

Rose F. Luzon (SBN 221544)
Shepherd, Finkelman, Miller & Shah, LLP
401 West 'A' Street, Suite 2350
San Diego, CA 92101
Phone: (619) 235-2416
Fax: (619) 234-7334
Email: rluzon@sfmslaw.com

(Additional Counsel on Signature Page)

Attorneys for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

PATSY MURDOCK, Individually
And On Behalf Of All Others Similarly
Situated,

Plaintiff,

v.

MAYBELLINE, LLC,

Defendant.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Patsy Murdock ("Plaintiff"), alleges, upon personal knowledge as to herself and her own acts, and upon information and belief (based on the investigation of counsel) as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has original jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332(d) because the matter in controversy, upon information and belief, exceeds \$5,000,000, exclusive of interest and costs, and this is a class action in which certain of the Class members and Defendant are citizens of different states.

1 2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), because many of
2 the acts and transactions alleged herein occurred in substantial part in this District and Plaintiff
3 resides in this District.

4 **NATURE OF ACTION**

5 3. This action seeks to remedy the unfair, deceptive, and unlawful business practices
6 of Defendant, Maybelline, LLC (“Defendant” or “Maybelline”) with respect to the production,
7 distribution, advertising, marketing and sales of its facial foundation makeup, SuperStay™
8 24HR Makeup (“24HR Foundation”) and SuperStay™ 24 Color lipstick (“24 Color”)
9 (collectively the “Product(s)”). Defendant manufactures, markets, sells, and distributes the
10 Products using a marketing and advertising campaign that is centered around the claim that the
11 Products will last for 24 hours on the consumer’s skin, regardless of skin type, and lips, and stay
12 perfectly flawless (the “24-hour Claim”). However, Defendant’s advertising and marketing
13 campaign and labeling claims are false and misleading because the Products do not stay on the
14 skin and lips for 24 hours.

15 4. As explained more fully herein, Maybelline has made, and continues to make,
16 deceptive and misleading claims and promises to consumers about the efficacy of the Products,
17 in a pervasive, nationwide, marketing scheme that confuses and misleads consumers about the
18 true nature of the Products. In reality, the Products do not live up to the claims made by
19 Maybelline.

20 5. Maybelline knows this, yet designed its marketing and advertising campaign to
21 include indicia of research of the claims, for the sole purpose of misleading and deceiving
22 consumers. As a result, Maybelline misleads consumers with false and misleading promises of
23 results it knows it cannot deliver, and does so with one goal in mind – reaping enormous profits.

24 6. Through the marketing and sales of the Products, Defendant has worked to convey
25 the singular message: the Products last for 24 hours. Each person who has purchased the
26 Products has been exposed to Defendant’s misleading advertising message and purchased the
27 Products as a result of that message on the Products’ labels and/or as part of the advertising.

1 7. Defendant knows that consumers are willing to pay for specialized cosmetics, and
2 advertised the Products with the intention that consumers rely on the 24-hour Claim and
3 representations made on the packaging. Defendant's claims are deceptive and misleading, and
4 have been designed solely to cause consumers to buy the Products. Defendant knew or should
5 have known, at the time it began selling the Products, that they did not last for 24 hours.

6 8. Plaintiff read and relied on the representations that Maybelline made on the
7 Products and in the advertising, namely the 24-hour Claim, when she purchased the Products.
8 Plaintiff and the Class (defined below) paid a premium for the Products over foundations and
9 lipsticks that did not purport to provide 24-hour coverage.

10 9. By relying on the representations that Defendant's Products would stay on her skin
11 for 24 hours and could, thus, do something that other foundation products and lipsticks could
12 not do, Plaintiff and the Class have been damaged and suffered loss and damage by purchasing
13 the Products, which are sold at an inflated price. Plaintiff did not receive the benefit of the
14 bargain, a foundation that provided 24-hour coverage, or a lipstick that provided 24-hour
15 coverage, when she purchased the Products. Instead, she received Products that, in direct
16 contradiction to Defendant's representations, do not provide full 24-hour coverage.

17 10. This class action seeks to provide redress to consumers who have been harmed by
18 the false and misleading marketing practices Defendant has engaged in with respect to the
19 Products. Plaintiff asserts claims, on behalf of herself and the Class, pursuant to the California
20 Consumers Legal Remedies Act, Civil Code § 1750, *et seq.* ("CLRA"); Unfair Competition
21 Law, California Business and Professions Code § 17200, *et seq.* ("UCL"); False Advertising
22 Law, California Business and Professions Code § 17500, *et seq.* ("FAL"); and breach of the
23 express warranty created by Defendant's advertising, including the labeling of the Products.

24 11. Through this action, Plaintiff seeks injunctive relief, actual damages, restitution
25 and/or disgorgement of profits, statutory damages, attorneys' fees, costs, and all other relief
26 available to the Class as a result of Defendant's unlawful conduct.

PARTIES

12. Plaintiff, is a resident of Susanville, Lassen County, California and, thus, is a citizen of California.

13. Defendant, Maybelline, is a subsidiary of L'Oreal, Inc. ("L'Oreal"), is a New York corporation, and has its principal place of business at 575 Fifth Avenue, New York, New York. Maybelline, therefore, is a citizen of New York.

14. All of Defendant's actions described in this Complaint are part of, and in furtherance of, the unlawful conduct alleged herein, and were authorized and/or done by Defendant's various officers, agents, employees, or other representatives while actively engaged in the management of Defendant's affairs (or that of its predecessors-in-interest) within the course and scope of their duties and employment, and/or with the actual, apparent, and/or ostensible authority of Defendant.

FACTUAL ALLEGATIONS

15. Maybelline is a cosmetics company that was founded in 1915 and is based in New York. Maybelline is a part of L'Oreal, and offers skin care and makeup products.

16. Maybelline's products are sold at pharmacies, large retailers such as Wal-Mart and Target, or over websites, with prominent signage identifying Maybelline as the seller, and the products as Maybelline products. Maybelline products are also packaged in product containers that identify them as Maybelline products.

17. Regardless of where Plaintiff and the Class purchased the Products (*i.e.*, on-line, or from third-party retailers' brick and mortar store(s)), they were exposed to the deceptive and misleading advertising messages and material omissions regarding the efficacy promises of the Products.

18. Maybelline.com directs consumers who want to buy the Products online to the websites of Walmart, CVS, Drugstore.com, Walgreen's, RiteAid, Target and Ulta, many of which also have brick and mortar stores. Sales of cosmetics, including foundation and lipstick, by these retailers, and others, are intensely competitive.

1 19. Such competition is, in part, characterized by claims as to product performance
2 characteristics, which purport to reflect the benefits resulting from the intended use of the
3 products. Product efficacy claims serve the important purpose of helping consumers make
4 informed purchase decisions based upon product differentiation.

5 20. Customers who purchase cosmetics are heavily reliant on product efficacy claims
6 due to diverse expectations, a large choice of product alternatives geared to consumer
7 individuality, and rapid roll out of innovation in response to customer trends and demands.

8 **The Products and Their Advertising**

9 21. In or about 2009, Maybelline introduced a new foundation makeup named
10 SuperStay™ 24HR Makeup. The “24HR” stands for 24 hours. Maybelline claims that,
11 following application, the 24HR Foundation will remain flawlessly perfect and unified on the
12 skin for a full 24 hours, without transfer or caking.

13 22. Maybelline also introduced a new lipstick makeup named SuperStay™ 24 Color
14 lipstick. The “24HR” stands for 24 hours. Maybelline claims that, following application, the
15 lipstick will stay on and not transfer for 24 hours.

16 23. Maybelline heavily markets the Products in print media, including the placement
17 of advertisements in widely circulated magazines such as *Glamour*, *Cosmopolitan*, *Vogue*, and
18 *O- The Oprah Magazine*, among others.

19 24. Maybelline uniformly repeats its pervasive 24-hour Claim on the boards or boxes
20 in which the Products are sold, on the bottle or tube in which they are sold, and through its
21 pervasive advertising campaign in the media and on the internet.

22 25. For example, Maybelline’s proprietary website touts the 24-hour Claim. On the
23 website, under “Product Details” with respect to the 24HR Foundation, Maybelline provides:

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25 //

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Product Details

Why You'll Love It

- Stays comfortable and looks naturally flawless all day
- Micro-Flex formula provides 24-hour wear and no transfer
- Withstands heat, sweat and humidity
- Oil-free, dermatologist-tested, fragrance-free
- Suitable for all skin types

For Best Results

Apply smoothly and evenly to your face and blend with your fingertips.

DO-IT-ALL, THROUGH-IT-ALL MAKEUP

24-HOUR WEAR, NO TRANSFER

MEDIUM COVERAGE

<http://www.maybelline.com/Products/Face-Makeup/Foundation/SuperStay-24HR-Makeup.aspx>.

26. The same claims are made on the packaging and bottle of the 24HR Foundation, which refers to "No Transfer" and "24HR Wear" and states that it withstands "heat, sweat and humidity" and is "No-Transfer: won't rub off." The bottle also states that the 24HR Foundation provides "flexible, breathable, all day comfort."

27. With respect to the 24 Color, Maybelline claims on its website that the 24 Color: NO OTHER LONGWEAR LASTS LONGER. Period.

Our Micro-Flex formula glides on and looks gorgeous all day

<http://www.maybelline.com/Products/Lip-Makeup/Lip-Color/SuperStay-24-Color.aspx>.

28. Maybelline also states:

Meet the 24-hour lip color that stretches the limits of longwear:

- Micro-Flex formula glides on and looks gorgeous all day
- No crumbling, no caking, no fading, no feathering, no transferring
- 2-step lipcolor in one pack
- 30 long-lasting shades

For Best Results

1 Apply the liquid color to your clean, bare lips. Allow a full two minutes to dry,
2 then apply ultra-conditioning balm to seal in softness. Reapply balm as needed. Remove
3 with an oil-based makeup remover.

4 <http://www.maybelline.com/Products/Lip-Makeup/Lip-Color/SuperStay-24-Color.aspx>.

5 29. In fact, the 24-hour Claim is false and materially misleading. The Products do not
6 perform as claimed for 24 hours or anywhere near 24 hours.

7 30. Maybelline does not publish information sufficient to validate its 24-hour Claim,
8 because it has no such information.

9 **Plaintiff's Experience**

10 31. On May 7, 2012, Plaintiff purchased a 1-ounce bottle of the 24HR Foundation at
11 Walgreen's in Susanville, California, for \$12.83, plus tax.

12 32. On May 7, 2012, Plaintiff purchased a SuperStay™ 24 Color lipstick at
13 Walgreen's in Susanville, California, for \$9.50, plus tax.

14 33. Plaintiff saw, read and relied on the Products' efficacy statements made by
15 Maybelline in making her decision to purchase the Products. The efficacy statements relied on
16 by Plaintiff included claims that the Products were good for 24 hours and would not transfer or
17 rub off.

18 34. These false and misleading statements received by Plaintiff at Walgreen's in
19 Susanville, California, were material and influenced her decision to purchase the Products.
20 Moreover, as Maybelline also has products which advertise coverage for fewer hours (at a lesser
21 price), Plaintiff purchased the Products in reliance on the 24-hour Claim.

22 35. Plaintiff applied the 24HR Foundation appropriately, and within 4-6 hours, the
23 makeup began to cake, run, and decompose. Plaintiff also experienced the 24HR Foundation
24 running into her eyes and coming off with a paper towel. Moreover, the 24 Color lipstick
25 stayed on only for a few hours. As a result, Plaintiff did not receive the benefit of longwearing
26 efficacy as claimed by Maybelline on the Products' packaging and in advertisements.

27 36. Similarly, consumers who cannot themselves apply makeup and need daily help
28 (e.g., nursing home and assisted living residents) to assist them in the task, have the need for

1 longwearing makeup, as does the person who applies makeup early in the morning but will not
2 have an opportunity to reapply makeup prior to a dinner or other evening engagement. All of
3 such persons, and others, reasonably seek a long-wear makeup and could reasonably be
4 expected to purchase the Products because Defendant has represented that the Products produce,
5 on all skin types, a freshly made-up appearance for 24 hours.

6 37. Plaintiff called Defendant's customer service representative to complain about the
7 Products' lack of efficacy, but the customer service representatives refused to offer any
8 assistance or corrective measures.

9 38. Additionally, there are a plethora of online reviews to the effect that, contrary to
10 the 24-hour Claim, the Products break down, bronze, cake, require touch-up and otherwise fail
11 to maintain affinity with the skin for more than one-half the 24-hour Claim.

12 39. Maybelline knew that the Products' promised results are not possible, *i.e.*, that
13 neither its foundation nor its lipstick will provide the promised 24-hour, longlasting results.

14 40. In addition to its affirmative misrepresentations and false advertising, Maybelline
15 failed (and fails) to disclose that its Products do not perform as promised.

16 41. Until such time that Maybelline ceases to engage in deceptive and misleading
17 advertising and sale of the Products, Plaintiff and the Class will continue to be harmed.

18 42. Plaintiff and Class members suffered an ascertainable loss and damage, in the
19 amount of the price of the Products, as a result of the improper actions described herein,
20 because the Products do not last for 24 hours, as Defendant claims.

21 **CLASS ACTION ALLEGATIONS**

22 43. Plaintiff brings this action on behalf of herself and all other persons similarly
23 situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

24 44. The Class that Plaintiff seeks to represent is defined as follows:

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California Class:

All persons who purchased SuperStay™ 24HR Foundation or SuperStay™ 24 Color lip stick, not for resale, within California (“Class”).

Excluded from the Class are (a) Defendant, including any entity in which Defendant has a controlling interest, and their representatives, officers, directors, employees, assigns and successors; (b) any person who has suffered personal injury or is alleged to have suffered personal injury as a result of using the Product; and (c) the Judge to whom this case is assigned.

45. **Numerosity/Impracticability of Joinder:** The members of the Class are so numerous that joinder of all members would be impracticable. The proposed Class includes, at a minimum, thousands of members. The precise number of Class members can be ascertained by reviewing documents in Defendant’s possession, custody and control or otherwise obtained through reasonable means.

46. **Commonality and Predominance:** There are common questions of law and fact which predominate over any questions affecting only individual members of the Class. These common legal and factual questions, include, but are not limited to the following:

- a. whether Maybelline engaged in a pattern of fraudulent, deceptive and misleading conduct targeting the public through the marketing, advertising, promotion and/or sale of the Products;
- b. whether Maybelline’s acts and omissions violated California consumer protection law and breached express warranties;
- c. whether Maybelline made material misrepresentations of fact or omitted material facts to Plaintiff and the Class regarding the marketing, promotion, advertising and sale of the Products, which material misrepresentations or omissions operated as fraud and deceit upon Plaintiff and the Class;
- d. whether Maybelline’s false and misleading statements of fact and concealment of material facts regarding the Products were intended to deceive the public;

1 e. whether, as a result of Maybelline's misconduct, Plaintiff and the Class
2 are entitled to equitable relief and other relief, and, if so, the nature of such relief;
3 and

4 f. whether Plaintiff and the members of the Class have sustained
5 ascertainable loss and damages as a result of Maybelline's acts and omissions,
6 and the proper measure thereof.

7 47. **Typicality**: Plaintiff's claims are typical of the claims of the members of the Class
8 she seeks to represent. Plaintiff and all Class members have been injured by the same wrongful
9 practices in which Defendant has engaged. Plaintiff's claims arise from the same practices and
10 course of conduct that give rise to the claims of the Class members, and are based on the same
11 legal theories.

12 48. **Adequacy**: Plaintiff is a representative who will fully and adequately assert and
13 protect the interests of the Class, and has retained Class counsel who are experienced and
14 qualified in prosecuting class actions. Neither Plaintiff nor her attorneys have any interests
15 which are contrary to or conflicting with the Class.

16 49. **Superiority**: A class action is superior to all other available methods for the fair
17 and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class
18 members is economically unfeasible and procedurally impracticable. While the aggregate
19 damages sustained by the Class are likely in the millions of dollars, the individual damages
20 incurred by each Class member resulting from Defendant's wrongful conduct are too small to
21 warrant the expense of individual suits. The likelihood of individual Class members
22 prosecuting their 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 litigation of such
24 cases. Individual members of the Class do not have a significant interest in individually
25 controlling the prosecution of separate actions, and individualized litigation would also present
26 the potential for varying, inconsistent, or contradictory judgments and would magnify the delay
27 and expense to all of the parties and to the court system because of multiple trials of the same
28 factual and legal issues. Plaintiff knows of no difficulty to be encountered in the management

1 of this action that would preclude its maintenance as a class action. In addition, Maybelline has
2 acted or refused to act on grounds generally applicable to the Class and, as such, final injunctive
3 relief or corresponding declaratory relief with regard to the members of the Class as a whole is
4 appropriate.

5 50. Plaintiff will not have any difficulty in managing this litigation as a class action.

6 **FIRST CAUSE OF ACTION**

7 **For Violations of the Consumers Legal Remedies Act -**
8 **Civil Code § 1750, *et seq.* on Behalf of Plaintiff and the Class**

9 51. Plaintiff realleges and incorporates by reference the allegations contained in the
10 paragraphs above as if fully set forth here.

11 52. This cause of action is brought pursuant to the CLRA. Plaintiff is a consumer as
12 defined by California Civil Code § 1761(d). The Products are goods within the meaning of the
13 CLRA.

14 53. Defendant violated and continues to violate the CLRA by engaging in the
15 following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff
16 and the Class which were intended to result in, and did result in, the sale of the Products:

17 (2) Misrepresenting the source, sponsorship, approval or certification of goods
18 or services.

19 * * *

20 (5) Representing that [the Products have] . . . characteristics, . . . uses [or]
21 benefits . . . which they do not have

22 * * *

23 (7) Representing that [the Products] are of a particular standard, quality or
24 grade . . . if they are of another.

25 * * *

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

27 54. Defendant violated the CLRA by representing, through its advertisements, the
28 Products as described above when it knew, or should have known, that the representations and
advertisements were unsubstantiated, false and misleading.

1 55. Pursuant to § 1782 of the CLRA, by letters dated September 25 and December 10,
2 2012, Plaintiff notified Defendant in writing by certified mail of the particular violations of §
3 1770 of the Act and demanded that Defendant rectify the problems associated with the actions
4 detailed above and give notice to all affected consumers of its intent to so act. Although
5 Defendant's counsel responded, Defendant did not rectify the problems associated with the
6 Products as set forth herein.

7
8 56. Plaintiff is a consumer under Civil Code § 1761(d). Civil Code § 1780(a)(2)
9 permits any court of competent jurisdiction to enjoin practices that violate Civil Code § 1770.

10 57. Plaintiff also is entitled to recover actual or statutory compensatory/monetary
11 damages as authorized by Civil Code § 1780(a)(1) and Civil Code § 1781(a)(1), restitution as
12 applicable and authorized under Civil Code § 1780(a)(3), and punitive damages as authorized
13 by Civil Code § 1780(a)(4), which are appropriate in this case in light of Defendant's knowing,
14 intentional, malicious, fraudulent and unconscionable conduct, Defendant's reckless disregard
15 of its legal obligations to Plaintiff and the members of Class, and/or as otherwise recoverable
16 under Civil Code § 1780(a)(4).

17 58. Plaintiff and the members of the Class also are entitled to recover attorneys' fees
18 and costs pursuant to Civil Code §§ 1780 and 1781.

19 59. Under Civil Code § 1782(a), Plaintiff provided the required thirty (30) day notice
20 before filing the Complaint in this action pursuant to Civil Code § 1782(d). Plaintiff's requisite
21 CLRA Declaration is attached hereto as Exhibit "A."

22 **SECOND CAUSE OF ACTION**
23 **False and Misleading Advertising**
24 **Violation of Bus. & Prof. Code § 17500, *et seq.***

25 60. Plaintiff realleges and incorporates by reference the allegations contained in the
26 paragraphs above as if fully set forth herein.

27 61. Plaintiff brings this cause of action on behalf of herself and on behalf of the Class.

28 62. Beginning in or about 2012, Defendant engaged in advertising and marketing to
the public and offered for sale the Products throughout the United States, including California.

1 63. Defendant has engaged in the advertising and marketing alleged herein with the
2 intent to directly or indirectly induce the purchase of the Products.

3 64. Defendant's advertisements and marketing representations regarding the
4 characteristics of the Products, and specifically regarding the 24-hour Claim, were false,
5 misleading, and deceptive as a result of Defendant's knowledge of the falsity regarding the
6 Products, and the fact that the claims were false.

7 65. The false and misleading representations were intended to, and likely to, deceive a
8 reasonable consumer.

9 66. The false advertisements and misrepresentations were material to Plaintiff and
10 Class members in connection with their respective decisions to purchase the Products.

11 67. Plaintiff and other Class members relied on the false advertisements and
12 misrepresentations, which played a substantial part in influencing the decision of Plaintiff (and
13 the Class) to purchase the Products.

14 68. At the time it made and disseminated the statements alleged herein, Defendant
15 knew, or should have known, that the statements were untrue or misleading, and acted in
16 violation of Cal. Bus. & Prof. Code § 17500, *et seq.*

17 69. At all pertinent times, Defendant actively concealed its knowledge that the
18 Products do not function as advertised.

19 70. Plaintiff, on behalf of herself and on behalf of the Class, seeks restitution,
20 disgorgement, injunctive relief, and all other relief allowable under § 17500, *et seq.*

21 **THIRD CAUSE OF ACTION**

22 **Unlawful Business Acts and Practices in Violation of California Business and Professions**
23 **Code §17200, *et seq.* on Behalf of Plaintiff, the General Public and the Class**

24 71. Plaintiff realleges and incorporates by reference the allegations contained in the
25 paragraphs above as if fully set forth here.

26 72. California Business and Professions Code § 17200 prohibits any "unfair,
27 deceptive, untrue or misleading advertising." For the reasons discussed above, Defendant has
28 engaged in unfair, deceptive, untrue and misleading advertising, in violation of California
Business & Professions Code § 17200.

1 73. California Business & Professions Code § 17200 also prohibits any “unlawful . . .
2 business act or practice.” Defendant has violated § 17200’s prohibition against engaging in
3 unlawful acts and practices by, *inter alia*, making the misrepresentations and omissions of
4 material facts, as set forth more fully herein, and violating California Civil Code §§ 1572, 1573,
5 1709, 1710, 1711, 1770, Business & Professions Code § 17200 *et seq.*, § 17500, *et seq.*,
6 California Health & Safety Code § 110765, and the common law.

7 74. Plaintiff and the Class reserve the right to allege other violations of law which
8 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to
9 this date.

10 75. California Business & Professions Code § 17200 also prohibits any “unfair . . .
11 business act or practice.”

12 76. Defendant’s acts, omissions, misrepresentations, practices and nondisclosures, as
13 alleged herein, also constitute “unfair” business acts and practices within the meaning of
14 Business & Professions Code § 17200, *et seq.*, in that its conduct is substantially injurious to
15 consumers, offends public policy, and is immoral, unethical, oppressive and unscrupulous, as
16 the gravity of the conduct outweighs any alleged benefits attributable to such conduct.

17 77. As stated in this Complaint, Plaintiff alleges violations of consumer protection,
18 unfair competition and truth in advertising laws in California resulting in harm to consumers.
19 Plaintiff asserts violation of the public policy of engaging in false and misleading advertising,
20 unfair competition and deceptive conduct towards consumers. This conduct constitutes
21 violations of the unfair prong of California Business & Professions Code § 17200, *et seq.*

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

24 79. Business & Professions Code § 17200 also prohibits any “fraudulent business act
25 or practice.”

26 80. Defendant’s claims, nondisclosures and misleading statements, as more fully set
27 forth above, were false, misleading and/or likely to deceive the consuming public within the
28 meaning of Business & Professions Code § 17200.

FOURTH CAUSE OF ACTION
Breach of Express Warranty
On Behalf of Plaintiff and the Class

81. Plaintiff realleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth here.

82. Plaintiff, and each member of the Class, formed a contract with Defendant at the time they purchased the Products. The terms of that contract include the promises and affirmations of fact made by Defendant on the labels and through the marketing campaign, as alleged 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 Defendant on the other.

83. All conditions precedent to Defendant's liability under the warranty have been performed by Plaintiff and the Class.

84. Defendant breached the terms of the express warranty by not providing Products which could provide the benefits described above.

85. When Plaintiff called Defendant to complain about the Products' lack of efficacy on several occasions, the customer service representatives refused to offer any assistance or corrective measures.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for judgment against Defendant granting the following relief:

A. An order certifying this case as a class action and appointing Plaintiff as Class representative and Plaintiff's counsel to represent the Class;

B. Restitution and disgorgement of all amounts obtained by Maybelline as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations;

1 C. All recoverable compensatory and other damages sustained by Plaintiff and the
2 Class;

3 D. Actual and/or statutory damages for injuries suffered by Plaintiff and the Class
4 and in the maximum amount permitted by applicable law;

5
6 E. An order (1) requiring Maybelline to immediately cease its wrongful conduct as
7 set forth above; (2) enjoining Maybelline from continuing to misrepresent and conceal material
8 information and conduct business via the unlawful, unfair and deceptive business acts and
9 practices complained of herein; (3) ordering Maybelline to engage in a corrective advertising
10 campaign; and (4) requiring Maybelline to pay to Plaintiff and all members of the Class the
11 amounts paid for the Products;

12 F. Statutory pre-judgment and post-judgment interest on any amounts;

13 G. Payment of reasonable attorneys' fees and costs; and

14 H. Such other relief as the Court may deem just and proper.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff demands a trial by jury as to all claims so triable.

17 DATED: February 1, 2013

/s/ Rose F. Luzon

Rose F. Luzon (SBN 221544)
SHEPHERD, FINKELMAN, MILLER &
SHAH, LLP
401 West A Street, Suite 2350
San Diego, CA 92101
(619) 235-2416
(619) 234-7334
rluzon@sfmslaw.com

James C. Shah
Natalie Finkelman Bennett
SHEPHERD, FINKELMAN, MILLER &
SHAH, LLP
475 White Horse Pike
Collingswood, NJ 08107
Telephone: (856) 858-1770
Facsimile: (856) 858-7012
Email: jshah@sfmslaw.com
nfinkelman@sfmslaw.com

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John F. Edgar
EDGAR LAW FIRM LLC
1032 Pennsylvania Ave.
Kansas City, MO 64105
Telephone: (816) 531-0033
Facsimile: (816) 531-3322
Email: jfe@edgarlawfirm.com

Mark Schlachet
3515 Severn Road
Cleveland, OH 44118
Telephone: (216) 896-0714
Facsimile: (216) 932-5390
Email: mschlachet@gmail.com

EXHIBIT A

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

-----X :
PATSY MURDOCK, Individually :
And On Behalf Of All Others Similarly Situated, :

Plaintiff, :

Civil Action No. _____

v. :

MAYBELLINE, LLC, :

Defendant. :
-----X

JURY TRIAL DEMANDED

DECLARATION OF PATSY MURDOCK

I, Patsy Murdock, 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 Susanville, California, and I am a named Plaintiff in this litigation.

3. In or about May, 2012, I purchased a 1-ounce bottle of the Maybelline SuperStay™ 24HR Makeup and a Maybelline SuperStay™ 24 Color lipstick from a Walgreen's in Susanville, California.

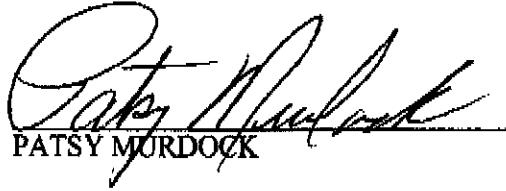
4. To the best of my knowledge, information and belief, Defendant Maybelline, LLC is a New York corporation with its principal place of business and executive offices located in New York, New York.

5. To the best of my knowledge, information and belief, Defendant Maybelline, LLC, does business directly and/or indirectly in California.

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

1 Executed this 31 day of January 2013 at Susanville, California.

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PATSY MURDOCK

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Patsy Murdock, Individually And On Behalf Of All Others Similarly Situated,

DEFENDANTS

Maybelline, LLC

(b) County of Residence of First Listed Plaintiff Lassen County

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant New York

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Rose F. Luzon (SBN 221544)
Shepherd, Finkelman, Miller & Shah, LLP
401 West 'A' Street, Suite 2350
San Diego, CA 92101
Tel: (619) 235-2416

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Section 1332(d)(2)

Brief description of cause:

Consumer class action for, inter alia, false advertising, breach of warranty, and violations of state consumer laws.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ TBD

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2/1/13

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____