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**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

ALEXIS SLATEN, an individual, on behalf of herself, the general public, and those similarly situated,

Plaintiff,

v.

CHRISTIAN DIOR PERFUMES, LLC,

Defendant.

CASE NO. 3:23-cv-00409-JSC

SECOND AMENDED CLASS ACTION COMPLAINT FOR VIOLATION OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT; FALSE ADVERTISING; FRAUD, DECEIT, AND/OR MISREPRESENTATION; UNFAIR BUSINESS PRACTICES; AND UNJUST ENRICHMENT

JURY TRIAL DEMANDED

INTRODUCTION

1. Plaintiff Alexis Slaten, by and through her counsel, brings this class action against Christian Dior Perfumes, LLC (“Defendant” or “Dior”) to seek redress for Defendant’s deceptive and unlawful practices in labeling and marketing its cosmetic products that make “24 HR” claims in conjunction with SPF claims, such as “24H FOUNDATION ... WITH SUNSCREEN” and “24H WEAR ... FOUNDATION WITH SUNSCREEN.”

2. Consumers are increasingly aware of the risks associated with sun exposure and its effect on skin. Cosmetic consumers are attracted to products that provide protection against the sun’s harmful ultraviolet (“UV”) rays in addition to the products’ cosmetic benefits. Consumers rely on labels to determine the SPF protection that a product provides.

3. Developed decades ago, the Sun Protection Factor (“SPF”) is the most accepted method for evaluating the photo-protective efficacy of sunscreens. While SPF products protect

1 against UV rays, the SPF is only fully effective for two hours after it is applied. After two hours,
2 the SPF product must be reapplied to provide continued protection from the sun.

3 4. Defendant sells cosmetic products under the brand name Dior. Intending to profit
4 from consumers' desire to protect their skin from the sun's harmful rays, Defendant developed
5 cosmetic foundation products with SPF protection, and labeled these products with 24 hour
6 claims such as "24H FOUNDATION ... WITH SUNSCREEN" and "24H WEAR ...
7 FOUNDATION WITH SUNSCREEN." Reasonable consumers interpret these labels to mean
8 that the sunscreen in the Products will last longer than two hours. However, the products do not
9 and cannot provide more than two hours of SPF protection as claimed. The labels are therefore
10 false, deceptive, confusing and/or misleading.

11 5. Furthermore, the products' labels violate federal and California regulations
12 regarding labeling for each of the following reasons. Under the Federal Food, Drug, and
13 Cosmetic Act (the "Act"), the products are each a "sunscreen" because the labeling suggests to
14 consumers that it is intended to "prevent, cure, treat, or mitigate disease or to affect a structure
15 or function of the body." 21 C.F.R. § 700.35 (defining cosmetics that contain sunscreen
16 ingredients subject the cosmetic to sunscreen labeling requirements). The products contain
17 sunscreen ingredients, including octinoxate, octisalate, and titanium dioxide. *See* 21 C.F.R. §
18 352.10 (defining active sunscreen ingredients). Therefore, the products are required to comply
19 with, *inter alia*, sunscreen labeling requirements that generally prohibit "claims that would be
20 false and/or misleading on sunscreen products" (21 C.F.R. § 201.327(g)).

21 6. The claims are therefore false and misleading in violation of the Act. For the same
22 reason, the labeling of the Products also violates California Health & Safety Code § 111730,
23 which states that "any cosmetic is misbranded if its labeling is false or misleading in any
24 particular." Plaintiff brings this action to stop Defendant's misleading practices.

25 **PARTIES**

26 7. Alexis Slaten ("Plaintiff") is, and at all times alleged in this Class Action
27 Complaint was, an individual and a resident of San Bruno, California. She makes her permanent
28 home in California and intends to remain in California.

1 8. Defendant Christian Dior Perfumes, LLC is a corporation existing under the laws
2 of the State of Delaware, having its principal place of business in New York, New York.
3 Christian Dior Perfumes, LLC has two members: Anish Melwani and Veronique Courtois. Both
4 members' addresses are in New York, New York.

5 **JURISDICTION AND VENUE**

6 9. This Court has jurisdiction over the subject matter of this action pursuant to 28
7 U.S.C. § 1332(d)(2). The aggregate amount in controversy exceeds \$5,000,000, exclusive of
8 interest and costs; and Plaintiff and Defendant are citizens of different states.

9 10. The injuries, damages and/or harm upon which this action is based, occurred or
10 arose out of activities engaged in by Defendant within, affecting, and emanating from, the State
11 of California. Defendant regularly conducts and/or solicits business in, engages in other
12 persistent courses of conduct in, and/or derive substantial revenue from products provided to
13 persons in the State of California. Defendant has engaged, and continues to engage, in substantial
14 and continuous business practices in the State of California.

15 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a
16 substantial part of the events or omissions giving rise to the claims occurred in the state of
17 California, including within this District.

18 12. In accordance with California Civil Code Section 1780(d), Plaintiff concurrently
19 files herewith a declaration establishing that she purchased Dior Forever Foundation (in 6N) on
20 one or more occasions during the last four years. (Plaintiff's declaration is attached hereto as
21 Exhibit A.)

22 13. Plaintiff accordingly alleges that jurisdiction and venue are proper in this Court.

23 **SUBSTANTIVE ALLEGATIONS**

24 **Defendant's Products**

25 14. Defendant manufactures, distributes, markets, advertises, and sells a variety of
26 cosmetic products under the brand name "Dior."

27 15. The cosmetic products include foundations that are typically applied to the face.
28 These products often wear off and need to be reapplied throughout the day. Products that

1 advertise that they last 24 hours are appealing to consumers so that they will not have to reapply
2 the product throughout the day.

3 16. Cosmetic consumers are also attracted to products that provide sun protection.
4 Sun UV rays damage the skin and contribute to risks, such as skin cancer, and an increase in
5 aging of the skin, such as fine lines and wrinkles. Products that combine the cosmetic benefits
6 associated with foundations with the sun protection benefits of a sunscreen are appealing to
7 consumers because it reduces the number of products a consumer needs to purchase and apply.

8 17. In recent years, consumer demand for sun care products has increased at a steady
9 rate. In 2019, 1 in 3 adults in the U.S. used cosmetic products having SPF ingredients.¹

10 18. Sunscreens have an SPF that denotes the level of sun protection provided.
11 Sunscreens provide the designated level of SPF protection for two hours. After two hours, the
12 sunscreen must be reapplied, otherwise the skin will be exposed to the harm of UV rays. This is
13 acknowledged in 21 C.F.R. § 201.327, which requires SPF products to be labeled with
14 instructions to “reapply at least every two hours.”

15 19. In order to compete with a growing market of SPF cosmetic products, Defendant
16 has advertised and convinced reasonable consumers that the Products’ sun protection will last
17 longer than two hours. Defendant has violated FDA policies and regulations and for the reasons
18 described herein, its labels are misleading and deceptive.

19 20. The Dior products at issue predominately, uniformly, and consistently include,
20 on the principal display panel of the product boxes and bottles, an SPF claim alongside a claim
21 that the products last longer than two hours. These products include the Dior Forever
22 Foundations, including the Dior Forever Foundation and the Dior Forever Skin Glow Foundation.
23 These products, will hereinafter be referred to as the “Products.”

24 21. The representation that the Products will provide SPF protection longer than two
25 hours was uniformly communicated to Plaintiff and every other person who purchased any of
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27
28 ¹ <https://www.fortunebusinessinsights.com/sun-care-products-market-103821>

1 the Products in California. The same or substantially similar product label has appeared on the
2 Product boxes during the entirety of the Class Period in the general form of the following
3 examples:



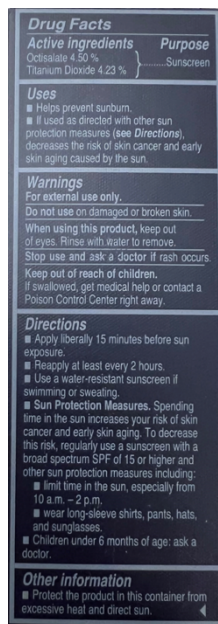
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20 22. As shown in the above images, the product packaging for the Dior Forever
21 Foundation and the Dior Forever Skin Glow Foundation are substantially similar. The Products'
22 packaging is stylistically similar and both Products claim to be 24HR foundations and both
23 Products claim to be "with sunscreen" and "BROAD SPECTRUM SPF 15."

24 23. The Product boxes' front labels emphasize that the Products are a "24H
25 FOUNDATION" and/or a foundation with "24H WEAR." They also list several advertised
26 benefits including "WITH SUNSCREEN" and "BROAD SPECTRUM SPF 15." Reasonable
27 consumers interpret the claims on these labels collectively to mean that the sunscreen benefits in
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1 the Products will last longer than two hours without the need to reapply. For example, in the
 2 exemplar shown above, the Forever Foundation Product label shown claims to be a “24H
 3 FOUNDATION ... WITH SUNSCREEN” and “BROAD SPECTRUM SPF 15.” Based on the
 4 label, a reasonable consumer will believe that the Products provide SPF protection for longer
 5 than two hours.

6 24. However, the SPF protection will last, at most, only two hours.

7 25. The Products’ back label contains certain FDA-required disclosures. An example
 8 of the back panel of the Products is below:



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 19 26. However, as explained more fully below, the back labels do not clarify for
 20 reasonable consumers the duration of the sun protection. Even after viewing the back label,
 21 reasonable consumers are confused, deceived, and/or misled into believing that the sun
 22 protection will last longer than two hours.

23 **Defendant’s Product Labels Deceive, Confuse, and/or Mislead Reasonable Consumers.**

24 27. Three surveys that showed respondents images of the Product labels to determine
 25 how reasonable consumers interpret the Products’ claims. Those surveys confirmed that the
 26 Product labels deceive, confuse, and/or mislead reasonable consumers into believing that the
 27 Products will provide sunscreen protection for longer than two hours. Each survey had over 300
 28 different respondents who had purchased cosmetics within the last twelve months. Respondents

1 were instructed to read the label as if they were shopping for the foundation in a store. The survey
2 asked the respondents whether, based on the product packaging, they would expect the sunscreen
3 benefits in the product to last two hours or less, or more than two hours. Respondents in each
4 survey were instructed to base their answers solely on the Product packaging they viewed.

5 28. To assess whether the Products' front labels are unambiguously deceptive,
6 Survey 1 showed respondents only the front label. A super-majority of respondents—69%—in
7 Survey 1 believed that the Products would provide sunscreen benefits for more than two hours
8 based solely on the Products' front label claims. The front label is, therefore, unambiguously
9 deceptive, and the back label is irrelevant to the deceptiveness determination. *See McGinity v.*
10 *P&G*, 69 F.4th 1093, 1098 (9th Cir. 2023); *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 939
11 (9th Cir. 2008).

12 29. Nevertheless, and in the alternative, Plaintiff pleads that even if the front label
13 were ambiguous, it is still deceptive even when considering the Products' back labels, as
14 confirmed by Surveys 2 and 3.

15 30. Survey 2 showed respondents the front label and gave them an option to click a
16 link to view the back label. Respondents were instructed to review the product labels as if they
17 would if they were shopping for foundation in a store. Approximately one third of respondents
18 clicked on the link to view the back label. In other words, approximately two-thirds of reasonable
19 consumers who shop for the Products do not look at product back labels when making purchasing
20 decisions. They rely solely on the front label.

21 31. Moreover, Survey 2 confirms that in a market environment where shoppers view
22 the front and back labels as they would when shopping for foundation in a store, a substantial
23 majority of consumers (57%) were still confused, deceived, and/or misled into believing that the
24 Products provide more than two hours of sunscreen protection.

25 32. Survey 3 forced consumers to view the front and back label side-by-side and
26 asked how long they expected the sunscreen benefits in the products to last. Even in this scenario,
27 based on the totality of the labeling, *half* of the respondents, i.e., 50%, were *still* confused,
28

1 deceived, or misled into believing that the sunscreen in the Products would last for more than
 2 two hours.

3 33. Thus, even if, in the alternative, the front label was ambiguous, the back label
 4 does not clarify the ambiguity and the front label claims remain misleading.

5 34. The complete survey results are summarized in the table below:

	Percent of respondents that expect the product to provide more than two hours of sunscreen benefits
Survey 1: Respondents shown only front label	69%
Survey 2: Respondents shown front label and were given the option to view back label	57%
Survey 3: Respondents shown front and back labels	50%

Consumer Reviews of the Products Confirm the Survey Results

35. A number of consumer reviews confirm the survey results. For example, the following reviews suggest that consumers believe the Product will provide sunscreen benefits more than two hours:

★★★★★
23 Jan 2022
✓ Recommended

I'm in love!!

● 2W Warm - light skin with warm tones

When it comes to foundations, I like my coverage and this foundation met all of my expectations when it came to it. It's also super hydrating and stayed on nicely all day which doesn't usually happen with other foundations I've tried. I also love that it has SPF 15, which just adds an extra layer of protection for all day wear, I'm so excited to keep using this foundation as I've found my new staple.

★★★★★
27 Jan 2022
✓ Recommended

Light and all day

● 0N Neutral - fair skin with neutral tones

I love this foundation it looks so natural and feels so lite and had a little perfume smell. And it lasts all day as well as does not smudge onto clothes. And bonus it's spf 15 so no need to add sunscreen for all of us with fair skin that burn in 5 min in the sun. I just love it.

36. In the following review, the consumer expresses confusion after viewing the back panel instructions that contradicted the front label claims:

★★★☆☆
24 Jan 2022

Honestly

● 0CR Cool Rosy - fair skin with cool rosy undertones

tried this on the back on my hand. It's definitely medium to full coverage but if you look on the back of the box, it says apply every 2 hrs and on the front it says 24h foundation... I'm confused lol. Was excited to receive anything "Dior" complementary but you can get just as good if not better foundation without breaking the bank for a lable. Not heavily scented but has a faint floral smell. Not sure if it's my shade. Maybe because I don't need full coverage, pretty close though. I do love that there are so many shades available.

Helpful? ▲ (1) | ▼ (0)

37. These reviews confirm that reasonable consumers understand the label claims to mean that the sunscreen benefits will last longer than two hours and even when they view the Product's back label, consumers remain confused.

Sun Exposure and SPF

38. Sunlight travels to Earth as a mixture of both visible and invisible rays, or waves. One such wave is ultraviolet (UV) light. The longest of the UV rays are called UVA rays and the shorter ones are called UVB rays.

1 39. UVA and UVB rays affect the skin differently. UVB rays can lead to sunburn.
2 UVA rays penetrate more deeply into the skin and affect skin aging.

3 40. Unprotected exposure to UVA and UVB rays damages the DNA in skin cells,
4 producing genetic defects, or mutations, that can lead to skin cancer or premature aging.

5 41. UV radiation is a proven human carcinogen, causing basal cell carcinoma (BCC)
6 and squamous cell carcinoma (SCC). UV exposure that leads to sunburn contributes to
7 developing melanoma, a dangerous type of skin cancer.

8 42. UV damage also contributes to premature aging because of its effect on the
9 underlying connective tissue of skin.

10 43. Sunscreen works in two different ways depending on the ingredient providing the
11 sun protection. Chemical-based sunscreens work by absorbing ultraviolet (UV) rays and altering
12 them before they cause damage. Common chemical ingredients include oxybenzone and
13 octisalate. Mineral or physical based ingredients work by reflecting and scattering UV rays away
14 from the skin. Zinc is a common mineral ingredient used in sunscreen.

15 44. Using sunscreen decreases the risk of skin cancers and skin precancers. Regular
16 daily use of SPF 15 sunscreen can reduce the risk of developing SCC by about 40 percent, and
17 lower the risk of melanoma by 50%.

18 45. Sunscreen also helps prevent premature skin aging caused by the sun, including
19 wrinkles, sagging, and age spots.

20 46. Two hours after application of sunscreen, the sunscreen ingredients lose their
21 effectiveness in protecting the skin from UV damage. Therefore, sunscreen must be reapplied
22 every two hours.

1 **Federal and State Regulations of Sunscreens**

2 47. Under the Federal Food, Drug, and Cosmetic Act (the “Act”), cosmetics
3 containing sunscreen ingredients are considered drugs by the FDA because they are used to
4 “prevent, cure, treat, or mitigate disease or to affect a structure or function of the body.” 21 C.F.R.
5 § 700.35 (defining cosmetics that contain sunscreen ingredients subject the cosmetic to
6 sunscreen labeling requirements).

7 48. Ordinarily there is a premarket approval process for drugs, but in the instance of
8 sunscreen, it is subject to the “monograph” system for nonprescription drugs. A monograph
9 applies to a class of drugs, and specifies the permissible active ingredients, labeling claims, and
10 other standards for each class of drug.

11 49. Sunscreen products include cosmetic products with SPF ingredients. The
12 Products contain sunscreen ingredients, including octinoxate, octisalate, and titanium dioxide.
13 *See* 21 C.F.R. § 352.10 (defining active sunscreen ingredients).

14 50. The regulations generally prohibit “claims that would be false and/or misleading
15 on sunscreen products.” 21 C.F.R. § 201.327(g).

16 51. The Product claims lead reasonable consumers to believe that the Products will
17 provide more than two hours of SPF sun protection when in fact they will provide, at most, only
18 two hours of protection. The claims are therefore false and misleading in violation of the Act.
19 For the same reason, the labeling of the Products also violates California Health & Safety Code
20 § 111730, which states that cosmetics “any cosmetic is misbranded if its labeling is false or
21 misleading in any particular.”

22 **Defendant’s Marketing and Labeling of its Products Violates State and Federal Food**
23 **Labeling Laws**

24 52. Defendant’s labeling of its SPF cosmetic products is unlawful, false, confusing,
25 misleading and/or deceptive to consumers. The Products confuse and deceive consumers into
26 believing that the Products will provide SPF protection for longer than two hours, which is false.
27 The Products do not and cannot provide more than two hours of SPF protection. For the same
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1 reason, the claims are misleading to consumers who rely on the claims and use the Products,
2 believing they will provide more than two hours of protection from the sun.

3 53. The Products are unlawful, misbranded, and violate the Sherman Law, California
4 Health & Safety Code § 111730.

5 54. Defendant has violated the standards set by FDA regulations, including, but not
6 limited to, 21 C.F.R. § 201.327(g), which are parallel to the Sherman Law.

7 55. A reasonable consumer would expect that the Products provide SPF protection
8 for more than two hours based on the label.

9 56. Consumers lack the meaningful ability to test or independently ascertain the
10 truthfulness of Defendant's SPF claims, especially at the point of sale. Consumers would not
11 know that the Products cannot provide more than two hours of SPF protection, and are
12 unlawfully labeled. Its discovery requires investigation well beyond the drug store aisle and
13 knowledge of regulations and chemistry beyond that of the average consumer. Therefore,
14 consumers had no reason to investigate whether the Products actually provide more than two
15 hours of SPF protection as the labels claim.

16 **Defendant Intends to Continue to Market the Products as Providing More Than 2 Hours**
17 **of SPF Sun Protection**

18 57. Label claims and other forms of advertising and marketing drive product sales,
19 particularly if placed prominently on the front of product packaging, as Defendant has done with
20 the claim that the Products provide more than 2 hours of SPF sun protection.

21 58. Because consumers pay a price premium for products that contain SPF,
22 Defendant is able to both increase its sales and retain more profits by labeling its Products as
23 providing more than two hours of SPF protection.

24 59. Defendant engaged in the practices complained of herein to further its private
25 interests of: (i) increasing sales of the Products while decreasing the sales of competitors'
26 products that are not unlawfully and misleadingly labeled, and/or (ii) commanding a higher price
27 for the Products because consumers will pay more for them due to consumers' demand for
28 cosmetic products with SPF protection.

1 protection for longer than two hours. As a result of Defendant's misrepresentations and
2 omissions, the Products have no, or, at a minimum, a much lower value to Plaintiff.

3 66. Plaintiff not only purchased the Products because of the unlawful and misleading
4 labeling, but she also paid more money for the Products than she would have paid for other or a
5 similar cosmetic product that was not unlawfully and misleadingly labeled with the 24 hour and
6 SPF claims.

7 67. Had Defendant not misrepresented (by omission and commission) the true nature
8 of the Products, Plaintiff would not have purchased them or, at a very minimum, she would have
9 paid less for the Products.

10 68. Plaintiff continues to desire to purchase cosmetic products, including those
11 marketed and sold by Defendant. If the Products were reformulated and/or relabeled without the
12 misleading 24 hour and SPF claims, Plaintiff would likely purchase the Products again in the
13 future. Plaintiff regularly visits stores where the Products and other cosmetics are sold.

14 **CLASS ALLEGATIONS**

15 69. Plaintiff brings this class action lawsuit on behalf of herself and a proposed class
16 of similarly situated persons, pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil
17 Procedure. Plaintiff seeks to represent the following group of similarly situated persons, defined
18 as follows:

19 The Class: All natural persons who purchased the Products between January 27,
20 2019 and the present.

21 California Subclass: All Class Members who purchased the Products in the state of
22 California.

23 70. This action has been brought and may properly be maintained as a class action
24 against Defendant because there is a well-defined community of interest in the litigation and the
25 proposed Class is easily ascertainable.

26 71. Numerosity: Plaintiff does not know the exact size the Class, but she estimates
27 that each is composed of more than 100 persons. The persons in the Class are so numerous that
28

1 the joinder of all such persons is impracticable and the disposition of their claims in a class action
2 rather than in individual actions will benefit the parties and the courts.

3 72. Common Questions Predominate: This action involves common questions of law
4 and fact to the potential Class because each class member's claim derives from the deceptive,
5 unlawful and/or unfair statements and omissions that led consumers to believe that the Products
6 provide more than 2 hours of SPF protection as represented on the Product labels. The common
7 questions of law and fact predominate over individual questions, as proof of a common or single
8 set of facts will establish the right of each member of the Class to recover. The questions of law
9 and fact common to the Class are:

10 a. Whether the marketing, advertising, packaging, labeling, and other promotional
11 materials for the Products are deceptive and/or unlawful;

12 b. Whether Defendant's actions violate Federal and California laws invoked herein;

13 c. Whether labeling the Products with false and misleading claims causes them to
14 command a price premium in the market as compared with similar products that do not make
15 such misrepresentations;

16 d. Whether Defendant's advertising and marketing regarding the Products sold to
17 the class members was likely to deceive reasonable consumers;

18 e. Whether representations regarding the number of hours the SPF protection will
19 last are material to a reasonable consumer;

20 f. Whether a reasonable consumer interprets the labels to mean the Products provide
21 more than two hours of sun protection;

22 g. Whether Defendant engaged in the behavior knowingly, recklessly, or
23 negligently;

24 h. The amount of profits and revenues Defendant earned as a result of the conduct;

25 i. Whether class members are entitled to restitution, injunctive and other equitable
26 relief and, if so, what is the nature (and amount) of such relief; and

1 j. Whether class members are entitled to payment of actual, incidental,
2 consequential, exemplary and/or statutory damages plus interest thereon, and if so, what is the
3 nature of such relief.

4 73. Typicality: Plaintiff's claims are typical of the claims of the other members of the
5 Class because, among other things, all such claims arise out of the same wrongful course of
6 conduct in which Defendant engaged in violation of law as complained of herein. Further, the
7 damages of each member of the Class were caused directly by Defendant's wrongful conduct in
8 violation of the law as alleged herein.

9 74. Adequacy of Representation: Plaintiff will fairly and adequately protect the
10 interests of all Class members because it is in her best interest to prosecute the claims alleged
11 herein to obtain full compensation due to her for the unfair and illegal conduct of which she
12 complains. Plaintiff also has no interests that are in conflict with, or antagonistic to, the interests
13 of class members. Plaintiff has retained highly competent and experienced class action attorneys
14 to represent their interests and that of the Class. By prevailing on her own claims, Plaintiff will
15 establish Defendant's liability to all class members. Plaintiff and her counsel have the necessary
16 financial resources to adequately and vigorously litigate this class action, and Plaintiff and
17 counsel are aware of their fiduciary responsibilities to the class members and are determined to
18 diligently discharge those duties by vigorously seeking the maximum possible recovery for Class
19 members.

20 75. Superiority: There is no plain, speedy, or adequate remedy other than by
21 maintenance of this class action. The prosecution of individual remedies by members of the Class
22 will tend to establish inconsistent standards of conduct for Defendant and result in the
23 impairment of class members' rights and the disposition of their interests through actions to
24 which they were not parties. Class action treatment will permit a large number of similarly
25 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,
26 and without the unnecessary duplication of effort and expense that numerous individual actions
27 would engender. Furthermore, as the damages suffered by each individual member of the class
28 may be relatively small, the expenses and burden of individual litigation would make it difficult

1 or impossible for individual members of the class to redress the wrongs done to them, while an
2 important public interest will be served by addressing the matter as a class action.

3 76. Plaintiff is unaware of any difficulties that are likely to be encountered in the
4 management of this action that would preclude its maintenance as a class action.

5 **CAUSES OF ACTION**

6 77. Plaintiff does not plead, and hereby disclaims, causes of action under the FDCA
7 and regulations promulgated thereunder by the FDA. Plaintiff relies on the FDCA and FDA
8 regulations only to the extent such laws and regulations have been separately enacted as state
9 law or regulation or provide a predicate basis of liability under the state and common laws cited
10 in the following causes of action.

11 **PLAINTIFF'S FIRST CAUSE OF ACTION**
12 **(Violation of the Consumers Legal Remedies Act (the "CLRA"),**
13 **California Civil Code § 1750, *et seq.*)**
14 **On Behalf of Plaintiff and the California Subclass**

15 78. Plaintiff realleges and incorporates the paragraphs of this Class Action Complaint
16 as if set forth herein.

17 79. Defendant's actions, representations and conduct have violated, and continue to
18 violate the CLRA, because they extend to transactions that are intended to result, or which have
19 resulted, in the sale or lease of goods or services to consumers.

20 80. Plaintiff and other class members are "consumers" as that term is defined by the
21 CLRA in California Civil Code § 1761(d).

22 81. The Products that Plaintiff (and other similarly situated Class members)
23 purchased from Defendant were "goods" within the meaning of California Civil Code § 1761(a).

24 82. Defendant's acts and practices, set forth in this Class Action Complaint, led
25 consumers to falsely believe that the Products provided more than two hours of SPF protection
26 as claimed on the product package and labeling. By engaging in the actions, representations and
27 conduct set forth in this Class Action Complaint, Defendant has violated, and continues to
28 violate, § 1770(a)(2), § 1770(a)(5), § 1770(a)(7), and § 1770(a)(8), of the CLRA. In violation of
California Civil Code §1770(a)(2), Defendant's acts and practices constitute improper

1 representations regarding the source, sponsorship, approval, or certification of the goods they
2 sold. In violation of California Civil Code §1770(a)(5), Defendant's acts and practices constitute
3 improper representations that the goods they sell have sponsorship, approval, characteristics,
4 ingredients, uses, benefits, or quantities, which they do not have. In violation of California Civil
5 Code §1770(a)(7), Defendant's acts and practices constitute improper representations that the
6 goods it sells are of a particular standard, quality, or grade, when they are of another. In violation
7 of California Civil Code §1770(a)(8), Defendant has disparaged the goods, services, or business
8 of another by false or misleading representation of fact. Finally, regarding California Civil Code
9 §1770(a)(8), Defendant falsely or deceptively markets and advertises that, unlike other SPF-
10 containing cosmetic product manufacturers, it sells Products that will provide more than 2 hours
11 of sun protection.

12 83. Plaintiff requests that this Court enjoin Defendant from continuing to employ the
13 unlawful methods, acts and practices alleged herein pursuant to California Civil Code
14 § 1780(a)(2). If Defendant is not restrained from engaging in these types of practices in the
15 future, Plaintiff and the other members of the Class will continue to suffer harm. Plaintiff and
16 those similarly situated have no adequate remedy at law to stop Defendant continuing practices.

17 84. On or about July 8, 2022, Plaintiff provided Defendant with notice and demanded
18 that Defendant correct, repair, replace or otherwise rectify the unlawful, unfair, false and/or
19 deceptive practices complained of herein. Despite receiving the aforementioned notice and
20 demand, Defendant failed to do so in that, among other things, they failed to identify similarly
21 situated customers, notify them of their right to correction, repair, replacement or other remedy,
22 and/or to provide that remedy. Accordingly, Plaintiff seeks, pursuant to California Civil Code
23 § 1780(a)(3), on behalf of herself and those similarly situated class members, compensatory
24 damages, punitive damages and restitution of any ill-gotten gains due to Defendant's acts and
25 practices.

26 85. Plaintiff also requests that this Court award her costs and reasonable attorneys'
27 fees pursuant to California Civil Code § 1780(d).

PLAINTIFF'S SECOND CAUSE OF ACTION
(False Advertising, Business and Professions Code § 17500, et seq. ("FAL"))
On Behalf of Plaintiff and the California Subclass

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2
3 86. Plaintiff realleges and incorporates by reference the paragraphs of this Class
4 Action Complaint as if set forth herein.

5 87. Beginning at an exact date unknown to Plaintiff, but within three (3) years
6 preceding the filing of the Class Action Complaint, Defendant made false, deceptive and/or
7 misleading statements in connection with the advertising and marketing of the Products.

8 88. Defendant made representations and statements (by omission and commission)
9 that led reasonable customers to believe that the Products provide more than two hours of sun
10 protection.

11 89. Plaintiff and those similarly situated relied to their detriment on Defendant's
12 false, misleading and deceptive advertising and marketing practices, including each of the
13 misrepresentations and omissions set forth above. Had Plaintiff and those similarly situated been
14 adequately informed and not intentionally deceived by Defendant, they would have acted
15 differently by, without limitation, refraining from purchasing the Products or paying less for
16 them.

17 90. Defendant's acts and omissions are likely to deceive the general public.

18 91. Defendant engaged in these false, misleading and deceptive advertising and
19 marketing practices to increase its profits. Accordingly, Defendant has engaged in false
20 advertising, as defined and prohibited by section 17500, *et seq.* of the California Business and
21 Professions Code.

22 92. The aforementioned practices, which Defendant used, and continues to use, to its
23 significant financial gain, also constitute unlawful competition and provide an unlawful
24 advantage over Defendant's competitors as well as injury to the general public.

25 93. As a direct and proximate result of such actions, Plaintiff and the other class
26 members have suffered, and continue to suffer, injury in fact and have lost money and/or property
27 as a result of such false, deceptive and misleading advertising in an amount which will be proven
28 at trial, but which is in excess of the jurisdictional minimum of this Court. In particular, Plaintiff,

1 and those similarly situated, paid a price premium for the Products, i.e., the difference between
2 the price consumers paid for the Products and the price that they would have paid but for
3 Defendant's false, deceptive and misleading advertising. This premium can be determined
4 by using econometric or statistical techniques such as hedonic regression or conjoint analysis.
5 Alternatively, Plaintiff and those similarly situated will seek a full refund of the price paid upon
6 proof that the sale of the Products was unlawful.

7 94. Plaintiff seeks equitable relief, including restitution, with respect to her FAL
8 claims. Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiff makes the following
9 allegations in this paragraph only hypothetically and as an alternative to any contrary allegations
10 in their other causes of action, in the event that such causes of action will not succeed. Plaintiff
11 and the Class may be unable to obtain monetary, declaratory and/or injunctive relief directly
12 under other causes of action and will lack an adequate remedy at law, if the Court requires her
13 to show classwide reliance and materiality beyond the objective reasonable consumer standard
14 applied under the FAL, because Plaintiff may not be able to establish each Class member's
15 individualized understanding of Defendant's misleading representations as described in this
16 Complaint, but the FAL does not require individualize proof of deception or injury by absent
17 class members. *See, e.g., Ries v. Ariz. Bevs. USA LLC*, 287 F.R.D. 523, 537 (N.D. Cal. 2012)
18 (“restitutionary relief under the UCL and FAL ‘is available without individualized proof of
19 deception, reliance, and injury.’”).

20 95. Plaintiff seeks, on behalf of herself and those similarly situated, a declaration that
21 the above-described practices constitute false, misleading and deceptive advertising.

22 96. Plaintiff seeks, on behalf of herself and those similarly situated, an injunction to
23 prohibit Defendant from continuing to engage in the false, misleading and deceptive advertising
24 and marketing practices complained of herein. Such misconduct by Defendant, unless and until
25 enjoined and restrained by order of this Court, will continue to cause injury in fact to the general
26 public and the loss of money and property in that Defendant will continue to violate the laws of
27 California, unless specifically ordered to comply with the same. This expectation of future
28 violations will require current and future consumers to repeatedly and continuously seek legal

1 redress in order to recover monies paid to Defendant to which they are not entitled. Plaintiff,
2 those similarly situated and/or other consumers have no other adequate remedy at law to ensure
3 future compliance with the California Business and Professions Code alleged to have been
4 violated herein.

5 **PLAINTIFF'S THIRD CAUSE OF ACTION**
6 **(Common Law Fraud, Deceit and/or Misrepresentation)**
7 **On Behalf of Plaintiff and the Class**

8 97. Plaintiff realleges and incorporates by reference the paragraphs of this Class
9 Action Complaint as if set forth herein.

10 98. Defendant made representations and statements (by omission and commission)
11 that led reasonable customers to believe that the Products provide more than 2 hours of sun
12 protection.

13 99. These misrepresentations and omissions were known exclusively to, and actively
14 concealed by, Defendant, not reasonably known to Plaintiff, and material at the time they were
15 made. Defendant knew or should have known the composition of the Products, and knew or
16 should have known that the Products do not and cannot provide more than 2 hours of sun
17 protection, and results in misleading consumers. Defendant's misrepresentations and omissions
18 concerned material facts that were essential to the analysis undertaken by Plaintiff as to whether
19 to purchase Defendant's Products. In misleading Plaintiff and not so informing Plaintiff,
20 Defendant breached its duty to her. Defendant also gained financially from, and as a result of,
21 its breach.

22 100. Plaintiff and those similarly situated relied to their detriment on Defendant's
23 misrepresentations and fraudulent omissions. Had Plaintiff and those similarly situated been
24 adequately informed and not intentionally deceived by Defendant, they would have acted
25 differently by, without limitation: (i) declining to purchase the Products, (ii) purchasing less of
26 them, or (iii) paying less for the Products.

27 101. By and through such fraud, deceit, misrepresentations and/or omissions,
28 Defendant intended to induce Plaintiff and those similarly situated to alter their position to their

1 detriment. Specifically, Defendant fraudulently and deceptively induced Plaintiff and those
2 similarly situated to, without limitation, purchase the Products and/or pay more for the Products.

3 102. Plaintiff and those similarly situated justifiably and reasonably relied on
4 Defendant's misrepresentations and omissions, and, accordingly, were damaged by Defendant.

5 103. As a direct and proximate result of Defendant's misrepresentations and/or
6 omissions, Plaintiff and those similarly situated have suffered damages, including, without
7 limitation, the amount they paid for the Products.

8 104. Defendant's conduct as described herein was wilful and malicious and was
9 designed to maximize Defendant's profits even though Defendant knew that it would cause loss
10 and harm to Plaintiff and those similarly situated.

11 **PLAINTIFF'S FOURTH CAUSE OF ACTION**
12 **(Unlawful, unfair, and fraudulent trade practices violation of Business and Professions**
13 **Code § 17200, *et seq.*)**
14 **On Behalf of Plaintiff and the California Subclass**

15 105. Plaintiff realleges and incorporates by reference the paragraphs of this Class
16 Action Complaint as if set forth herein.

17 106. Within four (4) years preceding the filing of this lawsuit, and at all times
18 mentioned herein, Defendant has engaged, and continues to engage, in unlawful, unfair, and
19 fraudulent trade practices in California by engaging in the unlawful, unfair, and fraudulent
20 business practices outlined in this complaint.

21 107. In particular, Defendant has engaged, and continues to engage, in unlawful
22 practices by, without limitation, violating the following state and federal laws: (i) the CLRA as
23 described herein; (ii) the FAL as described herein; (iii) the advertising provisions of the Sherman
24 Law (Article 3), including without limitation, California Health & Safety Code § 111730; and
25 (v) federal laws regulating the advertising and branding of sunscreen, including but not limited
26 to, 21 C.F.R. § 201.327(g).

27 108. In particular, Defendant has engaged, and continues to engage, in unfair and
28 fraudulent practices by, without limitation, misrepresenting that the Products provide more than
2 hours of sun protection.

1 109. Plaintiff and those similarly situated relied to their detriment on Defendant
2 unlawful, unfair, and fraudulent business practices. Had Plaintiff and those similarly situated
3 been adequately informed and not deceived by Defendant, they would have acted differently by,
4 without limitation: (i) declining to purchase the Products, (ii) purchasing less of the Products, or
5 (iii) paying less for the Products.

6 110. Defendant's acts and omissions are likely to deceive the general public.

7 111. Defendant engaged in these deceptive and unlawful practices to increase its
8 profits. Accordingly, Defendant has engaged in unlawful trade practices, as defined and
9 prohibited by section 17200, *et seq.* of the California Business and Professions Code.

10 112. The aforementioned practices, which Defendant has used to its significant
11 financial gain, also constitute unlawful competition and provide an unlawful advantage over
12 Defendant's competitors as well as injury to the general public.

13 113. As a direct and proximate result of such actions, Plaintiff and the other Class
14 members, have suffered and continue to suffer injury in fact and have lost money and/or property
15 as a result of such deceptive and/or unlawful trade practices and unfair competition in an amount
16 which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court.
17 In particular, Plaintiff and those similarly situated paid a price premium for the Products, i.e.,
18 the difference between the price consumers paid for the Products and the price that they would
19 have paid but for Defendant's misrepresentation. This premium can be determined by using
20 econometric or statistical techniques such as hedonic regression or conjoint analysis.
21 Alternatively, Plaintiff and those similarly situated will seek a full refund of the price paid upon
22 proof that the sale of the Products was unlawful.

23 114. As a direct and proximate result of such actions, Defendant has enjoyed, and
24 continues to enjoy, significant financial gain in an amount which will be proven at trial, but
25 which is in excess of the jurisdictional minimum of this Court.

26 115. Plaintiff seeks, on behalf of herself and those similarly situated, equitable relief,
27 including restitution for the premium and/or the full price that they and others paid to Defendant
28 as result of Defendant's conduct. Plaintiff and the Class lack an adequate remedy at law to obtain

1 such relief with respect to their “unfairness” claims in this UCL cause of action, because there
2 is no cause of action at law for “unfair” conduct. Plaintiff and the Class similarly lack an adequate
3 remedy at law to obtain such relief with respect to their “unlawfulness” claims in this UCL cause
4 of action because the Sherman Law and the Federal laws and regulations referenced herein do
5 not provide a direct cause of action, so Plaintiff and the Class must allege those violations as
6 predicate acts under the UCL to obtain relief.

7 116. Plaintiff also seeks equitable relief, including restitution, with respect to her UCL
8 unlawfulness claims for violations of the CLRA, FAL and her UCL “fraudulent” claims.
9 Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiff makes the following allegations in
10 this paragraph only hypothetically and as an alternative to any contrary allegations in their other
11 causes of action, in the event that such causes of action do not succeed. Plaintiff and the Class
12 may be unable to obtain monetary, declaratory and/or injunctive relief directly under other causes
13 of action and will lack an adequate remedy of law, if the Court requires them to show classwide
14 reliance and materiality beyond the objective reasonable consumer standard applied under the
15 UCL, because Plaintiff may not be able to establish each Class member’s individualized
16 understanding of Defendant’s misleading representations as described in this Complaint, but the
17 UCL does not require individualized proof of deception or injury by absent class members. *See,*
18 *e.g., Stearns v Ticketmaster*, 655 F.3d 1013, 1020, 1023-25 (distinguishing, for purposes of
19 CLRA claim, among class members for whom website representations may have been materially
20 deficient, but requiring certification of UCL claim for entire class). In addition, Plaintiff and the
21 Class may be unable to obtain such relief under other causes of action and will lack an adequate
22 remedy at law, if Plaintiff is unable to demonstrate the requisite *mens rea* (intent, reckless, and/or
23 negligence), because the UCL imposes no such *mens rea* requirement and liability exists even if
24 Defendant acted in good faith.

25 117. Plaintiff seeks, on behalf of herself and those similarly situated, a declaration that
26 the above-described trade practices are fraudulent, unfair, and/or unlawful.

27 118. Plaintiff seeks, on behalf of herself and those similarly situated, an injunction to
28 prohibit Defendant from continuing to engage in the deceptive and/or unlawful trade practices

1 complained of herein. Such misconduct by Defendant, unless and until enjoined and restrained
2 by order of this Court, will continue to cause injury in fact to the general public and the loss of
3 money and property in that Defendant will continue to violate the laws of California, unless
4 specifically ordered to comply with the same. This expectation of future violations will require
5 current and future consumers to repeatedly and continuously seek legal redress in order to
6 recover monies paid to Defendant to which they were not entitled. Plaintiff, those similarly
7 situated and/or other consumers nationwide have no other adequate remedy at law to ensure
8 future compliance with the California Business and Professions Code alleged to have been
9 violated herein.

10 **PLAINTIFF'S FIFTH CAUSE OF ACTION**
11 **(Unjust Enrichment)**
12 **On Behalf of Plaintiff and the Class**

13 119. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

14 120. Plaintiff and members of the Class conferred a benefit on the Defendant by
15 purchasing the Products.

16 121. Defendant has been unjustly enriched in retaining the revenues from Plaintiff's
17 and Class Members' purchases of the Products, which retention is unjust and inequitable,
18 because Defendant falsely represented that the Products provide more than two hours of sun
19 protection when, in fact, the Products do not and cannot provide more than two hours of sun
20 protection. This harmed Plaintiff and members of the class because they paid a price premium
21 as a result.

22 122. Because Defendant's retention of the non-gratuitous benefit conferred on them
23 by Plaintiff and Class members is unjust and inequitable, Defendant must pay restitution to
24 Plaintiff and the Class members for its unjust enrichment, as ordered by the Court. Plaintiff and
25 those similarly situated have no adequate remedy at law to obtain this relief.

26 123. Plaintiff, therefore, seeks an order requiring Defendant to make restitution her
27 and other members of the Class.

28 **PRAYER FOR RELIEF**

1 WHEREFORE, Plaintiff, on behalf of herself and those similarly situated,
2 respectfully requests that the Court enter judgement against Defendant as follows:

3 A. Certification of the proposed Class and Subclass, including appointment of
4 Plaintiff's counsel as class counsel;

5 B. An order temporarily and permanently enjoining Defendant from continuing the
6 unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

7 C. An award of compensatory damages in an amount to be determined at trial, except
8 as to those causes of action where compensatory damages are not available at law;

9 D. An award of statutory damages in an amount to be determined at trial, except as
10 to those causes of action where statutory damages are not available at law;

11 E. An award of punitive damages in an amount to be determined at trial, except as
12 to those causes of action where punitive damages are not available at law;

13 F. An award of treble damages, except as to those causes of action where treble
14 damages are not available at law;

15 G. An award of restitution in an amount to be determined at trial, except as to those
16 causes of action where restitution is not available at law;

17 H. An order requiring Defendant to pay both pre- and post-judgment interest on any
18 amounts awarded;

19 I. For reasonable attorneys' fees and the costs of suit incurred; and

20 J. For such further relief as this Court may deem just and proper.

21 **JURY TRIAL DEMANDED**

22 Plaintiff hereby demands a trial by jury.

23
24
25
26
27 [signature on following page]
28

1 Dated: December 1, 2023

2 **GUTRIDE SAFIER LLP**

3 /s/ Seth A. Safier/s/
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9 *Attorneys for Plaintiff*

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EXHIBIT A

I, Alexis Slaten, declare:

1. I am a Plaintiff in this action. If called upon to testify, I could and would competently testify to the matters contained herein based upon my personal knowledge.

2. I submit this Declaration pursuant to California Code of Civil Procedure section 2215.5 and California Civil Code section 1780(d).

3. As set forth in my complaint, I purchased the Dior Forever Foundation (in 6N) on one or more occasions during the last four years.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed this __ day of January 2023, in San Bruno, California.
1/23/2023

DocuSigned by:

97D41362F34F414...
Alexis Slaten