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17 **UNITED STATES DISTRICT COURT**
 18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 **HOLIANNA**
 20 **ANDRIAMANIRAKA,**
 21 **Individually and On Behalf of All**
 22 **Others Similarly Situated,**

23 Plaintiff,

24 v.

25 **DEVA CONCEPTS, LLC, D/B/A**
 26 **DEVA CURL,**

27 Defendant.

28 **Case No.: '20CV0479 CAB WVG**

CLASS ACTION COMPLAINT FOR VIOLATIONS OF:

- 1) **FALSE ADVERTISING LAW, CAL. BUS. & PROF. §§ 17500, ET SEQ.;**
- 2) **UNFAIR COMPETITION LAW, CAL. BUS. & PROF. §§ 17200, ET SEQ.;**
- 3) **NEGLIGENT MISREPRESENTATION; AND**
- 4) **INTENTIONAL MISREPRESENTATION; AND**
- 5) **CONSUMER LEGAL REMEDIES ACT, CAL. CIVIL CODE §§ 1750, ET SEQ.;**

[JURY TRIAL DEMANDED]

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INTRODUCTION

1. Plaintiff HOLIANNA ANDRIAMANIRAKA (“Ms. Andriamaniraka” or “Plaintiff”) brings this Class Action to challenge the deceptive advertising and business practices of defendant, DEVA CONCEPTS, LLC, d/b/a DEVA CURL (“Deva Curl” or “Defendant”) with regard to Defendant’s false and misleading marketing with regards to “DevaCurl No-Poo Original” non-lathering conditioning cleanser, DevaCurl One Condition® Original hair-conditioner, DevaCurl Light Defining Gel, DevaCurl Low-Poo Original cleanser, DevaCurl Low-Poo Delight cleanser, DevaCurl No-Poo Decadence cleanser, DevaCurl One Condition® Delight hair-conditioner, DevaCurl One Condition® Decadence hair-conditioner, Melt into Moisture Mask, Styling Cream, High Shine, Heaven in Hair, Leave-In Decadence conditioner, Super Stretch Coconut Curl Elongator, Wavemaker, and DevaCurl Ultra Defining Gel (collectively “the Products”). Based on such false and misleading advertisements, Plaintiff and others similarly situated purchased Defendant’s mislabeled Products.
2. Defendant claims that the Products “will not only enhance your curls, but also enhance your life” and that the Products are “formulated with a moisture foundation that helps curls look and feel healthy, conditioned, soft, defined, shiny, and frizz-free.” Defendant also claims that “We literally take the products out of the lab and into curls” to “validate every product for quality, safety and performance.”
3. Defendant also claims that it is “committed to continuously listening, learning and finding innovative ways to help all curlkind love their curls!” Defendant claims that it “listen[s] to our stylists and curl community to find out what they need . . . to bring out the best in curls.” Defendant also claims that they have “strict safety testing protocols” and they “are committed to the safety of our products and our curl community.”

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- 1 4. Defendant also advertises all of its products as “free of harsh ingredients”
2 because “it was the right thing to do for curls.” Defendant promotes its products
3 as containing only “natural and functional ingredients” and that its ingredients
4 are “ingredients with a conscience.” Next to these claims, Defendant includes
5 pictures of natural chia-flaxseed extract, jojoba oil, saffron flower extract, and
6 passionfruit oil.
- 7 5. Despite these wholesome claims, Defendant’s products contain several
8 ingredients that are known allergens, irritants, or otherwise harmful to humans.
9 For example, Defendant’s No-Poo Original conditioning cleaner contains
10 Propylene Glycol and Cocamidopropyl Betaine, which are both allergens.
- 11 6. Defendant also failed to adequately disclose that its Products had safety risks
12 associated with ordinary use, including increased hair loss, hair damage,
13 excessive shedding, balding, and scalp injury.
- 14 7. Consequently, Defendant’s actions resulted in several violations of state
15 consumer statutes. Defendant’s misrepresentations are not only harmful to
16 consumers, but also allow Defendant to increase its sales and capture market
17 shares from its competitors.
- 18 8. Plaintiff makes these allegations as follows upon personal knowledge as to
19 Plaintiff’s own acts and experiences, and, as to all other matters, upon
20 information and belief, including investigation conducted by Plaintiff’s
21 attorneys.
- 22 9. Defendant’s nationwide sale and advertising of the deceptively misbranded
23 Products constitutes violations of: (1) California’s Consumer Legal Remedies
24 Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*; (2) California’s False
25 Advertising Law (“FAL”), Bus. & Prof. Code §§ 17500, *et seq.*; (3) California’s
26 Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*; (4)
27 negligent misrepresentation; and (5) intentional misrepresentation.

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1 10. This conduct caused Plaintiff and others similarly situated damages, and
2 requires restitution and injunctive relief to remedy and prevent further harm.

3 11. Unless otherwise indicated, the use of Defendant’s name in this Complaint
4 includes all its agents, employees, officers, members, directors, heirs,
5 successors, assigns, principals, trustees, sureties, subrogees, representatives and
6 insurers of the named Defendant.

7 **JURISDICTION AND VENUE**

8 12. This Court has jurisdiction over this matter pursuant to the Class Action
9 Fairness Act (CAFA) because the amount in controversy in this matter exceeds
10 \$5,000,000.00¹ as to all putative Class members, inclusive of attorneys’ fees
11 and costs, and injunctive relief. *See* 28 U.S.C. § 1332(d).

12 13. This Court has diversity jurisdiction under 28 U.S.C. § 1332 because Plaintiff
13 is a resident and citizen of the State of California, and Defendant is a corporation
14 organized and existing under the laws of the State of Delaware.

15 14. This Court has personal jurisdiction over Defendant because Defendant
16 conducts business in the County of San Diego. Therefore, Defendant has
17 sufficient minimum contacts with this state, and otherwise purposely avails
18 itself of the markets in this state through the promotion, sale, and marketing of
19 the Products in this state, to render the exercise of jurisdiction by this Court
20 permissible under traditional notions of fair play and substantial justice.
21 Moreover, Defendant has a registered agent for service in California, which was
22 served with the complaint and summons.

23
24
25 ¹ On information and belief, Defendant sells its Products online throughout the
26 country with thousands of reviews on each product. Based upon the advertised
27 price of Defendant’s Products and their nationwide availability, Plaintiff is
28 informed, believes, and thereon alleges the class damages exceed the \$5,000,000
threshold as set by 28 U.S.C. § 1332(d).

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1 15. Venue is proper in the United States District Court for the Central District of
2 California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) the
3 conduct complained of herein occurred within this judicial district; and, (ii)
4 many of the acts and transactions giving rise to this action occurred in this
5 district because:

- 6 (a) Defendant is authorized to conduct business in this district;
- 7 (b) Defendant does substantial business within this district;
- 8 (c) Defendant is subject to personal jurisdiction in this district
9 because it has availed itself of the laws and markets within this
10 district; and,
- 11 (d) Defendant’s actions resulting in harm to Plaintiff occurred within
12 this district.

13 **PARTIES**

14 16. Plaintiff is a natural person residing in the City and County of San Diego in the
15 State of California.

16 17. Upon information and belief, Defendant is a corporation that is organized and
17 exists under the laws of the State of Delaware, with its principal place of
18 business in New York, New York.

19 18. Defendant manufactures and/or distributes the Products. Defendant conducts
20 extensive business through internet sales, including its own highly interactive
21 website, and enjoys wide retail distribution at numerous stores within the United
22 States, including California.

23 **FACTUAL ALLEGATIONS**

24 19. At all times relevant, Defendant made and continues to make the claims and
25 affirmative misrepresentations regarding the Products, which it manufactures,
26 markets, and sells online through its own website and other online retailers,
27 including Amazon.com among others.

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1 20. Defendant advertised, marketed, packaged, and sold the Products to Plaintiff
2 and other consumers similarly situated throughout the nation with the claims,
3 which are false representation that the Products are safe, wholesome, and
4 beneficial to consumer’s hair’s health.

5 21. On or about August 16, 2019, Plaintiff purchased Defendant’s Curly Double
6 Take Kit and Styling Cream from Defendant’s website for a total of \$120.00
7 before taxes. The Curly Double Take Kit included Defendant’s No-Poo Original
8 Conditioning Cleanser and Defendant’s One Condition Original 32 oz and 12
9 oz.

10 22. After several months of using the Products, on or about December 2, 2019,
11 Plaintiff purchased Defendant’s Styling Cream, High Shine, Light Defining
12 Gel, and Defendant’s Heaven in Hair products.

13 23. Before both purchases, Plaintiff relied on Defendant’s statements online, as
14 detailed above and consumer testimonials on Defendant’s website and social
15 media, all of which lead Plaintiff to believe that the Products were safe,
16 wholesome, natural, and would lead to Plaintiff having a healthier scalp and
17 hair.

18 24. Due to Plaintiff’s extended and exclusive use of Defendant’s Products, Plaintiff
19 began losing unusual amounts of hair, her scalp began to feel extremely irritated
20 and her hair became dried out and frizzy.

21 25. Unbeknownst to Plaintiff, beginning in August of 2019, consumers throughout
22 the country began complaining that Defendant’s Products were causing scalp
23 irritation, extreme shedding and hair thinning. These complaints were voiced to
24 Defendant through Better Business Bureau and even a Facebook group entitled
25 “Hair Damage & Hair Loss from DevaCurl” and contains more than 58,000
26 members.

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1 26. Upon information and belief, Defendant knew of these complaints, but
2 continued to represent its Products as being beneficial for the consumer’s hair
3 and scalp. Moreover, Defendant has not warned consumers about any of these
4 harmful side effects, nor has Defendant recalled any of the Products.

5 27. As mentioned above, Defendant’s Products contain known allergens and
6 irritants. Similarly, the healthy product verification application ThinkDirty has
7 rated all of Defendant’s Products as having potentially serious negative and long
8 term health effects. This stems from Defendant’s inclusion of Phenoxyethanol,
9 Laureth-4, VP/VA Copolymer, Ceteareth-20, and Defendant’s generalized use
10 of the ingredient “Fragrance”, which typically occurs in products that use
11 artificial or harm chemicals for the fragrance.

12 28. Defendant’s misrepresentations regarding the Products caused the Plaintiff and
13 similarly situated consumers nationwide to purchase and use the Products that
14 are unsafe for human use.

15 29. Furthermore, the claims about the Products allows Defendant to gain a market
16 share of the cosmetic industry through misleading and deceptive practices,
17 giving it an unfair advantage over its competitors.

18 30. Despite this, Defendant continues to advertise, market, package, and sell the
19 Products online and on the open market as containing all of the health benefits
20 listed above.²

21 31. On information and belief, Defendant’s Products’ label, packaging, and
22 advertising materials are prepared and/or approved by Defendant and/or its
23 agents.

24 32. Defendant knew, or in the exercise of reasonable care, should have known that
25 its Products’ label and advertising materials were misleading or false.

26
27 ² See Product Philosophy, <https://www.devacurl.com/us/curl-101/product-philosophy> (last accessed March 12, 2020).

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1 33. As a consequence of Defendant’s unfair and deceptive advertising and
2 manufacturing practices, Plaintiff and other consumers similarly situated
3 purchased and overpaid for Defendant’s Products under the false impression
4 that the Products were safe for cosmetic use and could provide the health
5 benefits as advertised.

6 34. Plaintiff and other consumers similarly situated purchased and overpaid for
7 Defendant’s Products under the false impression that the Products would
8 provide the cosmetic benefits advertised in the claims associated with the use of
9 the Products; however, the Products could not provide the advertised benefits
10 as it was unsafe for human use and caused the side effects listed above.

11 35. If Plaintiff had been aware that the Products caused the side effects, Plaintiff
12 would have paid less for them, or would have purchased entirely different
13 products. In other words, Plaintiff would not have purchased Defendant’s
14 Products but for Defendant’s false claims and representations on the Products’
15 label and related advertising material.

16 36. Plaintiff and others similarly situated were exposed to and relied upon the same
17 material misrepresentations made on Defendant’s Products’ labels and website,
18 where Defendant sold, and currently sells, its Products to consumers throughout
19 the United States.

20 37. As a result of Defendant’s false and misleading statements and failure to
21 disclose, Plaintiff and others similarly situated consumers purchased thousands,
22 if not tens or hundreds of thousands, of units of Defendant’s Products, and have
23 suffered, and continue to suffer, injury in fact through the loss of money and/or
24 property.

25 38. This action seeks, among other things, equitable and injunctive relief, restitution
26 of all amounts illegally obtained, and disgorgement of any and all ill-gotten
27 gains as a result of the misconduct alleged herein.

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CLASS ACTION ALLEGATIONS

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2 39. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
3 this Complaint as though fully stated herein.

4 40. Plaintiff brings this action collectively and on behalf of all others similarly
5 situated against Defendant, pursuant to Federal Rules of Civil Procedure 23(a)
6 and (b)(3) and/or (b)(2).

7 41. Subject to additional information obtained through further investigation and/or
8 discovery, the proposed class (the “Class”) consists of:

9 All persons within the United States who purchased the one or
10 more of Defendant’s hair care products within the four years
11 prior to the filing of this Complaint.

12 42. Excluded from the Class is Defendant and any of its officers, directors, and
13 employees, or anyone who purchased Defendant’s Products for the purpose of
14 resale. Plaintiff reserves the right to modify or amend the Class definition before
15 the Court determines whether certification is appropriate.

16 43. **Ascertainability**. The members of the Class are readily ascertainable from
17 Defendant’s records and/or Defendant’s agent’s records of retail and online
18 sales, as well as through public notice.

19 44. **Numerosity**. The members of the Class are so numerous that their individual
20 joinder is impracticable. Plaintiff is informed and believes that the Products are
21 sold in large chain retailers, as well as online through Defendant’s website, as
22 well as numerous other third-party retailer sites, with thousands of customer
23 reviews, and on that basis, Plaintiff alleges that the putative Class consists of
24 thousands of members.

25 45. **Existence and Predominance of Common Questions of Law and Fact**.
26 Common questions of law and fact exist as to all members of the Class and
27 predominate over any questions affecting only individual Class members. All
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1 members of the Class have been subject to the same conduct and their claims
2 are based on the same standardized marketing, advertisements and promotions.
3 The common legal and factual questions include, but are not limited to, the
4 following:

- 5 a. Whether the Products as manufactured contained had various
6 negative side effects as described above;
- 7 b. Whether the Products were actually advertised as having varying
8 health benefits, as being all natural and wholesome;
- 9 c. Whether the Products were defective;
- 10 d. Whether Defendant’s claims and representations, as alleged herein,
11 are untrue, misleading, and/or reasonably likely to deceive the
12 average consumer;
- 13 e. Whether Defendant knew its claims and representations, as alleged
14 herein, are untrue, misleading, and/or reasonably likely to deceive the
15 average consumer;
- 16 f. Whether Defendant’s conduct violates California Civil Code §§ 1750,
17 *et seq.*;
- 18 g. Whether Defendant’s advertising is false, untrue, or misleading
19 within the meaning of California Business & Professions Code §§
20 17500, *et seq.*;
- 21 h. Whether Defendant’s conduct is an unfair, fraudulent, or unlawful act
22 or practice within the meaning of California Business & Professions
23 Code §§ 17200, *et seq.*;
- 24 i. Whether Defendant’s advertising is unfair, deceptive, untrue or
25 misleading within the meaning of California Business & Professions
26 Code §§ 17200, *et seq.*;
- 27
- 28

- 1 j. Whether Defendant acted negligently or intentionally in making the
- 2 Claims contained on the Products’ label and Defendant’s website;
- 3 k. Whether Defendant, through its conduct, received money that, in
- 4 equity and good conscience, belongs to the Plaintiff and members of
- 5 the Class;
- 6 l. Whether the Plaintiff and the putative Class members are entitled to
- 7 equitable relief, including but not limited to restitution and/or
- 8 disgorgement of ill-gotten gains; and
- 9 m. Whether the Plaintiff and the putative Class members are entitled to
- 10 injunctive relief as sought herein.

11 46. **Typicality.** Plaintiff’s claims are typical of the claims of the members of the
 12 Class in that the Plaintiff is a member of the Class that the Plaintiff seeks to
 13 represent. Similar to members of the putative Class, Plaintiff purchased the
 14 Products from Defendant after exposure to the same claims appearing on the
 15 Products’ label and Defendant’s website. Plaintiff also received Products that
 16 had various undisclosed side effects and as advertised. Plaintiff is advancing the
 17 same claims and legal theories on behalf of themselves and all absent members
 18 of the Class. Defendant has no defenses unique to the Plaintiff.

19 47. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the
 20 interests of the members of the putative Class. Plaintiff has retained counsel
 21 experienced in consumer protection law, including class actions, and
 22 specifically, false and deceptive advertising. Plaintiff has no adverse or
 23 antagonistic interest to those in the Class and will fairly and adequately protect
 24 the interests of the Class. Plaintiff’s attorneys are aware of no interests adverse
 25 or antagonistic to those of Plaintiff and proposed Class.

26 48. **Superiority.** A class action is superior to all other available means for the fair
 27 and efficient adjudication of this controversy. Individualized litigation would
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1 create the danger of inconsistent and/or contradictory judgments arising from
 2 the same set of facts. Individualized litigation would also increase the delay and
 3 expense to all parties and the court system. The damages or other financial
 4 detriment suffered by individual Class members may be relatively small
 5 compared to the burden and expense that would be entailed by individual
 6 litigation of the claims against the Defendant. The injury suffered by each
 7 individual member of the proposed class is relatively small in comparison to the
 8 burden and expense of individual prosecution of the complex and extensive
 9 litigation necessitated by Defendant's conduct. It would be virtually impossible
 10 for members of the proposed Class to individually redress effectively the
 11 wrongs to them. Even if the members of the proposed Class could afford such
 12 litigation, the court system could not. Individualized litigation of the complex
 13 legal and factual issues of such a case increases the delay and expense to all
 14 parties, including the court. By contrast, the class action device presents far
 15 fewer management difficulties, and provides the benefits of single adjudication,
 16 economy of scale, and comprehensive supervision by a single court. Therefore,
 17 a class action is maintainable pursuant to Federal Rules of Civil Procedure 23(a)
 18 and (b)(3) and/or (b)(2).

19 49. Unless the Class is certified, Defendant will retain monies received as a result
 20 of Defendant's unlawful and deceptive conduct alleged herein. Unless a class-
 21 wide injunction is issued, Defendant will also likely continue to, or allow its
 22 resellers to, advertise, market, promote, and sell the Class Products in an
 23 unlawful and misleading manner, and members of the Class will continue to be
 24 misled, harmed, and denied their rights under California law.

25 50. Further, Defendant has acted or refused to act on grounds that are generally
 26 applicable to the class so that declaratory and injunctive relief is appropriate to
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1 the Class as a whole, making class certification appropriate pursuant to Fed. R.
2 Civ. P. 23(b)(2).

3 **FIRST CAUSE OF ACTION FOR**
4 **VIOLATIONS OF CALIFORNIA’S FALSE ADVERTISING LAW (“FAL”)**
5 **BUS. & PROF. CODE §§ 17500, ET SEQ.**

6 51. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
7 this Complaint as though fully stated herein.

8 52. Plaintiff and Defendant are both “person[s]” as defined by California Business
9 & Professions Code § 17506.

10 53. California Business & Professions Code § 17535 authorizes a private right of
11 action on both an individual and representative basis.

12 54. Defendant states that each of its Products are each a cosmetic hair care product
13 containing safe and natural ingredients with various health and beauty benefits,
14 when, in fact, the Products have ingredients likely to cause various negative side
15 effects as described above.

16 55. These misrepresentations, acts, and non-disclosures by Defendant constitute
17 false and misleading advertising in violation of Business & Professions Code
18 §§ 17500, *et seq.*

19 56. At all times relevant, Defendant’s advertising and promotion of its Products
20 were, and are, untrue, misleading, and likely to deceive the reasonable consumer
21 and the public. In fact, Defendant did deceive Plaintiff and the putative Class
22 members through the misrepresentations described above.

23 57. Defendant engaged in the false and/or misleading advertising and marketing of
24 its Products, as alleged herein, with the intent to directly or indirectly induce
25 consumers to purchase its Products, which Defendant knew, or had reason to
26 know, the Products were causing various negative side effects that were the
27 opposite of what Defendant had advertised online and on the label.

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1 58. Because Defendant knew or should have known that the representations and/or
2 omissions alleged herein were untrue or misleading, Defendant acted in
3 violation of California Business & Professions Code §§ 17500, *et seq.*

4 59. Had Defendant truthfully advertised that its Products did not bring about the
5 advertised claims, Plaintiff and the putative Class members would not have
6 purchased the Products, would have paid less for the Products, or would have
7 purchased different products from another manufacturer.

8 60. This false and misleading advertising of the Products by Defendant presents a
9 continuing threat to consumers, as such conduct is ongoing to this day.

10 61. As a direct and proximate result of the aforementioned acts and omissions by
11 Defendant, Defendant received and continues to hold monies rightfully
12 belonging to Plaintiff and the putative Class members, who were led to purchase
13 Defendant’s Products during the Class Period.

14 **SECOND CAUSE OF ACTION FOR**
15 **VIOLATIONS OF CALIFORNIA’S UNFAIR COMPETITION LAW (“UCL”)**
16 **BUS. & PROF. CODE §§ 17200, *ET SEQ.***

17 62. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
18 this Complaint as though fully stated herein.

19 63. Plaintiff and Defendant are each a “person” as defined by California Business
20 & Professions Code § 17201. California Business & Professions Code § 17204
21 authorizes a private right of action on both an individual and representative
22 basis.

23 64. “Unfair competition” is defined by Business and Professions Code § 17200 as
24 encompassing several types of business “wrongs,” including: (1) an “unlawful”
25 business act or practice, (2) an “unfair” business act or practice, (3) a
26 “fraudulent” business act or practice, and (4) “unfair, deceptive, untrue or
27 misleading advertising.” The definitions in § 17200 are drafted in the
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1 disjunctive, meaning that each of these “wrongs” operates independently from
2 the others.

3 65. By and through Defendant’s conduct alleged in further detail above and herein,
4 Defendant engaged in conduct which constitutes unlawful, unfair, and/or
5 fraudulent business practices, and unfair, deceptive, untrue or misleading
6 advertising, as prohibited by California’s UCL.

7 **A. “UNLAWFUL” PRONG**

8 66. Beginning at a date currently unknown and continuing to the time of the filing
9 of this Complaint, Defendant has committed acts of unfair competition,
10 including those described above, by engaging in a pattern of “unlawful”
11 business practices, within the meaning of Bus. & Prof. Code §§ 17200 *et seq.*,
12 by marketing, manufacturing, and distributing Defendant’s Products in
13 violation of California’s Consumers Legal Remedies Act, Civil Code § 1759, *et*
14 *seq.* and California’s False Advertising Law, Business & Professions Code §§
15 17500, *et seq.*

16 67. Defendant violated the above-referenced statutes by falsely representing that its
17 Products were safe, natural and wholesome, when in fact the Products contained
18 harmful ingredients causing various side effects.

19 68. By advertising, promoting, manufacturing, and selling its Products in violation
20 of those California laws, Defendant engaged in a pattern of “unlawful” business
21 practices within the meaning of California’s UCL.

22 **B. “UNFAIR” PRONG**

23 69. Beginning at a date currently unknown and continuing to the time of the filing
24 of this Complaint, Defendant has committed acts of unfair competition as
25 prohibited by Bus. & Prof. Code §§ 17200, *et seq.*

26 70. Had Plaintiff and the putative class members have been informed that
27 Defendant’s Products were causing various negative side effects instead of
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1 producing the advertised benefits, Plaintiff and the putative class members
2 would have paid less for them, or would have purchased an entirely different
3 products. In other words, Defendant earned the business of Plaintiff and the
4 putative Class members by using deceptive advertising, which placed market
5 competitors at a disadvantage. Furthermore, Plaintiff and the putative Class
6 members were harmed in that they paid a price premium for the Products.

7 **C. “FRAUDULENT” PRONG**

8 71. Beginning at a date currently unknown and continuing to the time of the filing
9 of this Complaint, Defendant engaged in acts of unfair competition, including
10 those described above and herein, in violation of Bus. & Prof. Code §§ 17200,
11 *et seq.*, by engaging in a pattern of “fraudulent” business practices within the
12 meaning of Bus. & Prof. Code §§ 17200, *et seq.*, by falsely advertising its
13 Products as described above.

14 72. Plaintiff reserves the right to allege further conduct that constitutes other
15 fraudulent business acts or practices. Such conduct is ongoing and continues to
16 this date.

17 **D. “UNFAIR, DECEPTIVE, UNTRUE OR MISLEADING ADVERTISING” PRONG**

18 73. Defendant’s advertising is unfair, deceptive, untrue, and/or misleading within
19 the meaning of Bus. & Prof. Code §§ 17200, *et seq.*, in that consumers are led
20 to believe that Defendant’s Products contained healthy and wholesome
21 ingredients which would bring about various healthy benefits, when, in fact, the
22 Products did not contain such ingredients; and, instead the Products caused
23 various negative side effects as detailed above.

24 74. Plaintiff and other such reasonable consumers are likely to be, and were,
25 deceived and misled by Defendant’s advertising.

26 75. As a direct and proximate result of Defendant’s unlawful, unfair, and fraudulent
27 conduct described herein, Defendant received and continues to receive an unfair
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1 competitive advantage and unearned commercial benefits at the expense of its
2 competitors and the public, who unwittingly provided money to Defendant
3 based on Defendant’s misleading representations.

4 76. Plaintiff and the putative Class members suffered an injury in fact because
5 Plaintiff’s money was taken by Defendant as a result of Defendant’s false
6 representations as set forth on the Products’ label and on its website and other
7 third-party retailers as mentioned herein.

8 77. Such acts and omissions by Defendant are unlawful and/or unfair and/or
9 fraudulent, and constitute multiple violations of California’s UCL. Plaintiff
10 reserves the right to identify additional violations by Defendant as may be
11 established through discovery.

12 78. In prosecuting this action for the enforcement of important rights affecting the
13 public interest, Plaintiff seeks recovery of attorneys’ fees, which reward is
14 available to a prevailing plaintiff in a class action such as this.

15 **THIRD CAUSE OF ACTION**
16 **NEGLIGENT MISREPRESENTATION**

17 79. Plaintiff repeats re-alleges, and incorporates by reference the above allegations
18 as if fully stated herein.

19 80. Beginning at a date currently unknown and continuing to the time of the filing
20 of this Complaint, Defendant represented to Plaintiff and others similarly
21 situated, through product packaging and advertising materials, that Defendant’s
22 Products contained safe and natural ingredients that would bring about various
23 health and beauty benefits to the consumer’s hair.

24 81. Defendant made these representations knowing, or having reason to know, that
25 its Products contained dangerous ingredients, which caused various adverse side
26 effects.

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- 82. Defendant acted with the intent to induce the public, including Plaintiff and putative Class members, to purchase Defendant’s Products.
- 83. Plaintiff and the putative Class members saw, believed, and relied upon Defendant’s representations in making the decision to purchase Defendant’s Products.
- 84. At all times relevant, Defendant knew or should have known that such representations were untrue, and Defendant had no reasonable basis for believing the representations about the Products to be true.
- 85. As a proximate result of Defendant’s negligent misrepresentations, Plaintiff and other consumers similarly situated were induced to purchase, purchase more of, or pay more for Defendant’s Products due to the unlawful acts of Defendant, in an amount to be determined at trial, during the Class Period.

**FOURTH CAUSE OF ACTION
INTENTIONAL MISREPRESENTATION**

- 86. Plaintiff repeats, re-alleges, and incorporates herein by reference the above allegations as if fully stated herein.
- 87. Beginning at a date currently unknown and continuing to the time of the filing of this Complaint, Defendant intentionally represented to Plaintiff and others similarly situated, through the Products’ packaging and advertising materials, that Defendant’s Products contained safe and natural ingredients that would bring about various health and beauty benefits to the consumer’s hair.
- 88. Defendant acted intentionally by willfully and purposefully making Claims on the label of Defendant’s Products and on Defendant’s website indicating to consumers that the Products were in fact safe, natural and beneficial.
- 89. Because the Products contained ingredients causing adverse side effects in thousands of consumers, the Products did not deliver the benefits that Defendant advertised.

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1 90. Defendant knew or had reason to know such representations were false, and
2 continued to label its Products in a false or misleading way.

3 91. Plaintiff and the putative Class members saw, believed, and relied upon
4 Defendant’s representations in making the decision to purchase Defendant’s
5 Products.

6 92. As a proximate result of Defendant’s intentional misrepresentations, Plaintiff
7 and the putative Class members were damaged in an amount to be determined
8 at trial.

9 93. Plaintiff allege the “who, what, when, where, and how” of the alleged deception
10 by Defendant as follows:

- 11 i. The “who” is Defendant;
- 12 ii. The “what” is the representation that Defendant’s Products had safe
13 and wholesome ingredients that would give the user various health and
14 cosmetic benefits;
- 15 iii. The “when” is the date Plaintiff purchased the Products, and the Class
16 Period of four years prior to the filing of this Complaint;
- 17 iv. The “where” is in Defendant’s Products’ labeling, advertisements, and
18 online marketing; and
- 19 v. The “how” is the allegation that Defendant did not disclose that its
20 Products contained dangerous and unhealthy ingredients and that
21 thousands of consumers were experiencing various side effects.

22 94. By engaging in the acts described above, Defendant is guilty of malice,
23 oppression, and fraud, and Plaintiff and the putative Class are therefore entitled
24 to recover exemplary or punitive damages.

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**RESERVATION OF RIGHT TO ASSERT CLAIM FOR VIOLATION OF THE
CONSUMER LEGAL REMEDIES ACT
CALIFORNIA CIVIL CODE § 1750, ET SEQ.**

95. Concurrent with the filing of this Complaint, or shortly thereafter, Plaintiff intends to serve on Defendant a demand for corrective action pursuant to California Civil Code § 1750.

96. Plaintiff reserves the right to amend the Complaint to assert a cause of action under the CLRA, specifically, Civil Code Sections 1770(a)(1), (5), (7), and (9) should Defendant not take timely and appropriate corrective action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and the putative Class members the following relief against Defendant:

- that this action be certified as a Class Action;
- that Plaintiff be appointed as the Class Representatives;
- that Plaintiff’s attorneys be appointed as Class Counsel;
- that Defendant’s wrongful conduct be adjudged and decreed to violate the consumer protection statutes raised herein;
- An order requiring imposition of a constructive trust and and/or disgorgement of Defendant’s ill-gotten gains and to pay restitution to Plaintiff and all members of the Class and to restore to the Plaintiff and members of the class all funds acquired by means of any act or practice declared by this court to be an unlawful, fraudulent or unfair business act or practice, in violation of laws, statutes or regulations, or constituting unfair competition;
- Distribution of any monies recovered on behalf of members of the Class via fluid recovery or *cy pres* recovery were necessary and as applicable, to

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1 prevent Defendant from retaining the benefits of their wrongful conduct;

- 2 • that Plaintiff and each of the other members of the Class recover the
- 3 amounts by which Defendant has been unjustly enriched;
- 4 • A temporary, preliminary and/or permanent order for injunctive relief
- 5 requiring Defendant to: (i) discontinue its false and/or misleading
- 6 statement/s; and (ii) undertake an immediate public information campaign
- 7 to inform members of the proposed class as to their prior practices;
- 8 • that Defendant be enjoined from continuing the wrongful conduct alleged
- 9 herein and be required to comply with all applicable laws;
- 10 • Pre-judgment interests from the date of filing of this suit;
- 11 • that Plaintiff and each member of the putative Class recover their costs of
- 12 suit.

13 **FIRST CAUSE OF ACTION FOR**
 14 **VIOLATIONS OF CALIFORNIA’S FALSE ADVERTISING LAW**
 15 **CAL. BUS. & PROF. CODE §§ 17500, ET SEQ.**

- 16 • Restitution and injunctive relief pursuant to Bus. & Prof. Code § 17203;
- 17 • recovery of reasonably attorney’s fees pursuant to, *inter alia*, California
- 18 Code of Civil Procedure § 1021.5.

19 **SECOND CAUSE OF ACTION FOR**
 20 **VIOLATIONS OF CALIFORNIA’S UNFAIR COMPETITION LAW**
 21 **CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.**

- 22 • Restitution and injunctive relief pursuant to Bus. & Prof. Code § 17535;
- 23 and
- 24 • recovery of reasonable attorneys’ fees pursuant to, *inter alia*, California
- 25 Code of Civil Procedure § 1021.5.

26 **THIRD CAUSE OF ACTION FOR**
 27 **NEGLIGENT MISREPRESENTATION**

- 28 • A judgment against Defendant for general and compensatory damages in
- an amount to be determined at trial; and

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**FOURTH CAUSE OF ACTION FOR
INTENTIONAL MISREPRESENTATION**

- A judgment against Defendant for general and compensatory damages in an amount to be determined at trial;
- punitive damages pursuant to Cal. Civ. Code § 3294; and
- that Plaintiff and the members of the Class be granted any other relief the Court may deem just and proper.

**FIFTH CAUSE OF ACTION FOR
VIOLATIONS OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT
CAL. BUS. & PROF. CODE §§ 1750, ET SEQ.**

- Actual damages, injunctive relief, restitution, and punitive damages pursuant to Cal. Civ. Code § 1780(a); and
- an award of costs and attorney’s fees pursuant to Cal. Civ. Code § 1780(d).

TRIAL BY JURY

97. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to and demands a trial by jury.

Dated: March 12, 2020

Respectfully submitted,

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By: s/ Nicholas Barthel
ABBAS KAZEROUNIAN, ESQ
NICHOLAS BARTHEL, ESQ.
Attorneys for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges DevaCurl Hair Products Contain Several 'Known' Allergens, Irritants](#)
