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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

SACV12 - 0966 JVS (ANx)

11 KATTY ZELAYA, on Behalf of Herself
12 and All Others Similarly Situated,
13 Plaintiff,
14 vs.
15 STEINER U.S. HOLDINGS, INC.,
16 Defendant.

Civil Action No.
CLASS ACTION COMPLAINT
Demand For Jury Trial

2/5-21

17
18 Plaintiff, Katty Zelaya ("Plaintiff"), by and through her attorneys, brings
19 this action, on behalf of herself and all others similarly situated, against
20 Defendant, Steiner U.S. Holdings, Inc. ("Steiner" or "Defendant"), and, except for
21 information based on her own personal knowledge, alleges, on information and
22 belief based on the investigation conducted by her counsel, as follows:

23 **NATURE OF THE ACTION**

24 1. Plaintiff brings this action individually and on behalf of a proposed
25 class ("Class"), as more fully defined below, of similarly situated consumers in the
26 State of California seeking to redress the pervasive pattern of fraudulent,
27 deceptive, false and otherwise improper advertising, sales and marketing practices
28 that Defendant continues to engage in regarding its Bliss brand Body Care

1 products, Bliss fatgirlslim™ cellulite cream (“fatgirlslim™”) and Bliss
2 lovehandler™ (“lovehandler™”) (collectively, the “Slimming Products”). As
3 more fully alleged herein, Defendant’s schemes and/or artifices to defraud Plaintiff
4 and other members of the proposed Class have consisted of systemic and
5 continuing practices of disseminating false and misleading information via
6 television, celebrity endorsements, Internet websites and postings, point of
7 purchase advertisements, and the packaging of the Slimming Products, all of
8 which are intended to induce unsuspecting consumers, including Plaintiff and
9 other members of the proposed Class, into purchasing millions of dollars’ worth of
10 the Slimming Products, which may be manufactured, and are marketed, advertised
11 and sold, by Defendant.

12 2. Steiner is, upon information and belief, a wholly-owned subsidiary of
13 Steiner Leisure Limited, and manufactures, as well as distributes, markets and
14 sells, some or all of the Slimming Products.

15 3. Steiner product brands include Bliss, Elemis, Jou, La Thérapie,
16 Mandara and Steiner skin care, wellness and hair care products. These are
17 distributed through Steiner-operated day spas, resorts and spas-at-sea. Elemis is
18 also distributed to over 1,200 third-party spas, and both Bliss and Elemis are
19 distributed via retail outlets all over the world.

20 4. There are nine product lines listed on the Bliss website under its
21 slimming section: slimming apparel, cellulite creams, best sellers, daytime
22 solutions, nighttime solutions, supplements, sun smart, tools and detox.
23 Fatgirlslim™ and lovehandler™ are listed under the cellulite cream section, as
24 well as the best seller, daytime solutions, and nighttime solutions sections.
25 *www.blissworld.com* (last visited May 23, 2012).

26 5. Through an extensive and comprehensive nationwide marketing
27 campaign, Defendant claims that fatgirlslim™ is a “lean mean skin firming cream”
28 which “visibly reduces dimples,” and lovehandler™ is a “liquid workout for lazy

1 abdominals” which “wages war on not-so-hard ‘core’ areas with this genius
2 gel....” Defendant further claims that lovehandler™ “whittle[s] the look of your
3 middle and tone [sic] pudgy tummies.” *www.blissword.com* (last visited May 23,
4 2012); *www.sephora.com* (last visited May 23, 2012).

5 6. Since their introduction, Defendant’s nationwide advertising
6 campaign for the Slimming Products has been extensive, and Defendant has spent
7 a significant amount of money to convey these deceptive messages to consumers
8 throughout the United States. Defendant utilizes a wide array of media to convey
9 these deceptive claims about the Slimming Products, including celebrity
10 endorsements, television, Internet, and point of purchase advertisements, and on
11 the Slimming Products’ labels and labeling. Through this massive marketing
12 campaign, Defendant has conveyed one message: the Slimming Products deliver
13 slimmed, toned, reshaped, and firm skin. The names of the Slimming Products
14 themselves reinforce the misguided notion that using these products will help slim
15 a person down. Each person who has purchased the Slimming Products has been
16 exposed to Defendant’s misleading advertising message and purchased the
17 Slimming Products as a result of that advertising.

18 7. Defendant’s claims are deceptive and misleading, designed solely to
19 cause consumers to buy the Slimming Products. The active ingredient in
20 fatgirlslim™ is caffeine and the active ingredients in lovehandler™ are caffeine
21 and creatine. There are no reliable studies showing that caffeine and/or creatine
22 are readily absorbed through the skin to the fat layer in a strong enough
23 concentration to provide any of the results promised by Defendant.

24 8. Plaintiff brings this action, on behalf of herself and all other similarly
25 situated consumers residing in the State of California, to halt the dissemination of
26 this false and misleading advertising, correct the false and misleading perception it
27 has created in the minds of consumers, and to obtain redress for those who have
28 purchased the Slimming Products.

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bliss fatgirlslim

SKU :BLISS-275

a lean, mean skin firming cream!

o energizes the skin

o stimulates skin surface to firm and contour with caffeine

o visibly reduces the appearance of excess fluid retention in skin layers

This advanced-technology adipose antagonist (which, in layman’s terms, means it helps reduce the appearance of cellulite) features

QuSome-encapsulated caffeine molecules for quick and targeted delivery of the skin-firming stuff of choice for supermodels, spokespeople and other celebs.

www.blissworld.com (last visited May 23, 2012).

18. Advertisements on the website of national retailer, Sephora, website describe fatgirlslim™ as “[a] lean, mean skin-firming cream that visibly diminishes dimples with QuSome®-encapsulated caffeine.”

http://www.sephora.com/fatgirlslim-P70109?skuId=1026749 (last visited May 23, 2012).

1 19. Other representations made on various websites claim that
2 fatgirlslim™ “is a new advanced technology fat fighter...,” consumers can “trim
3 and tone triceps simultaneously as you massage in Bliss fatgirlslim™,” and
4 “fatgirlslim™ advanced-technology skin-firming cream quickly diminishes flab
5 with encapsulated caffeine.”
6 <http://www.cellulitess.plazadiscounts.com/page42.html> (last visited May 23,
7 2012); http://www.facebook.com/note.php?note_id=154340331346747 (last
8 visited May 23, 2012);
9 <http://chemicals.zibb.com/trademark/fat+girl+slim/30291662> (last visited May
10 23, 2012).

11 20. Defendant’s labeling for lovehandler™ consists of the following:



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25 **bliss the love handler 8.5 fl oz**

26 **SKU :BLISS-268**

27 **targeted skin-firming gel for the midsection**

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1 Wage war on not-so-hard 'core' areas with this genius gel, formulated for
2 extended 8-hour caffeine release. With cooling mint oil and naturally
3 derived amino acid ingredients.

4 **Why we love it**

5 o stimulates skin surface for improved firmness

6 o energy releasing amino acids firm and burn with creatine

7 o caffeine stays active for up to 8 hours!

8 *www.blissworld.com* (last visited May 23, 2012).

9 21. Advertisements on the website of national retailer, Sephora, and on
10 the lovehandler™ bottle itself, describe lovehandler™ as a "time-released,
11 caffeine-packed liquid workout for lazy abdominals, with energizing amino
12 acids." Sephora advertises that lovehandler™ is formulated to "wage[] war on
13 not-so-hard 'core' areas with caffeine, to whittle the look of your middle and tone
14 pudgy tummies. Cooling mint oil and naturally derived amino acid help to boost
15 energy and make lingering lipids depart on the double."

16 *http://www.sephora.com/love-handler-P188908?skuId=1025808* (last visited May
17 23, 2012).

18 22. On information and belief, Sephora and other retailers'
19 representations about the Slimming Products as described herein emanate from
20 and are driven by Defendant.

21 23. As the foregoing illustrates, the active ingredient in both fatgirlslim™
22 and lovehandler™ is caffeine. Caffeine is a bitter, white crystalline xanthine
23 alkaloid that acts as a stimulant drug. Caffeine is found in varying quantities in
24 the seeds, leaves, and fruit of some plants, where it acts as a natural pesticide that
25 paralyzes and kills certain insects feeding on the plants. It is most commonly
26 consumed by humans in infusions extracted from the bean of the coffee plant and
27 the leaves of the tea bush, as well as from various foods and drinks containing
28 products derived from the kola nut. Caffeine has diuretic properties when

1 administered to people who are not used to it, but regular users develop a strong
2 tolerance to this effect.

3 24. The other active ingredient in lovehandler™ is creatine. Creatine is a
4 naturally occurring amino acid (protein building block) that is found in meat and
5 fish. It is made in the human body in the liver, kidneys and pancreas. Creatine is
6 converted into creatine phosphate, or phosphocreatine, and stored in the muscles,
7 where it is used for energy. Creatine supplements, when taken orally, are popular
8 among body builders; however, not all human studies have shown that creatine
9 improves athletic performance.

10 **B. Cellulite and Recent Discussion of Possible Treatments**

11 25. Cellulite is the non-pathologic appearance of dimpled skin surface,
12 sometimes likened to “cottage cheese,” commonly seen on thighs and buttocks of
13 women, as well as on the abdomen, breasts and arms. The occurrence of cellulite
14 is nearly universal in postpubertal females. In fact, ninety percent (90%) of
15 women, women of all shapes, sizes and ages, suffer from cellulite. Cellulite
16 begins to form during puberty, although it is not always noticeable on younger
17 women. Due to their biological make-up, nearly all women will develop
18 noticeable cellulite at some point in their lives. Because it is unsightly, cellulite
19 causes great distress in women and billions of dollars are spent on treatments that
20 are largely ineffective. According to an article in the June 25, 2009 edition of *The*
21 *New York Times* (the “6/09 *New York Times* article”), the market for cellulite-
22 reduction devices in the United States (which includes topical applications and
23 creams such as the Slimming Products) was more than \$47 million in 2008 and is
24 estimated to increase to as much as \$62 million by 2013.

25 26. The 6/09 *New York Times* article reports that, unlike the situation in
26 men, the connective tissue bands under women’s skin are organized vertically, so
27 that fat may bulge irregularly. This is because women store fats in honeycomb
28 compartments in the skin’s deeper layers. Over time, fatty deposits accumulate in

1 these compartments, causing them to expand and bulge. This appears on the
2 skin's surface as "dimpled skin." As this condition progresses, the bulging
3 worsens, restricting the blood supply to affected areas, and trapping fats in the
4 compartments. Thus, when a woman's body needs to use the fat it stores to burn
5 for energy, it has to look elsewhere. Cellulite becomes more visible as the
6 condition worsens. In severe cases, it can become irreversible and lead to
7 permanent disfigurement. The 6/09 *New York Times* article quotes Dr. Michael D.
8 Jensen, a clinical professor of medicine at the Mayo Clinic, as explaining that
9 while "[a]t normal weight your fat cells fall nicely into valleys of connective
10 tissue, [w]hen you get too many fat cells or too big of fat cells now they push upon
11 the roof [*i.e.*, the skin]." This condition is exacerbated with age, as the connective
12 tissue strands between skin and muscle becomes more inflexible. How much
13 cellulite develops typically depends on factors including genetics, hormonal
14 changes, age, race, and lifestyle factors such as diet, stress and smoking.

15 27. The 6/09 *New York Times* article also quotes Dr. Molly Wanner, a
16 dermatology instructor at Harvard Medical School (and co-author of a 2008
17 evidence-based review of existing cellulite-reduction treatments), as flatly stating
18 that "[a]t this point, there is no outstanding treatment for cellulite." This view was
19 echoed by Dr. Michael F. McGuire, a clinical associate professor at the University
20 of California, Los Angeles School of Medicine, who was quoted as stating that
21 "realistically there is no cure for cellulite."

22 28. An article in the November 3, 2008 edition of the *Los Angeles Times*
23 (the "11/08 *LA Times* article") was similarly skeptical regarding the efficacy of
24 cellulite creams. It quoted Dr. Jenny Kim, an associate professor of medicine and
25 dermatology at UCLA's School of Medicine, as observing that "no studies have
26 convincingly shown that cellulite creams do any good on actual bodies because
27 nobody knows if creams can penetrate the skin deeply enough to reach fat cells, let
28 alone reduce the appearance of cellulite." Dr. Wanner, of Harvard's medical

1 school, was also quoted in the 11/08 *LA Times* article as agreeing that there are no
2 convincing studies to demonstrate that cellulite creams work:

3 I don't think the evidence is there to recommend
4 spending money on cellulite cream.... Never say never,
5 but at this point there's nothing to suggest that these
6 products [*i.e.*, cellulite creams] can improve cellulite....
7 That's because there's more to removing [cellulite] than
8 shrinking fat cells. Unless a product can fundamentally
9 change the structure of skin, ... the bulges will remain.

10 29. There is no competent scientific evidence demonstrating the efficacy
11 of the Slimming Products to reduce cellulite (dimples), energize the skin, firm and
12 contour the skin or slim a person's abdominals.

13 30. Nevertheless, Defendant has, and continues to, make false and
14 misleading representations to consumers about the efficacy of the Slimming
15 Products, including its claims that, *inter alia*, when rubbed onto the skin, the
16 Slimming Products will reduce cellulite, be a "liquid workout for lazy
17 abdominals," "whittle the middle," and "tone pudgy tummies."

18 31. Defendant's claims regarding the Slimming Products are deceptive
19 and misleading. Had Plaintiff and other members of the proposed Class been
20 aware of the truth regarding the Slimming Products, they would not have
21 purchased the Slimming Products.

22 32. On or about June 29, 2011, the Federal Trade Commission ("FTC")
23 announced "[a]s part of its ongoing efforts to protect consumers from over-hyped
24 advertising claims, the Federal Trade Commission reached a settlement requiring
25 Nivea skin cream maker Beiersdorf, Inc. to stop claiming that regular use of its
26 Nivea My Silhouette! Skin cream can significantly reduce consumers' body
27 size"...[and] that "[t]he real skinny on weight loss is that **no cream is going to**
28 **help you fit into your jeans.**" <http://www.ftc.gov/opa/2011/06/beiersdorf.shtm>
(emphasis added).

29 33. Likewise, Defendant's names for the Slimming Products, as well as
30 Defendant's labeling and advertisements concerning the Slimming Products,

1 create the impression upon consumers that use of the Slimming Products will
2 result in a slimmed, more toned and contoured appearance.

3 **CLASS ACTION ALLEGATIONS**

4 34. Plaintiff brings this lawsuit, both individually and as a class action,
5 on behalf of similarly situated purchasers of the Slimming Products, pursuant to
6 Federal Rule of Civil Procedure 23(b)(2) and (3). The proposed Class consists of:

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8 All persons in California who purchased, not for resale,
Bliss fatgirlslim™ and Bliss lovehandler™.

9 Excluded from the proposed Class is Defendant; its respective officers, directors
10 and employees; any entity that has a controlling interest in Defendant; as well as
11 those who purchased the Slimming Products for the purpose of resale. Any claims
12 for personal injury or consequential damages, not otherwise permitted under the
13 facts pled herein, are expressly excluded from this action. Plaintiff reserves the
14 right to amend the Class definition as necessary.

15 35. Upon information and belief, the Class comprises thousands of
16 consumers throughout California and is so numerous that joinder of all members
17 of the Class is impracticable. While the exact number of Class members is
18 presently unknown and can only be ascertained through discovery, Plaintiff
19 reasonably believes that there are thousands of Class members.

20 36. There are questions of law and fact common to the Class which
21 predominate over any individual issues, including:

- 22 (a) whether Defendant's claims regarding the Slimming Products are
23 deceptive and/or misleading;
- 24 (b) whether Defendant engaged in false and/or misleading advertising;
- 25 (c) whether Defendant's conduct as alleged herein violates the CLRA;
- 26 (d) whether Defendant's conduct as alleged herein violates the UCL;
- 27 (e) whether Defendant's conduct as alleged herein violates the FAL;
- 28 (f) whether Defendant's conduct as alleged herein constitutes a breach of

- 1 warranty;
- 2 (g) whether Plaintiff and Class members have sustained monetary loss
- 3 and the proper measure of that loss;
- 4 (h) whether Defendant has been unjustly enriched as a result of its
- 5 misconduct; and
- 6 (I) whether Plaintiff and Class members are entitled to declaratory and
- 7 injunctive relief.

8 37. Plaintiff's claims are typical of the claims of the proposed Class, and

9 Plaintiff will fairly and adequately represent and protect the interests of the

10 proposed Class. Plaintiff does not have any interests antagonistic to those of the

11 Class. Plaintiff has retained competent counsel experienced in the prosecution of

12 this type of litigation. The questions of law and fact common to the Class

13 members, some of which are set out above, predominate over any questions

14 affecting only individual Class members.

15 38. A class action is superior to all other available methods for the fair

16 and efficient adjudication of this lawsuit, because individual litigation of the

17 claims of all Class members is economically unfeasible and procedurally

18 impracticable. While the aggregate damages sustained by the Class are likely in

19 the millions of dollars, the individual damages incurred by each Class member

20 resulting from Defendant's wrongful conduct are too small to warrant the expense

21 of individual suits. The likelihood of individual Class members prosecuting their

22 own separate claims is remote, and, even if every Class member could afford

23 individual litigation, the court system would be unduly burdened by individual

24 litigation of such cases. Individual members of the Class do not have a significant

25 interest in individually controlling the prosecution of separate actions, and

26 individualized litigation would also present the potential for varying, inconsistent,

27 or contradictory judgments and would magnify the delay and expense to all of the

28 parties and to the court system because of multiple trials of the same factual and

1 legal issues. Plaintiff knows of no difficulty to be encountered in the management
2 of this action that would preclude its maintenance as a class action. In addition,
3 Defendant has acted or refused to act on grounds generally applicable to the Class
4 and, as such, final injunctive relief or corresponding declaratory relief with regard
5 to the members of the Class as a whole is appropriate.

6 39. Unless a class is certified, Defendant will retain monies received as a
7 result of its conduct that was taken from Plaintiff and proposed Class members.
8 Unless an injunction is issued, Defendant will continue to commit the violations
9 alleged, and the members of the Class and the general public will continue to be
10 misled.

11 **FIRST CAUSE OF ACTION**

12 **On Behalf Of Plaintiff And The Class**

13 **(Violations of the CLRA)**

14 40. Plaintiff repeats and realleges the allegations of the preceding
15 paragraphs as if fully set forth herein.

16 41. This cause of action is brought pursuant to the CLRA. Plaintiff is a
17 consumer as defined by California Civil Code § 1761(d). The Slimming Products
18 are goods within the meaning of the CLRA.

19 42. Defendant violated and continues to violate the CLRA by engaging in
20 the following practices proscribed by the California Civil Code § 1770(a) which
21 were intended to result in, and did result in, the sale of the Slimming Products:

22 (2) Misrepresenting the source, sponsorship, approval or
23 certification of good or services;

24 (5) Representing that [the Slimming Products have] . . .
25 characteristics, . . . uses [or] benefits . . . which they do not
26 have;

27 (7) Representing that [the Slimming Products] are of a
28 particular standard, quality or grade . . . if they are of another;
and

(9) Advertising goods . . . with the intent not to sell them as
advertised.

1 43. Defendant violated the CLRA by marketing and advertising the
2 Slimming Products in the manner described herein, when it knew that the labeling
3 and advertisements were deceptive, false, and misleading.

4 44. Defendant intended for Plaintiff and members of the Class to rely on
5 the false and misleading representations, and any reasonable consumer would
6 deem the false and misleading representations material to the purchase of the
7 Slimming Products. Had Defendant disclosed all material information regarding
8 the Slimming Products to Plaintiff and other members of the Class, they would not
9 have purchased the Slimming Products, or would have paid substantially less for
10 them.

11 45. As a result of Defendant's conduct, Plaintiff and members of the
12 Class suffered injury in fact, loss of money or property, and otherwise have been
13 damaged.

14 46. Pursuant to California Civil Code § 1782(d), Plaintiff and the Class
15 seek a Court order enjoining the above-described wrongful acts and practices of
16 Defendant and for restitution and disgorgement.

17 47. Pursuant to § 1782 of the CLRA, by letter dated March 2, 2012,
18 Plaintiff notified Defendant, in writing by certified mail, of the particular
19 violations of § 1770 of the CLRA and demanded that Defendant rectify the
20 problems associated with the actions detailed above and to give notice to all
21 affected consumers of its intent to so act.

22 48. Defendant has failed to rectify or agree to rectify the problems
23 associated with the actions detailed above within 30 days of the date of written
24 notice pursuant to § 1782 of the Act. Accordingly, Plaintiff seeks actual, punitive,
25 and statutory damages, as appropriate, as well as all other relief permitted under
26 the CLRA.

27 49. Defendant's conduct is malicious, fraudulent, and wanton.

28 50. Pursuant to § 1780(d) of the CLRA, attached hereto as Exhibit A is

1 the requisite CLRA Declaration executed by Plaintiff.

2 **SECOND CAUSE OF ACTION**

3 **On Behalf Of Plaintiff And The Class**

4 **(Violations of the FAL)**

5 51. Plaintiff repeats and realleges the allegations of the preceding
6 paragraphs as if fully set forth herein.

7 52. The misrepresentations, acts, and non-disclosures by Defendant of the
8 material facts detailed above constitute false and misleading advertising and
9 therefore constitute a violation of the FAL.

10 53. At all times relevant hereto, Defendant's advertisements and
11 promotions regarding the Slimming Products were untrue, misleading, and likely
12 to deceive the public. Defendant has deceived Plaintiff and other consumers,
13 including members of the Class, by representing, *inter alia*, that the Slimming
14 Products deliver slimmed, toned, reshaped, and firm skin, when, in fact, they do
15 not.

16 54. Defendant has engaged in the false and misleading advertising and
17 marketing alleged herein with an intent to directly and indirectly induce the
18 purchase of the Slimming Products.

19 55. Defendant's false and misleading advertising was and is material to
20 Plaintiff and Class members in connection with their respective decisions to
21 purchase the Slimming Products.

22 56. Plaintiff and the Class members relied on Defendant's false
23 advertisements and misrepresentations, which played a substantial part in
24 influencing the decision of Plaintiff (and the Class) to purchase the Slimming
25 Products. Defendant intended that Plaintiff and other consumers would rely on the
26 false and misleading representations.

27 57. In making and disseminating the statements and omissions alleged
28 herein, Defendant knew, or should have known, that the statements and omissions

1 were untrue and misleading, and acted in violation of the FAL.

2 58. Plaintiff and members of the Class have suffered injury in fact and
3 have lost money or property as a result of Defendant's unfair competition, as more
4 fully set forth herein. Plaintiff and members of the Class have been injured
5 because they overpaid for the Slimming Products, since the value of the Slimming
6 Products was diminished at the time of sale. Plaintiff and members of the Class
7 have been injured because, had Defendant disclosed all material information
8 regarding the Slimming Products to Plaintiff and other members of the Class, they
9 would not have purchased the Slimming Products, or would have paid
10 substantially less for them.

11 59. Defendant, through its acts of unfair competition, has unfairly
12 acquired money from Plaintiff and the members of the Class. Plaintiff can better
13 determine the amount of money that Defendant has improperly obtained through
14 discovery.

15 60. Plaintiff seeks an order requiring Defendant to undertake a public
16 information campaign to inform members of the Class of its prior acts and
17 practices.

18 61. Unless Defendant is enjoined from continuing to engage in such
19 wrongful actions and conduct, members of the Class will continue to be damaged
20 by Defendant's false and misleading advertising.

21 62. Plaintiff also seeks an order requiring Defendant to (a) make full
22 restitution of all monies wrongfully obtained, and (b) disgorge all ill-gotten
23 revenues and/or profits, together with interest thereon.

24 63. Plaintiff also seeks attorneys' fees and costs pursuant to, *inter alia*,
25 California Code of Civil Procedure § 1021.5.

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THIRD CAUSE OF ACTION
On Behalf Of Plaintiff And The Class
(Violations of the UCL)

64. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

65. The UCL defines unfair business competition to include any “unfair,” “unlawful,” or “fraudulent” business act or practice. California Business & Professions Code § 17200, *et seq.* The UCL also provides for injunctive relief and restitution for any such violations.

66. Defendant’s conduct as alleged herein constitutes unlawful, unfair and fraudulent business acts and practices.

67. By engaging in the above-described acts and practices, Defendant has committed one or more acts of unfair competition within the meaning of the UCL.

68. Defendant’s business practices and acts are “fraudulent” because they deceived and are likely to deceive Plaintiff and members of the consuming public. Specifically, Defendant intentionally and misleadingly marketed and sold the Slimming Products as, *inter alia*, delivering slimmed, toned, reshaped, and firm skin, when, in fact, they do not.

69. Defendant’s business practices, and each of them, are “unfair” because they offend established public policy and are immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers in that consumers are led to believe that the Slimming Products have qualities and benefits they do not have.

70. The injury to Plaintiff and consumers greatly outweighs any alleged countervailing benefit to consumers or competition under all of the circumstances.

71. There were reasonably available alternatives to further Defendant’s legitimate business interests, other than the conduct described herein.

72. Defendant’s acts and practices are “unlawful” because Defendant

1 engaged in false and misleading advertising, in violation of California Civil Code
2 §§ 1572, 1688, 1709, 1710, the FAL and the CLRA, and also are violative of
3 Defendant's warranties.

4 73. Plaintiff and the Class reserve the right to allege other violations of
5 law which constitute other unlawful business acts or practices. Such conduct is
6 ongoing and continues to this date.

7 74. Plaintiff and members of the Class have suffered injury in fact and
8 have lost money or property as a result of Defendant's unfair competition, as more
9 fully set forth herein. Plaintiff and members of the Class have been injured
10 because they overpaid for the Slimming Products and because, had they been
11 made aware that the Slimming Products do not perform as represented, they would
12 not have purchased the Slimming Products, or would have paid substantially less
13 for them.

14 75. Defendant, through its acts of unfair competition, has unfairly
15 acquired money from Plaintiff and members of the Class.

16 76. Unless Defendant is enjoined from continuing to engage in the
17 unlawful, unfair, fraudulent, untrue, and deceptive business acts and practices as
18 described herein, consumers will continue to be exposed to and damaged by
19 Defendant's unfair competition.

20 77. Plaintiff seeks an order requiring Defendant to undertake a public
21 information campaign to inform members of the Class of its prior acts or practices.

22 78. Plaintiff also seeks all relief available to her and the members of the
23 Class pursuant to the FAL.

24 79. Plaintiff also seeks attorneys' fees and costs pursuant to, *inter alia*,
25 California Code of Civil Procedure § 1021.5.

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FOURTH CAUSE OF ACTION
On Behalf Of Plaintiff And The Class
(Breach of Express Warranty)

80. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

81. Plaintiff, and each member of the Class, formed a contract with Defendant at the time Plaintiff and the other members of the Class purchased the Slimming Products. The terms of that contract include the promises and affirmations of fact made by Defendant on the Slimming Products' labels and through its marketing campaign, as described above. This product labeling and advertising constitutes express warranties, became part of the basis of the bargain, and is part of a standardized contract between Plaintiff and the members of the Class on the one hand, and Steiner on the other.

82. All conditions precedent to Steiner's liability under this contract, including notice, have been performed by Plaintiff and the Class.

83. Defendant breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing products which could provide the benefits described above.

84. As a result of Defendant's breach of its contract, Plaintiff and the Class have been damaged in the amount of the purchase price of the Slimming Products they purchased.

FIFTH CAUSE OF ACTION
On Behalf Of Plaintiff And The Class
(Unjust Enrichment)

85. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

86. This claim is asserted in the alternative on behalf of Plaintiff and Class members to the extent that any contracts do not govern the entirety of the

1 subject matter of the dispute with Defendant.

2 87. Plaintiff and Class members conferred a tangible economic benefit
3 upon Defendant by purchasing the Slimming Products. Plaintiff and Class
4 members would have expected remuneration from Defendant at the time this
5 benefit was conferred had they known that the Slimming Products do not perform
6 as promised.

7 88. As a direct and proximate result of Defendant's misconduct as set
8 forth above, Defendant has been unjustly enriched at the expense of Plaintiff and
9 Class members.

10 89. It would be inequitable for Defendant to retain the profits, benefits
11 and other compensation obtained by its wrongful conduct in marketing and selling
12 the Slimming Products.

13 90. Plaintiff, on behalf of herself and Class members, seeks restitution
14 from Defendant, and an order of this Court disgorging all profits, benefits and
15 other compensation obtained by Defendant from its wrongful conduct.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, on behalf of herself and members of the proposed
18 Class, prays for judgment as follows:

- 19 a. Certification of the Class under Federal Rule of Civil Procedure 23
20 and appointment of Plaintiff as representative of the Class and her
21 counsel as Class counsel;
- 22 b. Compensatory and other damages for economic and non-economic
23 damages identified herein;
- 24 c. Awarding restitution and disgorgement of Defendant's revenues or
25 profits to Plaintiff and the proposed Class members as permitted by
26 applicable law;
- 27 d. An order requiring Defendant to cease and desist from engaging in its
28 wrongful conduct and to engage in a corrective advertising campaign;

- 1 e. Statutory pre-judgment and post-judgment interest on any amounts;
2 f. Payment of reasonable attorneys' fees and recoverable litigation
3 expenses as may be allowable under applicable law; and
4 g. Such other relief as the Court may deem just and proper.

5 **JURY DEMAND**

6 Plaintiff demands a trial by jury on all causes of action so triable.

7
8 Date: June 15, 2012

9 
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28 Attorneys for Plaintiff and the Class

EXHIBIT A

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**KATTY ZELAYA, on Behalf of Herself
and All Others Similarly Situated,**

Plaintiff,

vs.

STEINER U.S. HOLDINGS, INC.

Defendant.

Civil Action No.

CLASS ACTION COMPLAINT

Demand For Jury Trial

DECLARATION OF KATTY ZELAYA

I, Katty Zelaya, declare under penalty of perjury as follows:

1. I make this declaration based upon my personal knowledge except as to those matters stated herein that are based upon information or belief, which I believe to be true.
2. I am an adult citizen of the State of California. I reside in Santa Ana, California, and I am the named Plaintiff in this litigation.
3. In or about late November or early December 2011, and then again in or about February 2012, I purchased the fatgirlslim™ and lovehandler™ products at the JCPenny store in Santa Ana, California, products which may be manufactured, and are marketed, advertised and sold, by Defendant Steiner U.S. Holdings, Inc. ("Defendant").
4. To the best of my knowledge, information and belief, Defendant is doing business throughout California, including in this District in Santa Ana, Orange County, California.

I declare under penalty of perjury under the laws of the State of California

1 that the foregoing is true and correct. Executed this 6 day ^{JUNE} 2012 at Santa
2 Ana, California.

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5 KATY ZELAYA
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