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Counsel for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MELISSA RYAN, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

RODAN & FIELDS, LLC,

Defendants.

) Case No.:
)
)
)
) **CLASS ACTION COMPLAINT**
)
)
) **JURY TRIAL DEMANDED**
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)

1 Plaintiff, Melissa Ryan through her attorneys, bring this class action on behalf of herself,
2 and a class of all other similarly situated persons defined below (the “Class”), against Rodan &
3 Fields, LLC (“R&F” or “Defendant”). Plaintiff brings this action for injunctive, declaratory and
4 compensatory relief for violation of the Magnuson-Moss Warranty Act (“MMWA”), violation of
5 the California consumer protection laws, and unjust enrichment. Plaintiff alleges matters
6 pertaining to herself and her own acts upon personal knowledge, and as to all other matters upon
7 information and belief, based upon the investigation undertaken by counsel, as follows:
8

9
10 **SUMMARY OF THE ACTION**

11 1. This action arises out of Defendant’s illegal and deceptive practice of promoting,
12 marketing, distributing and/or selling the product, Lash Boost, an over the counter cosmetic
13 serum that Defendants advertises as improving the appearance of lash volume and length without
14 any significant side effects. However, Lash Boost contains isopropyl cloprostenate, a drug that
15 the Food and Drug Administration (“FDA”) has determined is associated with several serious
16 adverse effects including: dry eye, eye irritation, eye inflammation, eye redness, iris color change,
17 macular edema, low intraocular pressure, among other side effects.
18

19 2. Despite being FDA-approved for usage in prescription drugs, isopropyl
20 cloprostenate is not approved as a cosmetic additive.
21

22 3. At the time Plaintiff purchased and used Lash Boost, she and other similarly
23 situated individuals were unaware isopropyl cloprostenate was actually a drug and/or its serious
24 potential side effects.

25 4. On April 18, 2011, the FDA issued a warning letter to Lifetech Resources LLC,
26 which also manufactures lash enhancing products containing isopropyl cloprostenat. The warning
27 letter stated that Lifetech Resources LLC violated provisions of the FDA because its lash
28

1 enhancing products containing isopropyl cloprostenat were considered unapproved new drugs in
2 violation of sections 505(a) and 301(d) of the Act (21 U.S.C. §§ 355(a) and 331(d)) and
3 misbranded drugs in violation of section 502 (21 U.S.C. §§ 352) of the Act.¹
4

5 5. The FDA warning letters also advised isopropyl cloprostenate may cause the
6 following injuries: ocular irritation, hyperemia, iris color change, macular edema, ocular
7 inflammation, and interference with intraocular pressure reduction therapy. *Id.* In addition,
8 women of childbearing age are considered at risk for injury. *Id.*
9

10 **JURISDICTION AND VENUE**

11 6. This Court has jurisdiction over the subject matter presented by this complaint
12 because it is a class action arising under the Class Action Fairness Act of 2005, Pub. L. No.109-2,
13 119 Stat. 4 (2005) (“CAFA”). Under CAFA, the federal courts have jurisdiction over a class
14 action in which there is diversity of citizenship, the amount in controversy exceeds \$5,000,000 in
15 the aggregate, excluding interest and costs, more than two-thirds of the class members are from a
16 state other than the state in which the action is being brought and there are more than 100
17 members of the proposed class.
18

19 7. This Court also has jurisdiction over Plaintiffs’ MMWA claims pursuant to 28
20 U.S.C. § 1331. This Court also has jurisdiction over Plaintiffs’ California state law claims
21 pursuant to 28 U.S.C. § 1367, in that they arise out of the same set of operative facts and are so
22 related to Plaintiffs’ MMWA claims that they form part of the same case or controversy.
23
24
25

26
27 ¹ See [https://wayback.archive-](https://wayback.archive-it.org/7993/20170111100914/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm251951.htm)
28 [it.org/7993/20170111100914/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm251951.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm251951.htm)

1 8. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(a) and (c) since
2 Plaintiff resides in this District and Defendant does business in this District. Defendant has
3 promoted, marketed, distributed and/or sold Lash Boost in this District.
4

5 **PARTIES**

6 9. Plaintiff Melissa Ryan is a resident of San Diego, California. Plaintiff purchased
7 Lash Boost online in December 2017 from a sales representative for Defendant for personal,
8 family or household purposes. The Lash Boost purchased by Plaintiff contained isopropyl
9 cloprostenate. Prior to purchasing Lash Boost in June, 2017 for \$135.00, Plaintiff read that the
10 ingredient list included isopropyl cloprostenate. Prior to her purchase, Plaintiff also read
11 Defendant's representation that Lash Boost was a cosmetic grade product and not a drug. At the
12 time Plaintiff purchased and used Lash Boost she was unaware that isopropyl cloprostenate was
13 not an over the counter drug with serious, documented health risks. Plaintiff would not have
14 purchased Lash Boost had she known that it was not an over the counter drug with serious,
15 documented health risks or would have paid less for it.
16
17

18 10. Defendant Rodan & Fields, LLC is a California limited liability company that is
19 headquartered at 60 Spear Street, Suite 600, San Francisco, California 94105.
20

21 **SUBSTANTIVE ALLEGATIONS**

22 11. The selling of beauty through the cosmetic industry is a billion-dollar business.
23 Consumers have the right to know what is in their cosmetics and to be notified of potential
24 physical side effects of using a product ahead of time to make an informed decision.

25 12. In 2016, R&F, the multi-level marketing company behind the famous Proactiv
26 brand, launched Lash Boost to compete with other eyelash enhancers available now on the
27 market.
28

1 13. R&F advertises that its Lash Boost eyelash-conditioning serum features a unique
2 proprietary formula that improves the appearance of lash volume and length.

3 14. The cost for just one tube of Lash Boost, pictured below, varies from \$135.00 to
4 \$150.00 depending on where it is purchased.
5



23 15. Lash Boost joins a host of other eyelash boosting serums on the market that
24 contain isopropyl cloprostenate.

25 16. Isopropyl cloprostenate is classified as a drug ingredient regulated by the FDA.

26 17. According to the FDA, The inclusion of isopropyl cloprostenate in other eyelash
27 boosting serums like Lash Boost makes it a drug rather than a cosmetic.
28

1 18. Marketing a new drug without approval for its use is a purported violation of
2 several Food Drug and Cosmetics Act (“FDCA”) provisions, as is the misbranding of drugs.

3 19. Isopropyl cloprostenate is an active ingredient commonly found in medications
4 used to treat glaucoma. Glaucoma is a disease involving high intraocular pressure, and isopropyl
5 cloprostenate works to lower the intraocular pressure. Although this makes the drug effective for
6 treating glaucoma, it can cause dangerous side effects in someone with normal eye pressure.
7 Possible side effects include eye irritation, eye inflammation, eye redness, iris color change,
8 macular edema, low intraocular pressure, and more.

9
10 20. Other companies, such as Lifetech Resources LLC, have allegedly received
11 warning letters from the FDA for violating the FDCA. They violated FDA guidelines by
12 including isopropyl cloprostenate as a cosmetic additive in their eyelash boosting products (*i.e.*:
13 RapidLash and NeuLash) and claiming it was not a drug.

14
15 21. Notwithstanding the above, R&F fails to disclose to its customers that Lash Boost
16 is a drug and that one of its ingredients, isopropyl cloprostenate, is associated with any significant
17 side effects.

18
19 22. Rather R&F makes the following representation on the FAQ page of its website:
20 “Lash Boost is a cosmetic grade product designed to improve the appearance of your lashes. It is
21 not a drug product and will not affect the structure and function of your lashes.”
22

23 23. The above representation makes it difficult for potential patients trying to do their
24 due diligence to determine if they are at increased risk if using the product.

25 24. R&F further claims that for “best results,” use Lash Boost daily for 8 weeks, which
26 would likely require a consumer to buy at least two tubes of the costly Lash Boost and further
27 exposing the consumer to potential serious side effects.
28

CLASS ACTION ALLEGATIONS

1
2 25. Plaintiff bring this class action for injunctive relief, restitution and other equitable
3 and monetary relief on behalf of a class consisting of:

4 All persons in the United States who purchased Lash Boost at any
5 time during the four years prior to the date of the filing of this
6 Complaint through the present (the “Class”).
7

8 26. Excluded from the Class are governmental entities, Defendant, any entity in which
9 Defendant has a controlling interest, and Defendant’s officers, directors, affiliates, legal
10 representatives, employees, co-conspirators, successors, subsidiaries and assigns.
11

12 27. Plaintiff reserves the right to amend or modify the Class definition with greater
13 specificity or division into subclasses or limitation to particular issues as discovery and the orders
14 of this Court warrant.

15 28. Members of the Class are so numerous that joinder of all members is
16 impracticable. While the exact number of Class members is presently unknown, and can only be
17 ascertained through appropriate discovery, Plaintiff believes the members of the Class number in
18 the tens of thousands.
19

20 29. There is a well-defined community of interest in the questions of law and fact
21 underlying the claims of each member of the Class, and these common questions predominate
22 over any questions that may affect individual members of the Class. The common questions of
23 fact and law include, but are not limited, the following:
24

- 25 a. Whether the marketing, advertising, packaging, labeling and others
26 promotional materials for Lash Boost were deceptive;
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28 b. Whether Defendant’s claims regarding Lash Boost’s safety and legality are
accurate;

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- c. Whether Defendant’s marketing campaign and labeling claiming that Lash Boost is safe was false and misleading;
- d. Whether Defendant falsely represented that Lash Boost has uses and benefits which it does not have;
- e. Whether Defendant knew that their claims regarding Lash Boost’s safety and legality were false and/or misleading;
- f. Whether Defendant’s conduct constitutes a violation of the Magnuson-Moss Act;
- g. Whether Defendant’s conduct constitutes a violation of the Consumers Legal Remedies Act;
- h. Whether Defendant’s conduct constitutes a violation of California’s false advertising law;
- i. Whether Defendant’s conduct constitutes an unfair, unlawful and/or fraudulent business practice in violation of California’s unfair competition law;
- j. Whether Defendant was unjustly enriched;
- k. Whether Defendant’s conduct as set forth herein injured consumers, and if so, the extent of the injury;
- l. Whether Plaintiff and Class members are entitled to compensatory damages, and if so, the nature of such damages; and
- m. Whether Plaintiff and the Class members are entitled to declaratory and injunctive relief.

30. Plaintiff’s claims are typical of the claims of members of the Class. Plaintiff and all members of the Class have been similarly affected by Defendant’s common course of conduct.

31. Plaintiff will fairly and adequately represent and protect the interests of the Class Subclass in that she is a typical purchaser of Lash Boost. Plaintiff has retained competent counsel with substantial experience in handling complex class action litigation. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the Class.

1 32. Certification of this Class is appropriate because the questions of law or fact
2 common to the respective members of the Class predominate over questions of law or fact
3 affecting only individual members. This predominance makes class litigation superior to any
4 other method available for the fair and efficient adjudication of these claims and provides
5 substantial benefits.
6

7 33. Absent a class action, it would be highly unlikely that Plaintiff or any other
8 members of the Class would be able to protect their own interests because the cost of litigation
9 through individual lawsuits would exceed their expected recovery.
10

11 34. Certification is also appropriate because Defendant acted or refused to act on
12 grounds generally applicable to the Class, thereby making appropriate the relief sought on behalf
13 of the Class as a whole. Further, given the large number of consumers who purchased Lash
14 Boost, allowing individual actions to proceed in lieu of a class action would run the risk of
15 yielding inconsistent and conflicting adjudications.
16

17 35. A class action is a fair and appropriate method for the adjudication of the
18 controversy, in that it will permit a large number of claims to be resolved in a single forum
19 simultaneously, efficiently and without the unnecessary hardship that would result from the
20 prosecution of numerous individual actions and the duplication of discovery, effort, expense and
21 burden on the courts that such individual actions would engender. The benefits of proceeding as a
22 class action, including providing a method for obtaining redress for claims that would not be
23 practical to pursue individually, outweigh any difficulties that might be argued with regard to the
24 management of this class action.
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1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **VIOLATION OF MAGNUSON-MOSS WARRANTY ACT**
4 **(15 U.S.C. § 2301, *et seq.*)**

5 36. Plaintiff and the Class reallege and incorporate by reference each allegation set
6 forth above and further allege as follows.

7 37. This First Cause of Action is asserted by Plaintiff on behalf of the Class.

8 38. Lash Boost is a consumer product as defined in 15 U.S.C. § 2301(1).

9 39. Plaintiff and Class members are consumers as defined in 15 U.S.C. § 2301(3).

10 40. Defendant is the supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

11 41. In connection with the sale of Lash Boost, Defendants issued written warranties as
12 defined in 15 U.S.C. § 2301(6), which warranted that Lash Boost is a “cosmetic grade product
13 designed to improve the appearance of your lashes. It is not a drug product and will not affect the
14 structure and function of your lashes.” These statements are untrue as detailed above.

15 42. By reason of Defendant’s breach of the express written warranties stating that Lash
16 Boost is a “cosmetic grade product designed to improve the appearance of your lashes” and “is
17 not a drug product,” Defendant violated the statutory rights due Plaintiff and Class members
18 pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*, thereby damaging
19 Plaintiffs and Class members.
20
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22

23 **SECOND CAUSE OF ACTION**
24 **VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT**
25 **(CAL. CIV. CODE §1750 *et seq.*)**

26 43. Plaintiff incorporates by reference all the above allegations as if fully set forth
27 herein.
28

1 44. This Second Cause of Action is asserted by Plaintiff on behalf of the Class under
2 California law.

3 45. Plaintiff and each Class member are “Consumers” as that term is defined by Cal.
4 Civ. Code §1761(d).

5 46. Lash Boost is a “Good” as that term is defined by Cal. Civ. Code §1761(a).

6 47. Defendant is a “Person” as defined by Cal. Civ. Code §1761(c).

7 48. The transaction involved herein is a “Transaction” as defined by Cal. Civ. Code
8 §1761(e).

9 49. Plaintiff and members of the Class are individuals who have purchased Lash Boost
10 for personal use. This cause of action is being asserted on behalf of Plaintiff and the Class
11 members who purchased Lash Boost within the applicable statute of limitations period for this
12 claim.

13 50. Plaintiff has standing to pursue this cause of action because Plaintiff suffered
14 injury in fact and has lost money or property as a result of Defendant’s actions as set forth herein.
15 Specifically, Plaintiff purchased Lash Boost for her personal and family use in reliance on
16 Defendant’s marketing claims, both on the product labels and on Defendant’s website, with
17 respect to its efficacy, qualities, safety and legality. Plaintiff used Lash Boost as directed but it
18 did not work as advertised and was not of the quality and standard advertised by Defendant.

19 51. Defendant has engaged in, and continue to engage in, business practices in
20 violation of California Civil Code §1750 *et seq.* (the “Consumers Legal Remedies Act”) by
21 making false and unsubstantiated representations concerning the efficacy, qualities, safety and
22 legality of Lash Boost. These business practices are misleading and/or likely to mislead
23 consumers and should be enjoined.

1 52. Defendant has engaged in deceptive acts or practices intended to result in the sale
2 of Lash Boost in violation of Civil Code §1770. Defendant knew and/or should have known that
3 their representations of fact concerning the efficacy, qualities, safety and legality of Lash Boost
4 were material and likely to mislead the public. Defendant affirmatively misrepresented that Lash
5 Boost was of a certain standard and quality with certain benefits which it did not have.
6

7 53. Defendant represented that Lash Boost has characteristics, uses, benefits or
8 qualities that it does not have. The policies, acts and practices heretofore described were intended
9 to result in the sale of Lash Boost to the consuming public, particularly consumers seeking to
10 enhance eye lash appearance, and thus Defendant violated and continue to violate California Civil
11 Code §1770.
12

13 54. Defendant's conduct alleged herein violates the Consumers Legal Remedies Act,
14 including but not limited to, the following provisions: (1) using deceptive representations in
15 connection with goods or services in violation of Civil Code §1770(a)(4); (2) representing that
16 goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or
17 quantities which they do not have in violation of Civil Code §1770(a)(5); (3) representing that
18 goods or services are of a particular standard, quality or grade, if they are of another in violation
19 of Civil Code §1770(a)(7); and/or (4) advertising goods or services with intent not to sell them as
20 advertised in violation of Civil Code §1770(a)(9).
21
22

23 55. Defendant's practices, acts and course of conduct in connection with their
24 promotion and sale of Lash Boost, as described above, are likely to mislead a reasonable
25 consumer acting reasonably under the circumstances to his or her detriment. Like Plaintiff,
26 members of the putative Class would not have purchased Lash Boost or would have paid less if
27 Defendant had disclosed the truth and all facts concerning Lash Boost.
28

1 56. Plaintiff and members of the putative Class have each been directly and
2 proximately injured by the conduct of Defendants.

3 57. Contemporaneously with the filing of this action, Plaintiff's Counsel mailed to
4 Defendant, by certified mail, return receipt requested, the written notice required by Civil Code
5 §1782(a). If Defendant fails to respond within thirty days, Plaintiff will amend her complaint to
6 also seek damages under the California Consumer Legal Remedies Act.
7

8 58. Defendant's wrongful business practices constituted and constitute, a continuing
9 course of conduct in violation of the Consumers Legal Remedies Act since Defendant is still
10 representing that Lash Boost has characteristics, uses, benefits and abilities which are false and
11 misleading and have injured Plaintiff and the Class.
12

13 **THIRD CAUSE OF ACTION**
14 **VIOLATION OF FALSE ADVERTISING LAW**
15 **(CAL. BUS. & PROF. CODE §17500, *et seq.*)**

16 59. Plaintiff incorporates by reference all the above allegations as if fully set forth
17 herein.

18 60. This Third Cause of Action is asserted by Plaintiff on behalf of the Class under
19 California law.

20 61. Plaintiff and the Class have standing to pursue this cause of action because
21 Plaintiff and the Class have suffered injury in fact and lost money as a result of Defendants'
22 actions as set forth herein. Specifically, Plaintiff and the Class purchased Lash Boost in reliance
23 on Defendant's marketing claims, as described above. Plaintiff and the Class used Lash Boost not
24 knowing that Defendant's representations that Lash Boost is a "cosmetic grade product" and "not
25 a drug" were false.
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1 62. Defendant have engaged in false advertising as they have disseminated false and/or
2 misleading representations about Lash Boost.

3 63. Defendant knew or should have known by exercising reasonable care that its
4 representations were false and/or misleading. During the Class Period, Defendant engaged in
5 false advertising in violation of Cal. Bus. & Prof. Code §1750, *et seq.*, by misrepresenting in its
6 advertising and marketing of Lash Boost to Plaintiff, Class members and the consuming public
7 that Lash Boost is safe and legal and that Lash Boost has qualities and characteristics that it does
8 not have.
9

10 64. Each of the aforementioned representations alleged in this Complaint was false
11 and/or misleading because Lash Boost is not of the standard, quality or grade-advertised and is in
12 reality illegal and potentially unsafe.
13

14 65. By disseminating and publishing these statements in connection with the sale of
15 Lash Boost, Defendant engaged in and continues to engage in false advertising in violation of
16 Bus. & Prof. Code §17500, *et seq.*
17

18 66. As a direct and proximate result of Defendant's conduct, as set forth herein,
19 Defendant received ill-gotten gains and/or profits, including but not limited to, money. Therefore,
20 Defendant has been unjustly enriched. Pursuant to Cal. Bus. & Prof. Code §17535, Plaintiff seeks
21 injunctive relief, restitution and disgorgement of Defendant's ill-gotten gains as specifically
22 provided in Cal. Bus. & Prof. Code §17535.
23

24 67. Plaintiff and Class members seek to enjoin Defendant from engaging in these
25 wrongful practices, as alleged herein, in the future. There is no other adequate remedy at law and
26 if any injunction is not ordered, Plaintiff and the Class will suffer irreparable harm and/or injury.
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FOURTH CAUSE OF ACTION
VIOLATION OF UNFAIR COMPETITION ACT
(Cal. Bus. & Prof. Code §17200, *et seq.*)

68. Plaintiff incorporate by reference all the above allegations as if fully set forth herein.

69. This Fourth Cause of Action is asserted by Plaintiffs on behalf of the Class under California law.

70. Plaintiff has standing to pursue this cause of action because Plaintiff suffered injury in fact and lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff purchased Lash Boost in reliance on Defendant's marketing claims on both the product labels and Defendant's websites. Plaintiff and the Class used Lash Boost not knowing that Defendant's representations that Lash Boost is a "cosmetic grade product" and "not a drug" were false.

71. Defendant's actions as alleged in this Complaint constitute an unfair or deceptive business practice within the meaning of California Business and Professions Code §17200, *et seq.*, in that Defendant's actions are unfair, unlawful and fraudulent and because Defendant made unfair, deceptive, untrue or misleading statements in advertising media, including the Internet, within the meaning of California Business and Professions Code §17200, *et seq.*

72. In advertising and packing Lash Boost, Defendant made false and misleading statements concerning Lash Boost, and refuse to reveal true facts.

73. Defendant's fraudulent and unfair business practices have caused economic injury to Plaintiff and the putative Class.

74. Defendant's business practices, as alleged herein, are unlawful because they violate the Consumers Legal Remedies Act and False Advertising Law, as set forth herein.

1 75. Defendant knew or should have known by exercising reasonable care that its
2 representations were false and/or misleading. During the Class Period, Defendants engaged in
3 unfair, unlawful and fraudulent business practices in violation of California Business and
4 Professions Code §17200, *et seq.*, by misrepresenting in its advertising and marketing of Lash
5 Boost to Plaintiff, Class members and the consuming public that, Lash Boost had qualities and
6 characteristics that it did not have.

8 76. Each of the aforementioned representations alleged in this Complaint was false and
9 misleading because Lash Boost was not of the standard, quality or grade advertised, and is in
10 reality illegal and potentially unsafe.

12 77. Defendant's wrongful business practices constituted, and constitute, a continuing
13 course of conduct of unfair competition since Defendant is marketing and selling Lash Boost in a
14 manner likely to deceive the public.

15 78. As a direct and proximate result of Defendant's wrongful business practices in
16 violation of Business and Professions Code §17200, *et seq.*, Plaintiff and members of the Class
17 have suffered economic injury by losing money as a result of purchasing Lash Boost. Plaintiff
18 and members of the Class would not have purchased or would have paid less for Lash Boost had
19 they known that it was not as represented.

21 79. Pursuant to Business and Professions Code §17203, Plaintiff and the Class seek an
22 order of this Court enjoining Defendant from continuing to engage in unlawful, unfair or
23 deceptive business practices and any other act prohibited by law, including those set forth in the
24 Complaint. Plaintiff and the Class also seek an order requiring Defendant to make full restitution
25 of all money they wrongfully obtained from Plaintiff and the Class.
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FIFTH CAUSE OF ACTION
UNJUST ENRICHMENT

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2
3 80. Plaintiff incorporates by reference all the above allegations as if fully set forth
4 herein.

5 81. This Seventh Cause of Action is asserted by Plaintiff on behalf of the Class under
6 California law.

7
8 82. “The unjust enrichment claim can be made from common classwide proof.”
9 *Westways World Travel, Inc. v. AMR Corp.*, 218 F.R.D. 223, 239 (C.D. Cal. 2003) (certifying a
10 nationwide class where plaintiffs alleged defendants were unjustly enriched through a common
11 scheme.). “Although there are numerous permutations of the elements of the unjust enrichment
12 cause of action in the various states, there are few real differences. In all states, the focus of an
13 unjust enrichment claim is whether the defendant was *unjustly* enriched. At the core of each
14 state’s law are two fundamental elements – the defendant received a benefit from the plaintiff and
15 it would be inequitable for the defendant to retain that benefit without compensating the plaintiff.
16 The focus of the inquiry is the same in each state.” *In re Mercedes-Benz Tele Aid Contract Litig.*,
17 257 F.R.D. 46, 58 (D.N.J. Apr. 24, 2009), *quoting Powers v. Lycoming Engines*, 245 F.R.D. 226,
18 231 (E.D. Pa. 2007).
19
20

21 83. Plaintiff and Class members conferred a benefit on Defendant by purchasing Lash
22 Boost.

23 84. Defendant has been unjustly enriched in retaining the revenues derived from Class
24 members’ purchases of Lash Boost, which retention under these circumstances is unjust and
25 inequitable because Defendant misrepresented the facts concerning the safety and legality of the
26 product and caused Plaintiff and the Class to lose money as a result thereof.
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1 85. Defendant has benefited and has been unjustly enriched by its wrongful conduct
2 alleged hereinabove. Defendant sold Lash Boost to Plaintiff and the members of the Class based
3 upon deceptive conduct, omissions and misrepresentations as to uses and qualities which Lash
4 Boost does not possess and which Defendant was, and still is, aware that it does not possess.
5

6 86. Defendant has knowledge of this benefit and have voluntarily accepted and
7 retained this benefit.

8 87. Plaintiff and Class members suffered a loss of money as a result of Defendants'
9 unjust enrichment because: (a) they would not have purchased Lash Boost on the same terms if
10 the true facts concerning Lash Boost had been known; and (b) they paid a price premium due to
11 the false representations about Lash Boost.
12

13 88. The circumstances as described herein are such that it would be inequitable for
14 Defendant to retain these ill-gotten benefits without paying the value thereof to Plaintiff and the
15 Class members.
16

17 89. Plaintiff and the Class members are entitled to the amount of Defendant's ill-
18 gotten gains, including interest, resulting from Defendant's unlawful, unjust and inequitable
19 conduct as described above.
20

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff and members of the Class request that the Court enter an order or
23 judgment against Defendant, as follows:

- 24 A. Certification of the action as a class action pursuant to Rule 23(b)(3) of the
25 Federal Rules of Civil Procedure, and appointment of Plaintiff as Class
26 representative and her counsel of record as Class counsel;
27 B. As to the First Cause of Action only, damages in the amount of the monies
28 paid for Lash Boost and/or other consequential or incidental damages;

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- C. Equitable relief as may be necessary to disgorge and/or restore monies received by Defendant as a result of the deceptive conduct alleged herein;
- D. A declaration that Defendant’s conduct as alleged herein was unlawful and an injunction barring Defendant from continuing the unlawful conduct described herein;
- E. The costs of bringing this suit, including reasonable attorneys’ and expert fees; and
- F. All other relief to which Plaintiff and members of the Class may be entitled at law or in equity.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: April 26, 2018

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Counsel for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Rodan & Fields Facing Another Class Action Alleging 'Lash Boost' Product Causes Adverse Eye Side Effects](#)
