

***\*NEWS RELEASE\****

**JUDGMENT AGAINST OVERSTOCK FOR FALSE  
ADVERTISING AND UNFAIR BUSINESS  
PRACTICES IS AFFIRMED**

---

FOR IMMEDIATE RELEASE

June 7, 2017

CONTACT: JAMES R. BURLISON, Deputy District Attorney  
(831) 647-7713

---

Monterey County District Attorney Dean D. Flippo announced today that, on June 2, 2017, the First District Court of Appeal, Division Four issued an opinion affirming a judgment against online retailer Overstock for false advertising and unfair business practices. The opinion affirms a decision of the Honorable Wynne S. Carvill of the Alameda County Superior Court. The prosecution of the case was jointly handled by the Alameda, Marin, Monterey, Napa, Santa Clara, Santa Cruz, Shasta, and Sonoma County District Attorney's offices.

A major issue in the case was Overstock's use of advertised reference prices, such as "List Price" or "Compare at". It frequently displayed such reference prices in close proximity to the sales price, often with a purported discount which it labeled as "You Save" or "Save". The trial court found that Overstock unlawfully displayed advertised reference prices that were created by the use of formulas, that were based not on the actual product being offered for sale, but on similar products (without adequate disclosure to consumers), or that were based on the highest possible price that could be found in the market, again without adequate disclosures.

Overstock appealed the decision claiming the trial court's findings were not supported by substantial evidence. Overstock also contended, among other things, that the trial court had abused its discretion by finding Overstock liable for \$6,828,000 in civil penalties which Overstock claimed far exceeded the highest reported amount of penalties ever imposed for false advertising.

Following oral arguments on April 27, 2017, California's First District Court of Appeal, Division Four issued a detailed 36 page written opinion authored by the Honorable Justice Maria P. Rivera, portions of which have been certified for publication, unanimously affirming the trial court's decision in its entirety. The justices concluded that, among other things, there was sufficient evidence to support the trial court's finding that Overstock made false and misleading

statements in violation of the laws against unfair business practices and false advertising, and that the trial court did not abuse its discretion in calculating the \$6,828,000 in civil penalties. The office of the California Attorney General filed a friend of the court brief in support of the trial court decision in calculating civil penalties in this case.

The Court of Appeal's decision will become final in 30 days. Overstock has not indicated whether it will seek to file a petition with the California Supreme Court to review the decision.

The District Attorney's Office brings actions such as these to ensure that businesses comply with their legal responsibilities to protect consumers from harm. As the justices noted in their decision, the trial court expressly found that Overstock's deceptive pricing practice not only had the capacity to cause harm but "in fact did so."