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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
10

11 NATALIE LINARTE, individually and on
behalf of all others similarly situated,

12 Plaintiffs,
13

14 v.

15 HB USA HOLDINGS INC., and DOES 1-
16 10, Inclusive,

17 Defendants.
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CASE NO. 2:20-cv-09748

Judge:

CLASS ACTION

COMPLAINT FOR:

1. VIOLATION OF CAL. BUS. & PROF. § 17200, ET SEQ. (Unlawful, Unfair, and Fraudulent Prongs)
2. VIOLATION OF CAL. BUS. & PROF. § 17500, ET SEQ. (False and Misleading Advertising)
3. VIOLATION OF CAL. CIV. CODE § 1750, ET SEQ. (Consumers Legal Remedies Act)
4. COMMON LAW FRAUD
5. UNJUST ENRICHMENT

1 Plaintiff Natalie Linarte (hereafter “Plaintiff”), individually and on behalf of all
2 other similarly situated purchasers (hereafter the “Class”) of the Huda Beauty’s Neon
3 Obsessions Neon Pink, Neon Orange, and Neon Green products (hereafter the
4 “Products”), brings this consumer class action against HB USA Holdings, Inc.
5 (hereafter “Defendant” or “Huda Beauty”), and Does 1 through 10, inclusive
6 (sometimes collectively referred to herein as “Defendants”) and alleges as follows:

7 **JURISDICTION AND VENUE**

8 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
9 1332(d)(2)(A) because this case is a class action where the aggregate claims of all
10 members of the proposed class are in excess of \$5,000,000.00, exclusive of interest
11 and costs, and Plaintiff, as well as most members of the proposed class, are citizens of
12 states different from Defendant. This Court also has supplemental jurisdiction over
13 state law claims pursuant to 28 U.S.C. § 1367.

14 2. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this
15 action because Plaintiff is a citizen of California and resides in this District, and
16 because Plaintiff purchased the Products in this District. Moreover, Defendant is
17 located in this District and distributed, advertised, and sold the Products, which are the
18 subject of the present complaint, in this District.

19 **THE PARTIES**

20 3. Plaintiff is an individual residing in the State of California. Plaintiff
21 purchased the Products for personal use in California in during the Class Period. In
22 doing so, Plaintiff relied upon Defendant’s advertising, packaging, labeling and other
23 promotional materials, which were jointly prepared and approved by Defendants and
24 their agents and disseminated through advertising media, social media, Defendant’s
25 website, and the internet, containing the misrepresentations, concealments and unlawful
26 claims alleged herein. Plaintiff would not have purchased the Products if she had
27 known that that they were unlawful and were not approved for use in the eye area.

28 4. Defendant HB USA Holdings, Inc. is a Delaware corporation with its

1 business address located at 10000 Washington Blvd., Culver City, California 90232. At
2 times relevant to this Complaint, Defendant has advertised, marketed, and sold a variety
3 of cosmetic products, including the Products at issue, to consumers throughout the
4 United States and the State of California. Defendant has sold the Products directly to
5 consumers via the Internet through its own website, as well as Sephora.com,
6 Jcpenney.com, and through Sephora retail stores throughout the United States, including
7 in this District.

8 5. Defendant transacts or has transacted business in this County and
9 throughout the United States. Defendant, directly and through its agents, has substantial
10 contacts with and receives substantial benefits and income from and through the State of
11 California and this District. On information and belief, Defendant's sole U.S. corporate
12 office location and all its U.S. executives are located in Los Angeles within this District.
13 On information and belief, all decisions regarding the Defendant's U.S. marketing,
14 labeling and regulatory compliance of the Products were made in Los Angeles County.

15 16 FACTUAL ALLEGATIONS

17 Defendant Huda Beauty

18 6. Defendant Huda Beauty was founded in 2013 by a sophisticated
19 businesswoman named Huda Kattan. Ms. Kattan built the Huda Beauty cosmetics line
20 off of her popular beauty and makeup blog, Huda Beauty, where she would post
21 makeup tutorials and tips.

22 7. Ms. Kattan embraced the Instagram platform, noting "the exact month
23 (October 2012) and phone model (iPhone 4) she had when she started her account. A
24 couple of years later, she reached a million followers."
25 [https://www.nytimes.com/2017/03/20/fashion/is-huda-kattan-the-kim-kardashian-west-](https://www.nytimes.com/2017/03/20/fashion/is-huda-kattan-the-kim-kardashian-west-of-beauty-bloggers.html)
26 [of-beauty-bloggers.html](https://www.nytimes.com/2017/03/20/fashion/is-huda-kattan-the-kim-kardashian-west-of-beauty-bloggers.html).

27 8. Described as the "Kim Kardashian" of the beauty influencer economy, Ms.
28 Kattan has amassed over 47 million followers on Instagram alone, and is ranked #1 on

1 the “2017 Influencer Instagram Rich List”, purported earning \$18,000 for each post of
2 sponsored content.

3 9. Ms. Kattan was selected as one of the "ten most powerful influencers in the
4 world of beauty" by Forbes magazine. She was chosen as one of "The 25 Most
5 Influential People on the Internet" by Time magazine in 2017.

6 10. With the success of her blog, Ms. Kattan launched the Huda Beauty
7 cosmetics brand. Originating with a false lashes collection, Ms. Kattan successfully
8 expanded the Huda Beauty brand to include lip liners, liquid matte lipsticks, and eye
9 shadow palettes.

10 11. Based in Dubai, with an office in the U.K. and a U.S. office located in Los
11 Angeles, Ms. Kattan has turned Huda Beauty is a truly global brand. The company’s
12 products are sold at beauty retailers around the world such as Sephora, Harrod’s,
13 Selfridges, Brown Thomas, Arnotts, Net-a-Porter, and Feel Unique.

14 12. In or about 2017, private equity firm TSG Consumer Partners invested
15 approximately \$200 million to acquire a minority stake in Huda Beauty in a deal that
16 valued the company at \$1.2 billion.

17 13. Defendant Huda Beauty has grown exponentially into a global powerhouse
18 due to the burgeoning marketplace for “digital” brands—particularly those associated
19 with social media “influencers” like Huda Kattan.

20 14. With the expansion of social media platforms, digital marketing channels
21 have lowered barriers to entry into the beauty and personal care market, enabling the
22 creation of digitally native, “direct-to-consumer” cosmetics brands, like Huda Beauty.
23 These brands have disrupted the high-margin cosmetics industry that has long been
24 dominated by large, billion-dollar corporations.

25 15. Compared with traditional paid, media-intensive campaigns, and costly
26 brick-and-mortar distribution models, “direct-to-consumer” brands rely heavily on
27 social media, requiring only a modest investment to create the appearance of an
28 authentic consumer campaign that can be highly targeted to specific groups consumers

1 and loyal online follower of the brands.

2 16. The internet enables digital brands to operate “asset light” by accessing
3 consumers directly via online stores and outsourcing product development and
4 manufacturing. In other words, each online post, comment, “like”, and “retweet”,
5 performs the function of traditional advertising.

6 17. Recently, the firm Launchmetrics analyzed the Huda Beauty internet and
7 social media strategy to determine the brand’s Media Impact Value (“MIV®”). MIV®
8 is a proprietary algorithm developed by Launchmetrics to measure the impact of
9 placements and mentions across different voices in the Fashion, Luxury, and Cosmetics
10 industry.

11 18. According to Launchmetrics, Huda Beauty uses a sophisticated strategy of
12 posts, user content, public relations/press, and influencer promotion: “The brand utilizes
13 their Instagram channel in a multi-faceted way, sharing user-generated content, insider
14 beauty tips from Huda herself, as well as memes and press shoutouts around three to
15 five times a day. On their channel, they also invest heavily in video content, which
16 receives a 38% higher engagement rate than static posts, whether it be through
17 Instagram stories, or on the main feed.”
18 <https://www.launchmetrics.com/resources/blog/huda-beauty-digital-strategy>.

19 19. Analyzing the month of June 2019, Launchmetrics concluded the
20 staggering amount of MIV that Defendant achieves: “Huda Beauty generated a total
21 MIV® of \$54.4M in the month of June – with a \$52M share of this coming from social
22 media alone.”

23 **The “Neon” Eyeshadow Trend**

24 20. Because Huda Beauty is a nimble, digital brand, it can seize upon seasonal
25 trends. In the spring and summer of 2019, a neon colors trend swept through the fashion
26 and beauty industries.

27 21. In a July 2019 article, the website *Stylist* noted that “neon is the buzzword
28 of the summer.... From acid green and bright-than-sunshine yellow to fluorescent pink

1 and blazing orange; bright and bold shades have dominated Spring/Summer runways
2 and, consequently, our wardrobes. Now, the cheerful neon trend is trickling into our
3 beauty routines.” [https://www.stylist.co.uk/beauty/neon-eyeshadow-palette-colourful-](https://www.stylist.co.uk/beauty/neon-eyeshadow-palette-colourful-eye-makeup-looks-to-try-shop-online/279001)
4 [eye-makeup-looks-to-try-shop-online/279001](https://www.stylist.co.uk/beauty/neon-eyeshadow-palette-colourful-eye-makeup-looks-to-try-shop-online/279001).

5 22. According to *Stylist*, Pinterest reported that “searches for ‘neon eyeshadow’
6 are up a staggering 824% year-on-year.” *Id.*

7 23. In an effort to take advantage of the neon trend, in or about May 2019,
8 Huda Beauty launched its “Neon Obsessions” colors as part of its popular “Obsessions”
9 line of eyeshadow products.

10 24. In a June 11, 2019 post on its website, Defendant called neon colors “The
11 Dopest Eyeshadow Trend Of 2019”. Defendant specifically noted that its “Neon
12 Obsessions” products were for the “Eyes”:

13 The Dopest Eyeshadow Trend Of 2019

14 EYES

15 by HB Team | Tue, 11 Jun 2019



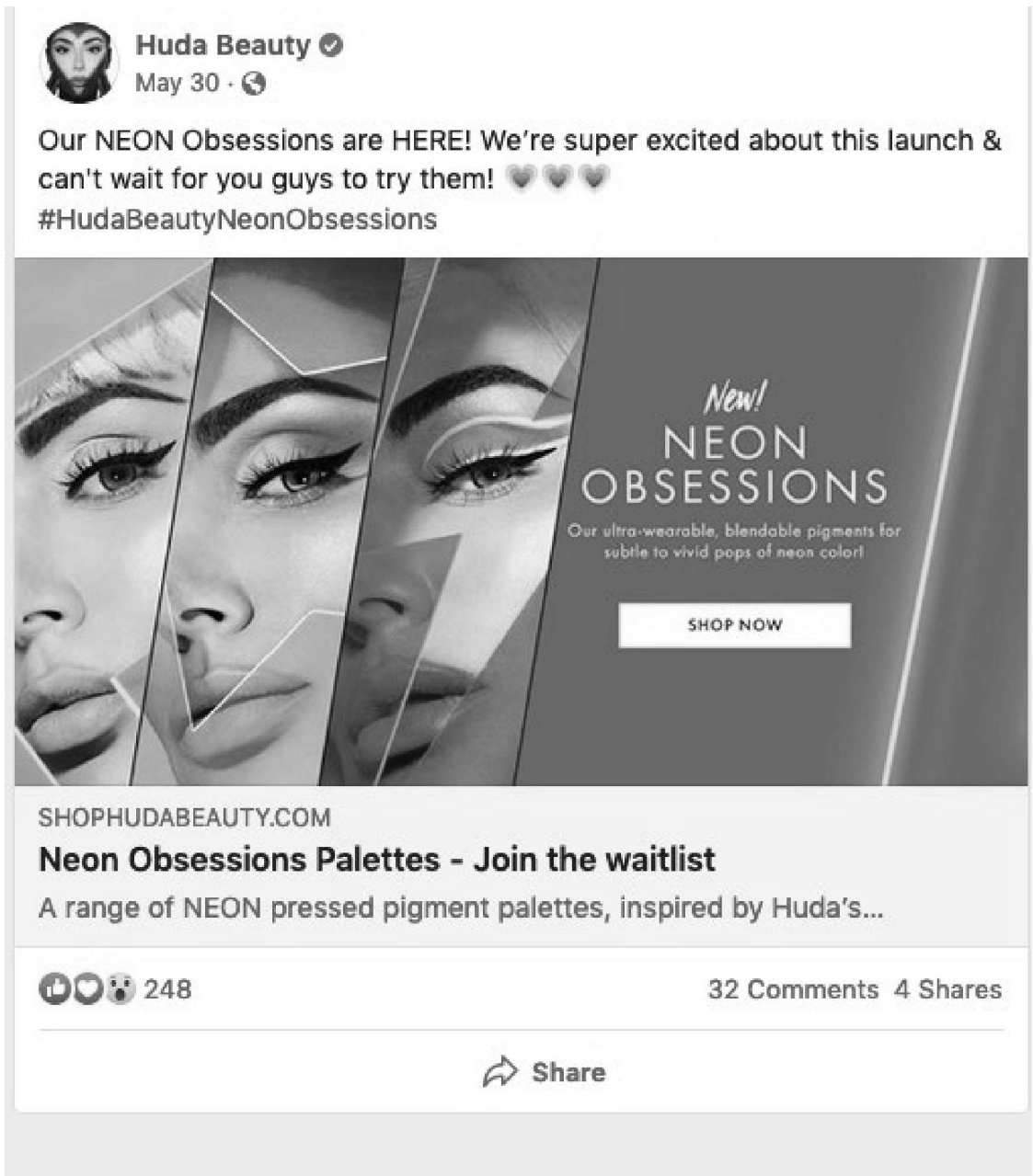
25 When we said that neon was going to dominate 2019, we weren't lying. We've literally been wearing neon from head to toe
26 non-stop, including our makeup (obviously). And our latest Neon Obsessions Palettes are the easiest way to ride the neon
27 wave. Okay, so we realize that we may be a little biased, but the colors are SO dope and the pigment payoff is next level. Plus,
28 you can create so many different looks with just one palette.

If you love the neon trend but are a little unsure of how to wear it, we've got all the tips and some serious inspo from our fave
beauty Instagrammers. These looks are poppin'...

1 See Exhibit A.

2 25. For the Neon Obsessions products, Huda Beauty deployed its sophisticated
3 internet marketing strategy to promote the product on social media and its website, as
4 well as rolling out the product worldwide in retail stores, including Sephora stores
5 nationwide.

6 26. Huda Beauty promoted the Products using its own content, including
7 tutorials and tips from Ms. Kattan:



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27. Ms. Kattan demonstrated, in her popular tutorial videos that the Products should be applied to the eye area:

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 **hudabeautyshop** • Follow ...

 **hudabeautyshop** • Glammed by neons! 🌈 She's so fab! ❤️

Repost @dubaimaven 🌈 Loving the new @hudabeauty Neon Obsessions ❤️❤️ The pics are taken on a sunset lighting 🌅 and on my makeup table 📺 Each palette is so pigmented, easy to blend and the colors are super fun and playful! My personal favorite is the Orange ❤️ Neon Palette but there are so many fun colors to play with on the Pink ❤️ and Green ❤️ ones! 🌈 .

23w



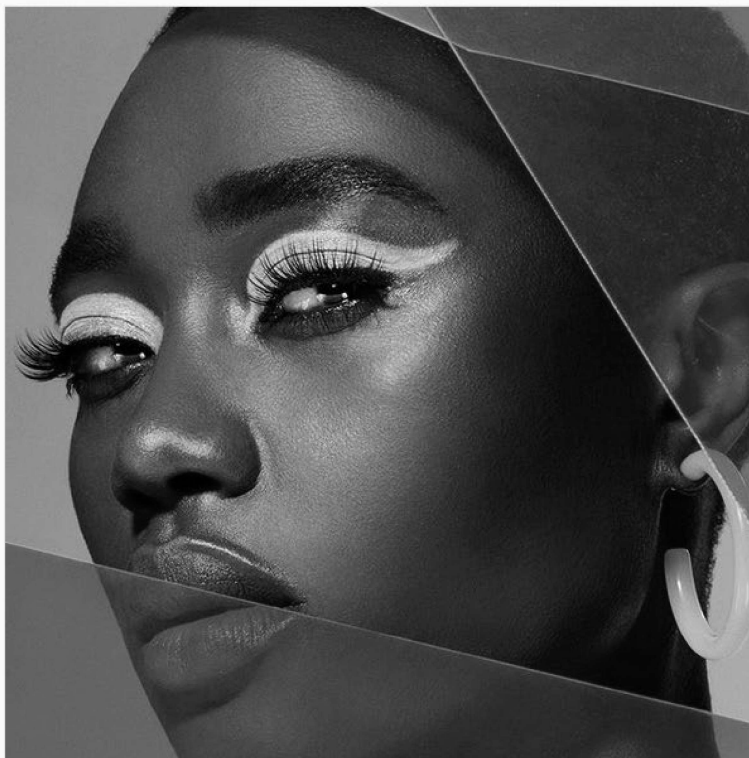
 **marsellatop** Amazing 🌈👏




19,598 likes

JUNE 14

Log in to like or comment.



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 **hudabeautyshop** • Neon Green ❤️ Obsessions
#HudaBeautyNeonObsessions
Available now at www.shophudabeauty.com 🌈🌈🌈

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 **breathingskin** 🌈

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16,313 likes


MAY 29

Log in to like or comment.


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 **Huda Beauty** ✓
May 29 · 🌐

BTS of our Neon Palettes Campaign Shoot ❤️❤️❤️ Do you guys want tutorials on these looks? #HudaBeautyObsessions launching May 30th



👍❤️😮 1.1K 98 Comments 51 Shares

 **Share**



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23 28. Defendant featured the products on its website in various articles, each time
24 referencing the Products as “eyeshadows” or demonstrating that they are used in the eye
25 area. *See* Exhibits B - D.

26 29. Ms. Kattan also spoke about using the products in the eye area in “press”
27 engagements. For instance, she told *Allure* that:

28 Kattan advises taking a dense shadow brush to any of the palettes' matte pigments
and fill in atop the concealer. "It sounds like a lot more work than it is, but I

1 promise it doesn't take long, and it really draws so much attention to the eyes." (If
2 you don't believe her, just check out the short Instagram tutorial she did for the
look.)...

3 Kattan promises that these palettes are perfect for neon novices. "If you're
4 worried about color intensity, I would say to start with a light amount of product
5 because you can always build up the pigments from there," Kattan explains.
6 "With these bright neon colors, you can't really go wrong with a simple
7 monochromatic color wash on the lids." She advises using your finger or a
shadow brush to apply the shadow starting from the inner eye and blending the
pigment to the outer part of the eye to cover the entire lid. "The further out you
blend the color, the more dramatic the look."

8 See Exhibit E (emphasis added).

9 30. Defendant listed the Products in the "Eye" section of its webstore along
10 with the other Obsessions eyeshadow palettes. See Exhibit F. The design of the
11 Products' packaging is the same as the form, shape, and format as its other Obsessions
12 eyeshadow products. *Id.*

13 31. Defendant's retail partners, Sephora and JC Penney, also promoted the
14 Products as "eye" products on their respective ecommerce sites and in store:



24 32. The JC Penney website contained language related to eye area use, which
25 on information and belief, was specifically provided by Huda Beauty, calling the
26 various shades "Eyeshadows" and the following "suggested" use:

27 **Suggested Usage:**-Blend the shadows seamlessly together, using darker shades in
28 the crease, and lighter hues along the brow bone and inner corners of the eye. -
Build strong looks, using the color on lips and cheeks -Use a smudge or liner

1 brush, to create bright liner looks either on the eye lid, or along lower lash line. -
 2 With your ring finger or with setting spray on an eyeshadow brush, apply the
 shimmer or metallic shades to the center of your eyelid for pop of color. -Huda's
 3 tip: Apply Overachiever concealer in shade Whipped Cream as a base to amplify
 pigment and intensity your looks.-

4 See Exhibit G (emphasis added).

5 33. Likewise, Sephora specifically sought to link the social media attention for
 6 the Products by featuring the Products in its “As Seen on Instagram” page. See Exhibit
 7 H.

8 34. The Sephora website also featured the Products in the “eye” section. See
 9 Exhibit I.

10 **Huda Beauty’s “Neon Obsessions” Products Are Intended to Be Used In The Eye**
 11 **Area**

12 35. A cosmetic’s “intended use” under the federal Food, Drug and Cosmetic
 13 Act (and analogous provisions under the California Sherman law), is determined by the
 14 seller’s objective intent as “derived or inferred from labeling, promotional material,
 15 advertising, *or any other relevant source.*” See *Allergan, Inc. v. Athena Cosmetics, Inc.*,
 16 738 F.3d 1350, 1357 (Fed. Cir. 2013) *cert. denied*, 135 S.Ct. 2886 (2015)(emphasis
 17 added) (citing *United States v. Storage Spaces Designated Nos. “8” & “49”*, 777 F.2d
 18 1363, 1366 (9th Cir. 1985)). Courts have considered a variety of factors, including
 19 pricing, internal communications, method of application, formulation, advertising
 20 claims, prior labeling, evidence of consumer use, among others, to determine the
 21 intended use of cosmetics. *Id.* at 1356-58.

22 36. As demonstrated above, marketing claims, product and packaging design,
 23 placement on store shelves and internet stores, and evidence of consumer use
 24 demonstrate that Huda Beauty’s intended use of the neon Products is that they are to be
 25 used as eyeshadows applied to the eye area.¹

26 _____
 27 ¹ Huda Beauty’s sale of the Products throughout the world confirms their intended use
 28 is the eye area. See Exhibit J, Harrods website (Feb. 24, 2020)

1 **The Products Contain Color Additives Not Approved By the FDA For the “Eye**
2 **Area”**

3 37. Color additives for cosmetics are tightly regulated under the California
4 Health & Safety Code and federal law. California state law incorporates the FDA’s
5 color additive regulations.

6 38. On its website, FDA provides guidance for the cosmetics industry: “Color
7 additives are subject to a strict system of approval under U.S. law [Federal Food, Drug,
8 and Cosmetic Act (FD&C Act), sec. 721; 21 U.S.C. 379e]. Except in the case of coal-tar
9 hair dyes, failure to meet U.S. color additive requirements causes a cosmetic to be
10 adulterated [FD&C Act, sec. 601(e); 21 U.S. Code 361(e)].”
11 [https://www.fda.gov/industry/color-additives-specific-products/color-additives-and-](https://www.fda.gov/industry/color-additives-specific-products/color-additives-and-cosmetics-fact-sheet)
12 [cosmetics-fact-sheet](https://www.fda.gov/industry/color-additives-specific-products/color-additives-and-cosmetics-fact-sheet).

13 39. “No matter whether a particular color is subject to certification or exempt
14 from certification, U.S. law prohibits its use in cosmetics (or any other FDA-regulated
15 product) unless it is approved specifically for the intended use [FD&C Act, sec.
16 721(a)(1)(A); 21 U.S.C. 379e(a)(1)(A)].” *Id.*

17 40. FDA advises the industry that: “You may not use a color additive in the
18 area of the eye unless the regulation for that additive specifically permits such use [21
19 CFR 70.5(a)].”²

20 41. Fluorescent/neon color are specifically prohibited for use in the area of the
21 eye: “These are the make-you-blink colors sometimes called “neon” or “day-glow.”
22 There are eight fluorescent colors approved for cosmetics, and like other colors, there
23 are limits on how they may be used. None of them are allowed for use near the eyes.
24 (Check the Summary of Color Additives again.) These are their names: D&C Orange

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26
27 ² See also FDA, Color Additive Permitted for Use in Cosmetics,
28 [https://www.fda.gov/cosmetics/cosmetic-ingredient-names/color-additives-permitted-](https://www.fda.gov/cosmetics/cosmetic-ingredient-names/color-additives-permitted-use-cosmetics)
[use-cosmetics](https://www.fda.gov/cosmetics/cosmetic-ingredient-names/color-additives-permitted-use-cosmetics).

1 No. 5, No. 10, and No. 11; D&C Red No. 21, No. 22, No. 27 and No. 28; and D&C
2 Yellow No. 7.” <https://www.fda.gov/cosmetics/cosmetic-products/novelty-makeup>.

3 42. The “area of the eye” includes: “the area enclosed within the circumference
4 of the supra-orbital ridge and the infra-orbital ridge, including the eyebrow, the skin
5 below the eyebrow, the eyelids and the eyelashes, and conjunctival sac of the eye, the
6 eyeball, and the soft areolar tissue that lies within the perimeter of the infra-orbital
7 ridge”. *See* 21 CFR § 70.3(s).

8 43. Huda Beauty’s Neon Products contain color additives not approved for use
9 in the area of the eye as follows:

- 10 a. Neon Obsessions Neon Pink Palette contains Red 6 (CI 15850) in the Rose
11 Matte, Hot Pink Matte, Bright Fuchsia Matte, Magenta Purple Matte, Lilac
12 Matte shades;
- 13 b. Neon Obsessions Neon Green Palette contains Yellow 10 (CI 47005), Red
14 6 (CI 15850), Red 22 (CI 45380), Red 28 (CI 45410) in the Fiery Orange
15 Matte shade, as well as Yellow 10 (CI 47005), Red 22 (CI 45380), Red 28
16 (CI 45410) in the Pink Matte shade; and
- 17 c. Neon Obsessions Neon Orange Palette contains Yellow 10 (CI 47005), Red
18 6 (CI 15850), Red 22 (CI 45380), Red 28 (CI 45410) in the Fiery Orange
19 Matte shade as Yellow 10 (CI 47005), Red 22 (CI 45380), Red 28 (CI
20 45410) in the Pink Matte shade.

21 **Huda Beauty Conceals Material Information From Consumers**

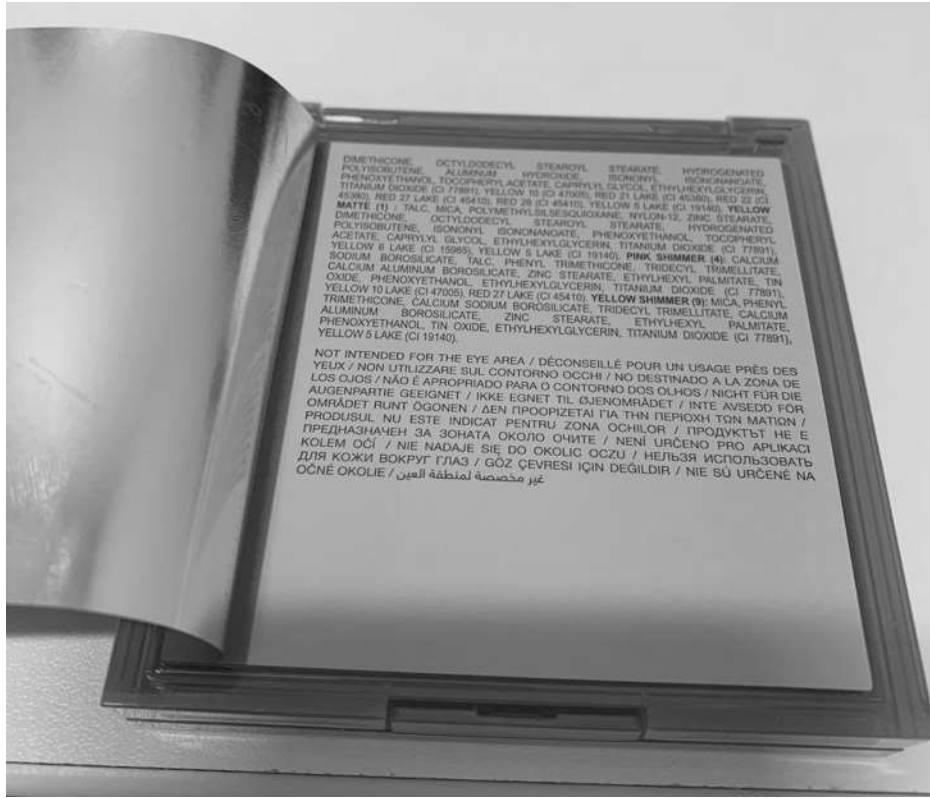
22 44. Huda Beauty is aware that the color additives used in the Products are not
23 approved for use in the eye area. But, Huda Beauty chose to obfuscate and conceal that
24 information from consumers in an apparent effort to unlawfully market the products as
25 eyeshadows in the U.S. and circumvent federal and California laws and regulations.

26 45. First, despite manufacturing and selling the Products in the same form,
27 container, and packaging as its other “Obsessions” eyeshadow products, Huda Beauty
28 discreetly omitted the word “eyeshadow” from the product name, instead referring to

1 the Products as “palettes” or “pressed pigment palettes”.

2 46. Second, in lieu of advising consumers in a clear and prominent manner,
3 that the Products are not approved for use in the eye area, Huda Beauty chose to conceal
4 this information from consumers, with only a “mouse print” disclaimer on a hidden
5 inner page of the rear product label:





47. This is disclosure is the only such disclosure and the language did not appear in any Huda Beauty advertising, its website, its social media, nor on the Sephora or JC Penney websites or retail store displays.

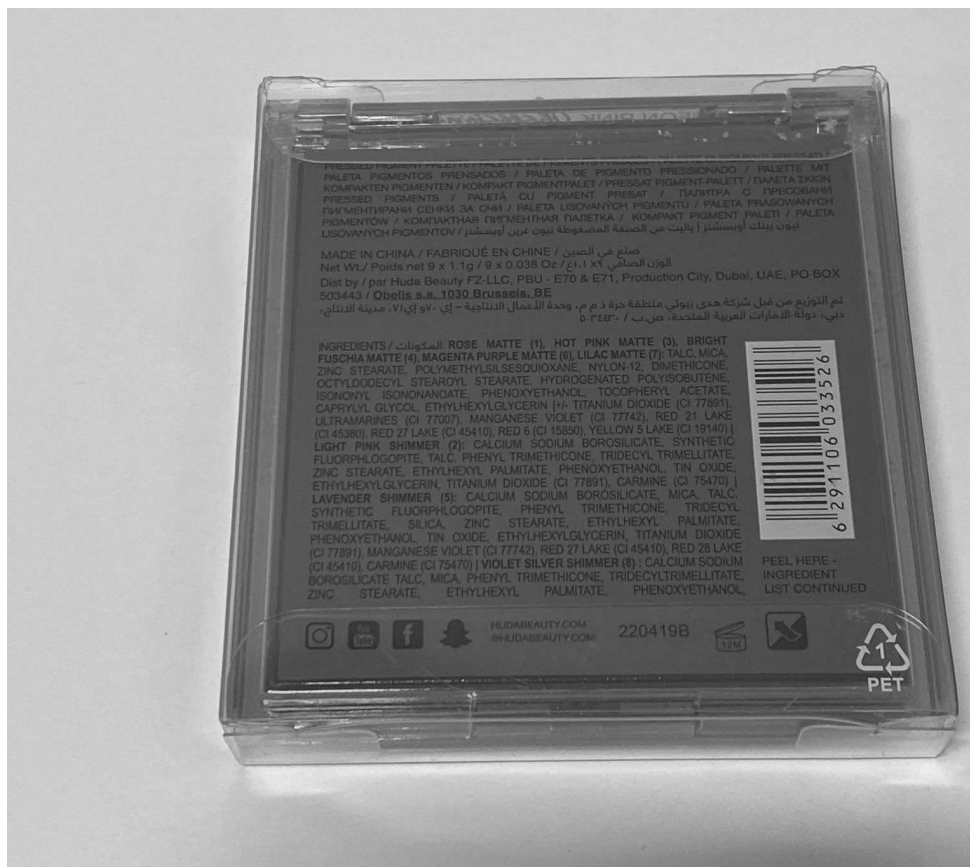
48. Huda Beauty expects consumers to ignore its own affirmative advertisements and other promotional materials for the Products, and then, once the Product is in a consumer’s hands, she or he must unwrap the outer plastic wrapper of the Product, and then peel the rear label sticker to reveal a disclaimer stating “not intended for the eye area”.

49. Aside from being hidden on the inner panel, the fine print “not intended for the eye area” is not bolded and buried within other text. Moreover, the disclaimer fails to identify which shades in the palettes are not safe or approved to be applied to the eye area.

50. Remarkably, Huda Beauty’s own advertising claims demonstrate that the “not intended” statement is false. Huda Beauty does, in fact, intend for the Products to be used in the eye area.

1 51. Third, because the Products are wrapped, it is not possible for a consumer
2 to view this disclaimer prior to purchase of the Product:





52. Thus, whether a consumer purchased online or in the retail store, it was not possible to view the disclaimer before purchase.

53. Regardless, the language Huda Beauty chose to use in the disclaimer, “not intended for the eye area”, is misleading because 1) Huda Beauty’s own marketing states that the Products are to be used in the eye area, and 2) the language misstates the relevant regulations which indicate that the Products are not “approved” for use in the eye area.

Plaintiff’s Purchase of the Product

54. Plaintiff purchased the Huda Beauty brand Pink Neon Obsessions and Green Neon Obsessions products in California on October 12, 2019 for \$63.94, including tax, at a Sephora in JC Penney store located at 6000 S Hannum Ave, Culver City, California 90230. Prior to purchasing the Products, Plaintiff saw, heard and relied upon packaging, labeling, advertisements, representations and statements made by Defendant, including advertisements showing the Products applied to the eye area and

1 the Products' placement in the retail store with other eye makeup products.

2 55. Plaintiff, neither before, nor after purchasing the Products, saw or viewed
3 any advisement that the Products were not approved for use in the eye area. After
4 purchasing the Products, Plaintiff applied the Products to her eye area, but experienced
5 irritation and burning, which were exacerbated by the difficulty she encountered in
6 removing the Products from her skin.

7 56. Plaintiff has suffered injury in fact and lost money as a result of
8 Defendant's conduct described herein. Plaintiff would not have purchased the Products
9 had she known that the Products were unlawful to sell and/or contained color additives
10 not approved for use on the eye area.

11 57. In accordance with pre-suit notice requirements of the CLRA, on
12 December 17, 2019, Plaintiff issued a pre-suit demand for corrective action under Cal.
13 Civil Code section 1782 (a) to Huda Beauty, notifying the company of its violations of
14 California law. *See* Exhibit K. Defendant responded on January 16, 2020, denying
15 Plaintiff's allegations. Thereafter over the next several months, the parties engaged in
16 an extensive back and forth on Plaintiff and the Class's claims as required by the CLRA
17 pre-suit notification process. The parties were unable to resolve their disputes and
18 Plaintiff was required to file this action.

19 **CLASS ACTION ALLEGATIONS**

20 58. L.R. 23-2.2(a) Class Definition: Plaintiff brings this class action on behalf
21 of herself, and as a class action on behalf of the following putative classes (the "Class"):

22 **Nationwide Class**

23 All individual residents of the United States who purchased the Products through
24 the date of class certification. Excluded from the Class are: (1) Defendants and
25 all directors, officers, employees, partners, principals, shareholders and agents of
26 Defendants; (2) Any currently sitting United States District Court Judge or
27 Justice, and the current spouse and all other persons within the third-degree of
28 consanguinity to such judge/justice; and (3) Class Counsel.

27 **California Sub-Class**

28 All individual residents of the State of California who purchased the Products

1 through the date of class certification. Excluded from the Class are: (1)
2 Defendants and all directors, officers, employees, partners, principals,
3 shareholders and agents of Defendants; (2) Any currently sitting United States
4 District Court Judge or Justice, and the current spouse and all other persons
5 within the third-degree of consanguinity to such judge/justice; and (3) Class
6 Counsel.

7 Plaintiff reserves the right to amend the Class definitions if further investigation
8 and discovery indicates that the Class definitions should be narrowed, expanded,
9 or otherwise modified.

10 59. L.R. 23-2.2(b) Numerosity and Ascertainability: Plaintiff does not know
11 the exact number of members of the putative classes. Due to Plaintiff's initial
12 investigation and information exchanged by the parties as part of the CLRA pre-suit
13 notification process, however, Plaintiff is informed and believes that the total number of
14 Class members is at least in the tens of thousands, and that members of the Class are
15 numerous and geographically dispersed throughout the United States and California.
16 While the exact number and identities of the Class members are unknown at this time,
17 such information can be ascertained through appropriate investigation and discovery,
18 including Defendants' records, either manually or through computerized searches.

19 60. L.R. 23-2.2(c) & (e) Typicality and Adequacy: Plaintiff's claims are typical
20 of those of the proposed Class, and Plaintiff will fairly and adequately represent and
21 protect the interests of the proposed Class. Plaintiff does not have any interests that are
22 antagonistic to those of the proposed Class. Plaintiff has retained counsel competent
23 and experienced in the prosecution of this type of litigation.

24 61. L.R. 23-2.2(d) Commonality: The questions of law and fact common to the
25 Class members, some of which are set out below, predominate over any questions
26 affecting only individual Class members:

- 27 a. whether Defendants claimed that the Products may be used in the eye area;
- 28 b. whether the Products contain color additives not approved by the FDA for
use in the eye area;

- 1 c. whether the surrounding facts and circumstances demonstrate that the
- 2 intended use of the Products is to be applied in the eye area;
- 3 d. whether Defendant's eye area advertising along with the concealment of
- 4 certain information regarding Defendants' Products, including the
- 5 unapproved color additives in the Products is material to consumers;
- 6 e. whether Defendants' advertising and marketing claims set forth above are
- 7 unlawful, untrue, or are misleading, or reasonably likely to deceive;
- 8 f. whether Defendants' conduct is fraudulent and/or violates public policy;
- 9 g. whether Defendants' engaged in unfair, unlawful and/or fraudulent
- 10 business practices in marketing and distributing the Products;
- 11 h. whether the Products are adulterated and/or misbranded under the
- 12 California Health & Safety Code and identical federal law;
- 13 i. whether Defendants' knew or should have known that the representations
- 14 were false;
- 15 j. whether Defendants engaged in false advertising with respect to the
- 16 Products;
- 17 k. whether Defendants' knowingly concealed or misrepresented material facts
- 18 for the purpose of inducing consumers into spending money on the
- 19 Products;
- 20 l. whether Defendants' representations, concealments and non-disclosures
- 21 concerning the Products are likely to deceive the consumer;
- 22 m. whether Defendants' representations, concealments and non-disclosures
- 23 concerning the Products violate the CLRA, FAL, UCL, and/or the common
- 24 law;
- 25 n. whether Defendants should be permanently enjoined from making the
- 26 claims at issue; and
- 27 o. whether Plaintiff and the Class are entitled to restitution and damages.

28 62. L.R. 23-2.2(f) Predominance and Superiority: Common questions, some of

1 which are set out above, predominate over any questions affecting only individual Class
2 members. A class action is the superior method for the fair and just adjudication of this
3 controversy. The expense and burden of individual suits makes it impossible and
4 impracticable for members of the proposed Class to prosecute their claims individually
5 and multiplies the burden on the judicial system presented by the complex legal and
6 factual issues of this case. Individualized litigation also presents a potential for
7 inconsistent or contradictory judgments. In contrast, the class action device presents far
8 fewer management difficulties and provides the benefits of single adjudication,
9 economy of scale, and comprehensive supervision by a single court on the issue of
10 Defendants' liability. Class treatment of the liability issues will ensure that all claims
11 and claimants are before this Court for consistent adjudication of the liability issues.

12 63. L.R. 23-2.2(f) Manageability: The trial and litigation of Plaintiff's and the
13 proposed Class's claims are manageable. Defendants have acted and refused to act on
14 grounds generally applicable to the Class, making appropriate final injunctive relief and
15 declaratory relief with respect to the Class as a whole.

16 64. L.R. 23-2.2(g) Notice: If necessary, notice of this action may be affected to
17 the proposed Class through publication in a manner authorized in the California Rules
18 of Court, Civil Code, and/or the Federal Rules of Civil Procedure. Also, Class members
19 may be notified of the pendency of this action by mail and/or email, through the
20 distribution records of Defendant, third party retailers, and vendors.

21 **FIRST CAUSE OF ACTION**

22 **VIOLATION OF UNFAIR COMPETITION LAW** 23 **(CAL. BUS. & PROF. CODE § 17200, *et seq.*)** **(Unlawful, Unfair, and Fraudulent Prongs of the Act)**

24 65. Plaintiff incorporates by this reference the allegations contained in the
25 preceding paragraphs as if fully set forth herein.

26 66. Plaintiff brings this claim individually and on behalf of the proposed Class
27 against Defendants.

28 67. California Business and Professions Code § 17200 prohibits any "any

1 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or
2 misleading advertising”. For the reasons discussed above, Defendants have engaged in
3 unlawful, unfair, and deceptive acts, and untrue and misleading advertising in violation
4 of California Business & Professions Code §17200.

5 68. As alleged herein, Plaintiff has standing to pursue this claim as Plaintiff has
6 suffered injury in fact and has lost money or property as a result of Defendant’s actions.
7 Specifically, Plaintiff purchased the Products for her own personal use. In so doing,
8 Plaintiff relied upon the representations referenced above. Plaintiff would not have
9 purchased the Products had she known that the Products were unlawful to sell in
10 California and the United States, and that the Products are not approved for use in the
11 eye area.

12 69. **Unlawful Business Practices:** The actions of Defendants, as alleged
13 herein, constitute illegal and unlawful practices committed in violation of the Business
14 & Professions Code §17200.

15 70. As alleged herein, Defendants have violated provisions of the California
16 Health & Safety Code, including, without limitation, the following sections: § 110090,
17 111665, 111695, 111700, 111710, among other provisions.

18 71. In addition, Defendants’ have committed unlawful business practices by,
19 *inter alia*, making the representations and omissions of material facts, as set forth more
20 fully herein, and violating California Civil Code §§ 1572, 1573, 1709, 1710, 1711,
21 1770, Business & Professions Code § 17500, et seq., Civil Code §1750, and the
22 common law.

23 72. In addition, Defendants have unlawfully manufactured, advertised, and
24 disseminated false advertisements of the Products, and that the product advertising and
25 packaging contain false or misleading statements about the Products in violation of Bus.
26 & Prof. Code § 17500, Civil Code §1750, which govern Defendant’s conduct.

27 73. Plaintiff and the Class reserve the right to allege other violations of law
28 which constitute other unlawful business acts or practices. Such conduct is ongoing and

1 continues to this date.

2 74. **Unfair Business Practices:** California Business & Professions Code §
3 17200 also prohibits any “unfair ... business act or practice.”

4 75. Defendants’ acts, omissions, misrepresentations, practices and non-
5 disclosures as alleged herein also constitute “unfair” business acts and practices within
6 the meaning of Business & Professions Code § 17200 *et seq.* in that its conduct is
7 substantially injurious to consumers, offends public policy, and is immoral, unethical,
8 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged
9 benefits attributable to such conduct.

10 76. There were reasonably available alternatives to further Defendants’
11 legitimate business interests, other than the conduct described herein.

12 77. **Fraudulent Business Practices:** California Business & Professions Code §
13 17200 also prohibits any “fraudulent business act or practice.”

14 78. Defendants’ claims, nondisclosures and misleading statements with respect
15 to the Products, as more fully set forth above, were false, misleading and/or likely to
16 deceive the consuming public within the meaning of Business & Professions Code §
17 17200.

18 79. Defendants’ conduct caused substantial injury to Plaintiff and the other
19 Class members. Plaintiff has suffered injury in fact and has lost money as a result of
20 Defendants’ unfair conduct.

21 80. Pursuant to section 17203 of the California Business & Professions Code,
22 Plaintiff and the Class seek an order of this court enjoining Defendants from continuing
23 to engage in unlawful, unfair, or deceptive business practices and any other act
24 prohibited by law, including, but not limited to: (a) selling, marketing, or advertising the
25 Products with false representations set forth above; (b) engaging in any of the illegal,
26 fraudulent, misleading, unlawful, unfair and/or deceptive conduct described herein; and
27 (c) engaging in any other conduct found by the Court to be illegal, fraudulent,
28 misleading, unlawful, unfair and/or deceptive conduct.

1 81. In addition, Plaintiff requests that this Court enter such orders or judgments
2 as may be necessary to restore to any person in interest any money which may have
3 been acquired by means of such illegal practices as provided in Business & Professions
4 Code § 17203, and for such other relief as set forth below.

5 82. Plaintiff engaged counsel to prosecute this action and is entitled to recover
6 costs and reasonable attorney's fees according to proof at trial.

7
8 **SECOND CAUSE OF ACTION**

9 **FALSE AND MISLEADING ADVERTISING**
10 **(CAL. BUS. & PROF. CODE § 17500, *et seq.*)**

11 83. Plaintiff incorporates by this reference the allegations contained in the
12 preceding paragraphs as if fully set forth herein.

13 84. Plaintiff brings this claim individually and on behalf of the proposed Class
14 against Defendants.

15 85. As alleged herein, Plaintiff has standing to pursue this claim as Plaintiff has
16 suffered injury in fact and has lost money or property as a result of Defendant's actions.
17 Specifically, Plaintiff purchased the Products for her own personal use. In so doing,
18 Plaintiff relied upon the representations referenced above. Plaintiff would not have
19 purchased the Products had she known that the Products were unlawful to sell in
20 California and the United States, and that the Products are not approved for use in the
21 eye area.

22 86. Defendants violated Business & Professions Code § 17500 by publicly
23 disseminating false and misleading advertisements regarding the Products.

24 87. Defendants' false and misleading advertisements were disseminated to
25 increase the sales of the Products.

26 88. Defendants knew or should have known that their advertisements for the
27 Products were false and misleading and that those advertisements would induce
28 consumers to purchase the Products. Such advertisements have deceived and are likely

1 to deceive the consuming public, in violation of Business & Professions Code § 17500.

2 89. Furthermore, Defendants publicly disseminated the false and misleading
3 advertisements as part of a plan or scheme and with the intent to sell unproven and
4 ineffective products.

5 90. Plaintiff and the members of the Class have suffered harm as a result of
6 these violations of the FAL because they have incurred charges and/or paid monies for
7 the Products that they otherwise would not have incurred or paid.

8 91. Defendants are aware, or by the exercise of reasonable care should have
9 been aware, that the representations (including, without limitation, the claim that the
10 Products could be applied in the eye area when they are not approved for that intended
11 use) were untrue or misleading and that such conduct is in violation of the current
12 injunction.

13 92. Plaintiff and the members of the Class have suffered injury in fact and have
14 lost money as a result of Defendant's false representations and false advertising.

15 93. Pursuant to Business & Professions Code § 17535, Plaintiff and the
16 members of the putative Class seek an order of this Court enjoining Defendant from
17 continuing to engage, use, or employ their practice of advertising the Products.

18 94. Likewise, Plaintiff and the members of the putative Class seek an order
19 requiring Defendant to disclose such misrepresentations, and additionally request an
20 order awarding Plaintiff and other members of the putative class restitution of the
21 money wrongfully acquired by Defendants by means of responsibility attached to
22 Defendants' failure to disclose the existence and significance of said misrepresentations.

23
24 **THIRD CAUSE OF ACTION**

25 **VIOLATION OF CALIFORNIA LEGAL REMEDIES ACT**
26 **(CAL. CIV. CODE § 1750 et seq.)**

27 79. Plaintiff incorporates by this reference the allegations contained in the
28 preceding paragraphs as if fully set forth herein.

1 80. Plaintiff brings this claim individually and on behalf of the proposed Class
2 against Defendants.

3 95. Plaintiff is a consumer as defined by California Civil Code § 1761(d). The
4 Products are a goods within the meaning of the Act. Specifically, prior to the filing of
5 this action, as alleged herein, Plaintiff purchased the Products for her own personal use.
6 In so doing, Plaintiff relied upon the representations referenced above. Plaintiff would
7 not have purchased the Products had she known that the Products were unlawful to sell
8 in California and the United States, and that the Products are not approved for use in the
9 eye area.

10 81. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in
11 fact and has lost money or property as a result of Defendants’ actions as set forth herein.

12 82. On December 17, 2019, Plaintiff provided notice to Defendant as required
13 by Civil Code §1782(a). *See* Exhibit K.

14 83. Plaintiff has concurrently filed the declaration of venue required by Civil
15 Code §1780(d) with this complaint.

16 84. Defendants have violated and continue to violate the CLRA by engaging in
17 the following practices proscribed by California Civil Code §1770(a) in transactions
18 with Plaintiff and the Class which were intended to result in, and did result in, the sale
19 of the Products:

20 §1770(a) (5) Representing that [The Product(s) have] ... characteristics, ...
21 uses [or] benefits ... which [it does] not have

22 §1770(a) (7) Representing that [the Product(s) are] of a particular standard,
23 quality or grade ... if [it is] of another.

24 1770(a) (9)) “Advertising goods...with intent not to sell them as
25 advertised”; and

26 1770(a) (16)Representing that the Products have been supplied “in
27 accordance with a previous representation” when they have not.

28 85. Defendants violated the CLRA by representing through its advertisements.

1 Packaging, and labeling of the Products as described above, when they knew, or should
2 have known, that the representations and advertisements were false and misleading.

3 86. Plaintiff and the members of the putative Class have each been directly and
4 proximately injured by the conduct of Defendants, and such injury includes payment for
5 units of the Products they purchased.

6 87. Defendants' wrongful business practices constituted, and constitute, a
7 continuing course of conduct in violation of the CLRA. Pursuant to Civil Code §
8 1782(d), plaintiff and the Class seek a Court order enjoining the above-described
9 wrongful acts and practices of Defendants along with any other conduct found by the
10 Court to be illegal, fraudulent, misleading, unlawful, unfair and/or deceptive conduct.

11 88. Plaintiff engaged counsel to prosecute this action and is entitled to recover
12 costs and reasonable attorney's fees according to proof at trial.

13
14 **FOURTH CAUSE OF ACTION**

15 **COMMON LAW FRAUD**

16 89. Plaintiff incorporates by this reference the allegations contained in the
17 preceding paragraphs as if fully set forth herein.

18 90. Plaintiff brings this claim individually and on behalf of the proposed Class
19 against Defendants.

20 91. Defendants represented, in a single, consistent and uniform manner, the
21 alleged benefits and uses of the Products.

22 92. Defendants' statements about the Products as set forth more fully above are
23 false.

24 93. Thus, Defendants knew that the representations set forth herein were false
25 when such representations were made and/or made the representations recklessly and
26 without regard for the truth.

27 94. Plaintiff and the Class reasonably relied upon Defendants' representations
28 in purchasing the Products.

1 95. Defendants' misleading and fraudulent conduct was knowing, deliberate,
2 wanton, willful, oppressive and undertaken in conscious disregard of, and with reckless
3 indifference to, Plaintiff and members of the Class's interest, and otherwise of the
4 character warranting the imposition of punitive damages pursuant to section 3294 of the
5 Civil Code.

6 96. Plaintiff and the Class suffered real economic losses and harm as a result of
7 Defendants' intentional misrepresentations and active concealment, as set forth
8 specifically herein.

9 97. Plaintiff's and the Class's reliance on Defendants' representations were a
10 substantial factor in causing the harm to Plaintiff and the Class.

11
12 **FIFTH CAUSE OF ACTION**

13 **UNJUST ENRICHMENT**

14 98. Plaintiff incorporates by this reference the allegations contained in the
15 preceding paragraphs as if fully set forth herein.

16 99. Plaintiff brings this claim individually and on behalf of the proposed Class
17 against Defendants.

18 100. Plaintiff and members of the Class conferred a monetary benefit on
19 Defendants. Defendants received and retained money by selling personal data collected
20 from Plaintiff and the Class.

21 101. This information was collected from Plaintiff and the Class without
22 authorization and through deceptive business practices.

23 102. Under principles of equity and good conscience, Defendants should not be
24 permitted to retain the money obtained by selling information about Plaintiff and
25 members of the Class, which Defendants have unjustly obtained as a result of their
26 unlawful and deceitful actions.

27 103. Accordingly, Plaintiff and the Class seek full disgorgement and restitution
28 of any money Defendants have retained as a result of the unlawful and/or wrongful

1 conduct alleged herein.

2
3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, on behalf of herself and as representative of all other
5 persons similarly situated, prays for judgment against Defendants, as follows:

- 6 1. An order certifying that the action may be maintained as a Class Action;
7 2. An order permanently enjoining Defendants from pursuing the policies,
8 acts, and practices complained of herein;
9 3. An order requiring Defendants to pay restitution to Plaintiff and all
10 members of the Class;
11 4. An order requiring Defendants to pay damages to Plaintiff and all members
12 of the Class;
13 5. An order requiring Defendants to pay punitive damages to Plaintiff and all
14 members of the Class;
15 6. For pre-judgment interest from the date of filing this suit;
16 7. For reasonable attorneys' fees;
17 8. Costs of this suit; and,
18 9. Such other and further relief as the Court may deem necessary and
19 appropriate.

20
21 DATED: October 15, 2020

BESHADA FARNESE, LLP

22 By: /s/Peter J. Farnese
23 Peter J. Farnese

24 Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues so triable.

DATED: October 15, 2020

BESHADA FARNESE, LLP

By: /s/Peter J. Farnese
Peter J. Farnese

Attorneys for Plaintiff