, 64 J OF BUS RESEARCH 67 (2011)

24 75 Similarly, according to Professors Praveen K Kopalle and Joan Lindsey-Mullikin,  
25 “research has shown that retailer-supplied reference prices clearly enhance buyers’ perceptions of value”  
26 and “have a significant impact on consumer purchasing decisions” Praveen K Kopalle & Joan Lindsey-  
27

28

1 Mullikin, *The Impact of External Reference Price on Consumer Price Expectations*, 79 J OF RETAILING  
2 225 (2003)

3 76 The results of a 1990 study by Professors Jerry B Gotlieb and Cyndy Thomas Fitzgerald,  
4 came to the conclusion that “reference prices are important cues consumers use when making the  
5 decision concerning how much they are willing to pay for the product” Jerry B Gotlieb & Cyndy  
6 Thomas Fitzgerald, *An Investigation into the Effects of Advertised Reference Prices on the Price  
7 Consumers Are Willing to Pay for the Product*, 6 J OF APP'D BUS RES 1 (1990) This study also  
8 concluded that “consumers are likely to be misled into a willingness to pay a higher price for a product  
9 simply because the product has a higher reference price” *Id*

10 77 The unmistakable inference to be drawn from the foregoing research and the Ninth  
11 Circuit’s opinion in *Hinojos* is that the deceptive advertising through the use of false reference pricing  
12 employed here by Defendant is intended to, and does in fact, influence customer behavior by artificially  
13 inflating customer perceptions of a given item’s value and causing customers to spend money that they  
14 otherwise would not have, purchase items they otherwise would not have, and/or spend more money for  
15 a product than they otherwise would have absent the deceptive advertising

16 78 Defendant had the opportunity to follow decades of significant industry guidance from  
17 the federal Government for its bargain advertising and comparative price advertising practices Federal  
18 law regulates bargain advertising practices under the general false advertising statutes, 15 U S C §§ 52  
19 and 55, but the Code of Federal Regulations set forth guidelines issued by the Federal Trade Commission  
20 (“FTC”) that provide detailed descriptions, explanations of what types of advertising may be misleading,  
21 and guidance 16 C F R § 1.5 (“Industry guides are administrative interpretations of laws administered  
22 by the [Federal Trade] Commission for the guidance of the public in conducting its affairs in conformity  
23 with legal requirements”)

24 79 For example, the FTC has provided written guidance on former price comparisons in  
25 relevant part, “One of the most commonly used forms of bargain advertising is to offer a reduction from  
26 the advertiser’s own former price for an article. If the former price is the actual, bona fide price at which  
27 the article was offered to the public *on a regular basis for a reasonably substantial period of time*, it  
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1 provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine,  
2 the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not  
3 bona fide but fictitious—for example, where *an artificial, inflated price was established for the purpose*  
4 *of enabling the subsequent offer of a large reduction—the “bargain” being advertised is a false one;*  
5 *the purchaser is not receiving the unusual value he expects. In such a case, the “reduced” price is, in*  
6 *reality, probably just the seller’s regular price”* (16 C F R § 233 1(a) (emphasis added) )

7 80 The FTC has also stated, “A former price is not necessarily fictitious merely because no  
8 sales at the advertised price were made. The advertiser should be especially careful, however, in such a  
9 case, that the price is one at which the product was openly and actively offered for sale, *for a reasonably*  
10 *substantial period of time, in the recent, regular course of his business*, honestly and in good faith—  
11 and, of course, *not for the purpose of establishing a fictitious higher price on which a deceptive*  
12 *comparison might be based”* (16 C F R § 233 1(b) (emphasis added) )

13 81 The FTC has also stated in addressing the topic of retail price comparisons, “Whenever  
14 an advertiser represents that he is selling below the prices being charged in his area for a particular  
15 article, he should be reasonably certain that the higher price he advertises does not appreciably exceed  
16 the price at which *substantial sales of the article are being made in the area*—that is, a sufficient  
17 number of sales so that a consumer would consider a reduction from the price to represent a genuine  
18 bargain or saving” (16 C F R § 233 2 (emphasis added) )

19 82 Plaintiff seeks damages and, in the alternative, restitution. Plaintiff is permitted to seek  
20 equitable remedies in the alternative because Plaintiff has no adequate remedy at law.

21 83 A legal remedy is not adequate if it is not as certain as an equitable remedy. The elements  
22 of Plaintiff’s equitable claims are different and do not require the same showings as Plaintiff’s legal  
23 claims. For example, Plaintiff’s theory of liability under section 17501 (an equitable claim) is predicated  
24 on a specific statutory provision, which prohibits advertising merchandise using a former price if that  
25 price was not the prevailing market price within the statutory three-month period. (Cal. Bus. & Prof.  
26 Code § 17501 ) Plaintiff may be able to prove these more straightforward factual elements, and thus  
27  
28

1 prevail under section 17501, while not being able to prove one or more elements of Plaintiff's legal  
2 claim under the CLRA seeking damages

3 84 In addition, to obtain a full refund as damages, Plaintiff must show that the Product that  
4 Plaintiff bought has essentially no market value. In contrast, Plaintiff can seek restitution without  
5 making this showing. This is because Plaintiff purchased a Product that Plaintiff would not otherwise  
6 have purchased, but for Defendant's representations. Obtaining a full refund at law is less certain than  
7 obtaining a refund in equity.

8 85 Finally, legal damages are inadequate to remedy the imminent threat of future harm that  
9 Plaintiff faces. Only an injunction can remedy this threat of future harm. Plaintiff would purchase either  
10 the Product or other products from Defendant again in the future if Plaintiff could feel sure that  
11 Defendant's regular prices accurately reflected Defendant's former prices and the market value of the  
12 products, and that its discounts were truthful. But, without an injunction, Plaintiff has no realistic way  
13 to know which—if any—of Defendant's regular prices, discounts, and sales are not false or deceptive.  
14 Thus, Plaintiff is unable to rely on Defendant's advertising in the future, and so Plaintiff cannot purchase  
15 products that Plaintiff would like to purchase.

16  
17 **V. CLASS ACTION ALLEGATIONS**

18 86 Plaintiff brings this action on behalf of all persons similarly situated, and seeks  
19 certification of the following class:

20 **All persons who purchased any product from Defendant's Website while in California**  
21 **within the statute of limitations period at a purported discount from a higher reference**  
22 **price.**

23 87 The above-described class of persons shall hereafter be referred to as the "Class."  
24 Excluded from the Class are any and all past or present officers, directors, or employees of Defendant,  
25 any judge who presides over this action, and any partner or employee of Class Counsel. Plaintiff  
26 reserves the right to expand, limit, modify, or amend this class definition, including the addition of one  
27 or more subclasses, in connection with his motion for class certification, or at any other time, based  
28 upon, *inter alia*, changing circumstances and/or new facts obtained during discovery.

1  
2 88 **Numerosity** The Class is so numerous that joinder of all members in one action is  
3 impracticable. The exact number and identities of the members of the Class is unknown to Plaintiff at  
4 this time and can only be ascertained through appropriate discovery, but Plaintiff is informed and  
5 believes, and thereon, alleges that there are at least 100 members of the Class.

6 89 **Typicality**. Plaintiff's claims are typical of those of other members of the Class, all of  
7 whom have suffered similar harm due to Defendant's course of conduct as described in this Complaint.

8 90 **Adequacy of Representation**. Plaintiff is an adequate representative of the Class and  
9 will fairly and adequately protect the interests of the Class. Plaintiff has retained attorneys who are  
10 experienced in the handling of complex litigation and class actions, and Plaintiff and Plaintiff's counsel  
11 intend to prosecute this action vigorously.

12 91 **Predominance of Common Questions of Law or Fact**. Common questions of law and  
13 fact exist as to all members of the Class that predominate over any questions affecting only individual  
14 members of the Class. These common legal and factual questions, which do not vary among members  
15 of the Class, and which may be determined without reference to the individual circumstances of any  
16 member of the Class, include, but are not limited to, the following:

17 a) Whether, during the Class Period, Defendant advertised false reference prices of its  
18 products offered on its Website.

19 b) Whether, during the Class Period, Defendant advertised price discounts from false  
20 reference prices on products offered on its Website.

21 c) Whether Defendant's deceptive pricing scheme using false reference prices constitutes  
22 false advertising in violation of the California False Advertising Law under Business &  
23 Professions Code § 17500 *et seq*.

24 c) Whether Defendant's deceptive pricing scheme using false reference prices violate the  
25 CLRA under Civil Code § 1770.

26 92 **Superiority**. A class action is superior to other available methods for the fair and  
27 efficient adjudication of this controversy because individual litigation of the claims of all members of  
28 the Class is impracticable.



1 96 Section 17501 of the Business and Professions Code provides in relevant part that “no  
2 price shall be advertised as a former price of any advertised thing, unless the alleged former price was  
3 the prevailing market price within three months next immediately preceding the publication of the  
4 advertisement or unless the date when the alleged former price did prevail is clearly, exactly, and  
5 conspicuously stated in the advertisement” (Cal Bus & Prof Code § 17501 )

6 97 By committing the acts alleged in this operative Complaint, Defendant has violated  
7 Business and Professions Code §§ 17500 *et seq*

8 98 For example, here, Defendant does not ordinarily sell its products including, but not  
9 limited to, the Product at the advertised regular prices And, the Product was not sold at the higher  
10 reference price in the pertinent statutory three-month period prior to Plaintiff’s purchase of the Product  
11 via the Website and Class members’ purchases of Defendant’s products via the Website

12 99 As a direct and proximate result of Defendant’s misleading and false advertisements,  
13 Plaintiff and members of the Class have suffered injury in fact and have lost money

14 **SECOND CAUSE OF ACTION**

15 **Violation of Consumers Legal Remedies Act**

16 **Cal. Civil Code § 1750 *et seq.***

17 100 Plaintiff incorporates by reference the foregoing paragraphs as if set forth hereinafter

18 101 The CLRA prohibits certain “unfair methods of competition and unfair or deceptive acts  
19 or practices” in connection with the sale of goods or services to any consumer (Cal Civ Code §  
20 1770(a) )

21 102 The practices described herein, specifically Defendant’s advertising and sale of its  
22 products, were intended to result and did result in the sale of such products to the consuming public and  
23 violated and continues to violate (i) section 1770(a)(9) of the Civil Code by “[a]dvertising goods  
24 with intent not to sell them as advertised”, and (ii) section 1770(a)(13) of the Civil Code by “[m]aking  
25 false or misleading statements of fact concerning reasons for, existence of, or, amounts of, price  
26 reductions ”  
27  
28

1           103 Plaintiff is an individual who acquired, by purchase, the Product, which is a good, for  
2 personal, family, or household purposes

3           104 Defendant deceived Plaintiff by advertising the price of the Product in a misleading  
4 manner contrary to California statutes including sections 17500 and 17501 of the Business and  
5 Professions Code

6           105 Defendant made material misrepresentations to deceive Plaintiff and Class members

7           106 In doing so, Defendant intentionally misrepresented and concealed material facts from  
8 Plaintiff and Class members Said misrepresentations and concealment were done with the intention of  
9 deceiving Plaintiff and Class members, and depriving Plaintiff and Class members of their rights and  
10 money

11           107 Defendant knew that the Product's advertising of its price on its Website was misleading  
12 and deceptive and the advertising of its other products on its Website was similarly misleading and  
13 deceptive

14           108 As mentioned above, Plaintiff read and relied upon the strike-through reference pricing  
15 advertising the Product that she purchased before completing her online purchase of the Product via the  
16 Website

17           109 Defendant's advertising of the Product through reference pricing was a material factor in  
18 Plaintiff's decision to purchase the Product Based on Defendant's advertising of the Product, Plaintiff  
19 reasonably believed that the reference price of the Product purchased by Plaintiff was genuine Had  
20 Plaintiff known the truth of the matter, *ie*, that the reference price of the Product was false or  
21 misleading, Plaintiff would not have purchased the Product

22           110 Plaintiff and Class members have suffered injury in fact and have lost money as a result  
23 of Defendant's deceptive, unfair, and unlawful conduct

24           111 Punitive damages are also sought herein based upon Defendant's deceptive conduct,  
25 which indicates that Defendant is guilty of oppression, fraud, or malice

26           112 Prior to the commencement of this action, Plaintiff sent a letter notifying Defendant of  
27 the particular wrongdoing that violates the CLRA and demanded that Defendant appropriately correct  
28

1 its advertising and/or provide another appropriate remedy of the violations to the putative Class of  
2 California consumers More than 30 days elapsed since Plaintiff sent such demand letter to Defendant,  
3 but Defendant failed to respond by providing an appropriate remedy of the violations or offering to do  
4 so, within a reasonable time to the entire putative Class

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff seeks judgment against Defendant as follows

- 7 a For an order certifying that the action be maintained as a class action, that Plaintiff be
- 8 designated as the class representative, and that undersigned counsel be designated as
- 9 class counsel,
- 10 b For all available legal, equitable, and declaratory relief,
- 11 c For statutory damages,
- 12 d For punitive damages,
- 13 e For attorneys' fees and costs as allowed by law, and
- 14 f. For any and all other relief at law or equity that may be appropriate

15  
16  
17 Dated August 21, 2025

PACIFIC TRIAL ATTORNEYS, APC

18  
19   
20 By \_\_\_\_\_  
21 Scott J Ferrell  
22 Attorneys for Plaintiff and the Putative Class