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BY: _____

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

Case No. **CV 13-9311 JFW (MANx)**

SUSAN TRAN, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

COSMETIC DERMATOLOGY, INC.,

Defendant.

CLASS ACTION

COMPLAINT FOR:

**BREACH OF EXPRESS WARRANTY;
AND**

**VIOLATION OF THE CALIFORNIA
UNFAIR COMPETITION LAW.**

DEMAND FOR JURY TRIAL

1 Plaintiff SUSAN TRAN, on behalf of herself, all others similarly situated, and the
2 general public, by and through her undersigned counsel, hereby brings this action against
3 Defendant Cosmetic Dermatology, Inc. (“CDI”), and alleges the following upon her own
4 knowledge, or where she lacks personal knowledge, upon information and belief including
5 the investigation of her counsel.

6 **INTRODUCTION**

7 1. CDI sells Dr. Brandt’s Pores No More Anti-Aging Mattifying Lotion (“Pores
8 No More”) in retail stores throughout the country, as well as over the Internet. Pores No
9 More is a “cosmeceutical” product, *i.e.*, one that is marketed both for cosmetic and therapeutic
10 purposes. The therapeutic uses for which Pores No More is marketed include refining pores,
11 maintaining longevity and activity of stem cells in the skin, stimulating new cell turnover,
12 improving lipid barrier function, and controlling the skin’s secretion of oil.

13 2. CDI expressly warrants that Pores No More is “Oil Free,” but Pores No More in
14 fact contains at least three oils. As a result, CDI has breached its express warranty.

15 3. CDI has also failed to label Pores No More in conformance with applicable
16 regulations, rendering the product misbranded under the Federal Food, Drug and Cosmetic
17 Act and its California equivalent, the Sherman Law. Specifically, because CDI markets Pores
18 No More for both cosmetic and therapeutic purposes, it is subject to federal and state
19 regulations relating to both cosmetics and drugs, including the requirement that CDI disclose
20 Pores No More’s active ingredients and their proportion in the product; but CDI fails to make
21 this required disclosure, further violating the FDCA and Sherman Law.

22 4. Separately and independently, Pores No More is also an unlawfully marketed
23 “new drug” within the meaning of the FDCA. This is because, although CDI markets Pores
24 No More for therapeutic purposes, the product is not generally recognized among qualified
25 experts as safe and effective for the marketed uses, and has not received the FDA’s required
26 prior approval in the form of an approved New Drug Application. And CDI does not supply
27
28

adequate directions of use for this new drug, another violation of the FDCA and Sherman Law.

5. Plaintiff Susan Tran has sustained legally cognizable injury in the form of lost money as a result of CDI's warranty breaches, misbranding, and unlawful marketing and sale of Pores No More. She brings this class action to remedy CDI's unlawful acts.

THE PARTIES

6. Plaintiff Susan Tran is a resident of Arroyo Grande, California, in San Luis Obispo County.

7. Defendant Cosmetic Dermatology, Inc. is a Florida corporation with its principal place of business at 8798 NW 15th Street, Miami, FL 33172.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A), the Class Action Fairness Act, because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs, and at least one member of the class of plaintiffs is a citizen of a State different from Defendant. In addition, more than two-thirds of the members of the class reside in states other than the state in which Defendant is a citizen and in which this case is filed, and therefore any exceptions to jurisdiction under 28 U.S.C. § 1332(d) do not apply.

9. The Court has personal jurisdiction over CDI pursuant to Cal. Code Civ. P. § 410.10, as a result of CDI'S substantial, continuous and systematic contacts with the State, and because CDI has purposely availed itself of the benefits and privileges of conducting business activities within the State.

10. Venue is proper in this Central District of California pursuant to 28 U.S.C. § 1391(b) and (c), because CDI resides (i.e., is subject to personal jurisdiction) in this District, and a substantial part of the events or omissions giving rise to the claims occurred in this district.

FACTS

I. PORES NO MORE

11. CDI sells Pores No More direct to consumers online via its Dr. Brandt website, drbrandtskincare.com, and in retail stores throughout the nation, such as Sephora and Ulta, for \$60 per 1.7 oz. bottle. CDI also sells Pores No More through its website in various packages containing other Dr. Brandt branded products.

12. The packaging and marketing materials for Pores No More include, among others, the following representations:

- a. “Oil Free”
- b. “anti-aging”
- c. “refines pores”
- d. “helps delay the natural signs of aging by maintaining the longevity & activity of stem cells in the skin”
- e. “stimulates new cell turnover”
- f. “increases water reserves”
- g. “improves lipid barrier function”
- h. “helps refine pores while controlling excess oil”

13. A true and correct copy of Pores No More’s packaging is attached hereto as Exhibit 1, and expressly incorporated into this Complaint.

A. Pores No More Contains Oil

14. Pores No More contains at least the following oils: Hydrogenated Polyisobutene, Lavandula Angustifolia (Lavender) Oil, and Melaleuca Alternifolia (Tea Tree) Leaf Oil.

15. Hydrogenated Polyisobutene is a synthetic oil used as a mineral oil substitute.

16. Lavendar oil is oil derived from the flower spikes of certain species of lavender.

17. Tea Tree Leaf Oil is an oil derived from the leaves of the *Melaleuca alternifolia* plant, which is native to certain areas of Australia.

B. Pores No More Contains Ingredients That CDI Represents Have Therapeutic Properties

18. Pores No More contains certain ingredients that CDI claims actively provide therapeutic benefits:

- a. *Alpine Extract*, appearing in Pores No More's ingredient list as "EPILOBIUM FLEISHERI EXTRACT," which CDI represents helps minimize the size of pores, control oil production and prevent inflammation.
- b. *Apple Stem Cell Extract*, appearing in Pores No More's ingredient list as "MALUS DOMESTICA FRUIT CELL CULTURE EXTRACT," which CDI represents helps delay the natural signs of aging by maintaining the longevity and activity of stem cells in the skin.
- c. *Aquaxyl*, appearing in Pores No More's ingredient list as "XYLITYLGLUSOIDE," "ANHYDROXYLITOL," and "XYLITOL" (the combination of the three ingredients is known by the common name of Aquaxyl), which CDI represents increases water reserves, limits water loss and improves lipid barrier function.
- d. *Retinol*, appearing in Pores No More's ingredient list as "RETINOL," which CDI represents increases cellular renewal rate, making skin appear softer and smoother, and improves appearance of lines and wrinkles.

II. PLAINTIFF'S PORES NO MORE PURCHASE

19. Plaintiff purchased Pores No More for approximately \$60 (excluding tax) in or about March 2013, from the Ulta retail store located in the Marina Pacifica Mall, in in Long Beach, California.

CDI'S UNLAWFUL ACTS & PRACTICES

I. CDI HAS BREACHED ITS "OIL FREE" WARRANTY

20. Although CDI warrants that Pores No More is "Oil Free," Pores No More contains at least three ingredients that are oils: Hydrogentated polyisobutene, Lavandula Angustifolia (Lavender) oil, and Melaleuca Alternifolia (Tea Tree) Leaf Oil.

21. Accordingly, CDI has breached its express "Oil Free" warranty.

II. PORES NO MORE IS MISBRANDED

A. The Federal Food, Drug, and Cosmetic Act

22. The FDCA, 21 U.S.C. §§ 301 *et seq.* governs the sale of foods, drugs, and cosmetics in the United States. The classification of a product as a food, drug, or cosmetic, affects the regulations by which the product must abide. In general, a product is characterized according to its intended use, which may be established, among other ways, by: (a) claims stated on the product's labeling, in advertising, on the Internet, or in other promotional materials; (b) consumer perception established through the product's reputation, for example by asking why the consumer is buying it and what the consumer expects it to do; or (c) the inclusion of ingredients well-known to have therapeutic use, for example fluoride in toothpaste.¹

¹ <http://www.fda.gov/cosmetics/guidancecomplianceregulatoryinformation/ucm074201.htm>
see also 21 C.F.R. § 201.128 (

The words *intended uses* or words of similar import . . . refer to the objective intent of the persons legally responsible for the labeling of drugs. The intent is determined by such persons' expressions or may be shown by the circumstances surrounding the distribution of the article. This objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives. . . . But if a manufacturer knows, or has knowledge of facts that would give him notice, that a drug introduced into interstate commerce by him is to be used for conditions, purposes, or uses other than the ones for which he offers it, he is required to provide adequate labeling for such a drug which accords with such other uses to which the article is to be put.)

23. The FDCA defines drugs, in part, by their intended use, as “articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease,” or “articles (other than food) intended to affect the structure or function of the body of man or other animals,” 21 U.S.C. § 321(g)(1).

24. The FDCA defines cosmetics by their intended use, as “articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body . . . for cleansing, beautifying, promoting attractiveness, or altering appearance,” 21 U.S.C. § 321(i)(1).

25. The FDA has explained that “[s]ome products meet the definitions of both cosmetics and drugs,” for example, “when a product has two intended uses” as with an anti-dandruff shampoo,” which “is a cosmetic because its intended use is to cleanse the hair,” and also “is a drug because its intended use is to treat dandruff. . . . Such products must comply with the requirements for both cosmetics and drugs.”²

26. The FDA has further explained that “[f]irms sometimes violate the law by marketing a cosmetic with a drug claim or by marketing a drug as if it were a cosmetic, without adhering to requirements for drugs.”³

27. California’s counterpart to the FDCA, known as the Sherman Law, incorporates the FDCA’s drug regulations. Cal. Health & Safety Code § 110110.

B. Pores No More is Both a Cosmetic and a Drug

28. CDI markets Pores No More as a cosmetic.

29. But Pores No More is also a drug because an intended use of Pores No More, as repeatedly demonstrated throughout CDI’s packaging, advertising, and marketing materials, is to affect the structure and function of the human body. Accordingly, the product is promoted for uses that cause it to be a drug under 21 U.S.C. § 321(g)(1), including through

² *Id.*

³ *Id.*

statements similar to those the FDA has found render other, similar products to be considered drugs under the Act.⁴

i. Pores No More's Packaging Demonstrates it is a Drug

30. The packaging of Pores No More claims that it is an “anti-aging lotion that refines pores,” that it “helps delay the natural signs of aging by maintaining the longevity & activity of stem cells in the skin,” that it “stimulates new cell turnover improving the appearance of lines & wrinkles,” that it “increases water reserves, limits water loss & improves lipid barrier function to balance moisture levels,” and that it “helps refine pores while controlling excess oil[.]” These claims expressly set forth therapeutic uses or purposes, rendering the product a drug under FDCA regulations.

31. In addition, Pores No More's packaging includes a photograph of Dr. Brandt, together with the following statement (reproduced here as it appears on the box):

dr. brandt skin care is much more than just a “doctor brand”. As a practicing celebrity dermatologist, Dr. Fredric Brandt has made it his eternal quest to attain state-of-the-art ingredients and technologically advanced deliver systems that mimic his in office procedures. Expect flawless, ageless looking skin in minimal time, when you take the doctor home with you®

⁴ See, e.g., Sept. 7, 2012 FDA Warning Letter to Lancome, at <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm318809.htm> (statements included “shown to improve the condition around the stem cells and regeneration to reconstruct skin to a denser quality”); Sept. 21, 2012 FDA Warning Letter to Andes Natural Skin Care, at <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm321094.htm> (statements included “triggers your body's own skin regeneration activators,” “repairs sun damages tissues at the cellular level,” and “activates the fibroblast stem cells which favor the proliferation of new healthy connective tissues and all the structural elements of healthy skin, smoothing facial crater-lie skin texture”).

32. By comparing Pores No More to medical dermatological procedures, CDI further suggests Pores No More has therapeutic purposes, also rendering it a drug under FDA regulations.

ii. Pores No More's In-Store Marketing Materials Demonstrates it is a Drug

33. CDI supplies the retail stores that sell Pores No More with marketing materials to provide to consumers. These materials state, among other things, that Pores No More "helps delay the natural signs of aging," through the use of "APPLE STEM CELLS," and "increases cellular renewal rate," through the use of "STABALIZED RETINOL." These statements also demonstrate a therapeutic purpose, rendering the product a drug.

34. A true and correct copy of exemplar in-store marketing materials is attached to this Complaint as Exhibit 2, and expressly incorporated into this Complaint.

iii. Pores No More's Website Demonstrates it is a Drug

35. The packaging of Pores No More identifies a website, drbrandtskincare.com.

36. The Dr. Brandt website includes information about Pores No More, which includes repeating, in various forms (such as in a video and in text) the packaging claims noted above.

37. The Dr. Brandt website includes further claims about Pores No More that demonstrate its intended use is to affect the structure and function of the human body. This includes the statement that "An apple a day keeps the *lines* away," and the claim that Pores No More "provides the best of both worlds, delivering anti-aging and pore minimizing/mattifying benefits."

38. The Dr. Brandt website includes a tab for "ingredients," which includes further representations demonstrating that an intended use of Pores No More is to affect the structure and function of the human body. Under the heading, "Key Ingredients," the Dr. Brandt website states:

1 • **Alpine Extract** - helps minimize the size of pores, control oil production and prevent
2 inflammation.

3 • **Apple Stem Cells** - helps delay the natural signs of aging by maintaining the
4 longevity and activity of stem cells in the skin.

5 • **Aquaxyl** - increases water reserves, limits water loss and improves lipid barrier
6 function.

7 • **Micronized Powder** - provides a matte finish by absorbing surface oils.

8 • **Retinol** - increases cellular renewal rate, making skin appear softer and smoother.
9 Improves appearance of lines and wrinkles.

10 39. The Dr. Brandt website includes a tab for “results,” which includes further
11 representations demonstrating that an intended use of Pores No More is to affect the structure
12 and function of the human body, stating that “After 4 weeks of treatment,” “100% reported
13 improvement in the appearance of lines & wrinkles,” “100% reported that excess oil is under
14 control,” “100% reported less shine/ matte finish,” and that “100% reported that the pores
15 look refined.”

16 40. The Dr. Brandt website includes a tab for “testimonials,” which includes further
17 representations demonstrating that an intended use of Pores No More is to affect the structure
18 and function of the human body. Testimonials includes consumer statements that “I can
19 definitely see a difference in my skin after one month,” that it “[k]eeps oil controlled but also
20 makes skin soft,” and that “I tried it in the summer to decrease the shiny skin . . . [and] it
21 decreased the size of my pores and just makes my 55 year old skin look better.”

22 41. True and correct copies of relevant portions of the Dr. Brandt website for Pores
23 No More are attached to this Complaint as Exhibit 3, and expressly incorporated into this
24 Complaint.
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C. Pores No More is Misbranded Because its Label Violates FDCA Regulations for Over-the-Counter (OTC) Drugs and Cosmetics

i. Pores No More Violates Drug Regulations

42. Pursuant to 21 U.S.C. § 352(c), “[a] drug . . . shall be deemed to be misbranded [i]f any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon”

43. Drug labeling regulations appear in Part 201 of Title 21 of the Code of Federal Regulations.

44. Pursuant to 21 U.S.C. § 352(c), “[a] drug . . . shall be deemed to be misbranded [u]nless its labeling bears (1) adequate directions for use”

a. Pores No More is Misbranded Because it Does Not State the Active Drug Ingredients (21 C.F.R. § 201.66)

45. 21 C.F.R. § 201.66(c) provides that:

The outside container or wrapper of the retail package . . . shall contain

(2) “Active ingredient” or “Active ingredients” “(in each [insert the dosage unit stated in the directions for use (e.g., table, 5 mL teaspoonful) or in each gram as stated in 333.110 and 333.120 of this chapter])”, followed by the established name of each active ingredient and the quantity of each active ingredient per dosage unit. Unless otherwise provided in an applicable OTC drug monograph or approved drug application, products marketed without discreet dosage units (e.g., topicals) shall state the proportion (rather than the quantity) of each active ingredient.

46. Given CDI’s description of “key ingredients” in Pores No More, and that Pores No More is a topical product, CDI is required to disclose on Pores No More’s package the proportion of at least the following ingredients: (a) MALUS DOMESTICA FRUIT CELL CULTURE EXTRACT (Apple Stem Cells); (b) EPILOBIUM FLEISHERI EXTRACT

(Alpine Extract); (c) XYLITYLGLUCOSIDE, ANHYDROXYLITOL, and XYLITOL (together Aquaxl, a trade name) and (d) RETINOL.

47. CDI fails to disclose the proportion of these ingredients on Pores No More's label and packaging, in violation of 21 C.F.R. §§ 201.66(c)(2).

48. 21 C.F.R. § 201.66(d) provides the "Format requirements" for the disclosures required under 21 C.F.R. § 201.66(c)(2). Since CDI fails to even make those required disclosures, CDI also violates 21 C.F.R. § 201.66(d).

49. Accordingly, Pores No More is misbranded pursuant to 21 U.S.C. § 352(c) and 21 C.F.R. § 201.66.

50. CDI's failure to disclose the proportion of active ingredients in Pores No More misleadingly obscures from consumers the amount contained in the product, which could therefore be miniscule given that some ingredients are claimed by CDI to be rare, and others, like apple stem cell extract, known to be expensive.

b. Pores No More is Misbranded Because it Does Not Contain Adequate Directions for Use (21 C.F.R. § 201.5)

51. 21 C.F.R. § 201.5 sets forth the definition of "adequate directions for use" used in 21 U.S.C. § 352(f), and specific examples of inadequate directions. Since CDI does not provide any directions for use other than a "recommend[ation]" that the purchaser "apply to face" and "[u]se am and/or pm," it is misbranded pursuant to both 21 U.S.C. § 352(f) and 21 C.F.R. § 201.5.

c. Pores No More is Misbranded Because it Does Not Make a Proper Statement of Identity (21 C.F.R. § 201.61)

52. Pores No More is customarily displayed on retail shelves standing upright on its short edge.

53. Pores No More's principal display panel—the panel "most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale," 21 C.F.R. § 201.60—does not "bear as one of its principal features a statement of the

identity of the commodity,” *id.* § 201.61(a), because the “commodity,” Pores No More, “is a mixture with no established name” that does not contain “a prominent and conspicuous statement of the general pharmacological action(s) of the mixture or of its principal intended action(s) in terms that are meaningful to the layman.” *Id.* § 201.61(b).

54. Even if the commodity’s “general pharmacological action(s)” were stated, Pores No More’s principal display panel also fails to bear a statement of identity conforming to the requirements of 21 C.F.R. § 201.61(c) because any such statement would not be “in lines generally parallel to the base on which the package rests as designed to be displayed.” Instead, the statement appears *perpendicular* to the base of the package as displayed.

55. Because Pores No More’s packaging fails to bear a proper identity statement, the product is misbranded pursuant to 21 U.S.C. § 362(c) and 21 C.F.R. §§ 201.61(b) and (c).

ii. Pores No More Violates Cosmetic Regulations

56. Pursuant to 21 U.S.C. § 362(c), “[a] cosmetic shall be deemed to be misbranded [i]f any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon”

57. Cosmetic labeling regulations appear in Part 701 of Title 21 of the Code of Federal Regulations.

a. Pores No More is Misbranded Because it Fails to Declare Active Drug Ingredients (21 C.F.R. § 701.3(d))

58. Pursuant to 21 C.F.R. § 701.3(d), because Pores No More is “a cosmetic [that] is also an over-the-counter drug product,” it must “declare the active drug ingredients as set forth in 201.66(c)(2) and (d) of” title 21 of the Code of Federal Regulations.

59. As alleged above in paragraphs 74-78, Pores No More fails to make the required statement of active drug ingredients under 21 C.F.R. § 201.66. Accordingly, Pores No More is misbranded pursuant to 21 U.S.C. § 362(c) and 21 C.F.R. § 701.3.

b. Pores No More is Misbranded Because it Does Not Make a Proper Statement of Identity (21 C.F.R. § 711(c))

60. Pores No More is customarily displayed on retail shelves standing upright on its short edge.

61. Pores No More's principal display panel—the panel “most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale,” 21 C.F.R. § 701.10—fails to bear a statement of identity conforming to the requirements of 21 C.F.R. § 701.11(c) because the statement of the commodity's common name, i.e., lotion, is not “in lines generally parallel to the base on which the package rests as designed to be displayed.” Instead, the statement appears *perpendicular* to the base of the package as displayed.

62. Because Pores No More's packaging fails to bear a proper identity statement, the product is misbranded pursuant to 21 U.S.C. § 362(c) and 21 C.F.R. § 701.11(c).

III. PORES NO MORE IS AN UNAPPROVED NEW DRUG

63. Placing an unapproved new drug into the stream of commerce is an independent wrongful act under the FDCA, different than misbranding. 21 U.S.C. § 355(a).

64. Under the FDCA, drugs must either receive premarket approval by the FDA through a New Drug Application process, or conform to a monograph for a particular drug category, as established by the FDA's Over-the-Counter Drug Review. Such monographs specify conditions whereby OTC drug ingredients are generally recognized as safe and effective, and not misbranded.

65. The FDA has not conducted a review of Pores No More and found it to be generally recognized as safe. Nor has the FDA concluded that at least some of its active ingredients, for example its apple stem cell extract, are generally recognized as safe or effective.

66. Because Pores No More is not generally recognized as safe and effective when used as labeled, it is a new drug as defined in 21 U.S.C. § 321(p).

1 67. Such new drugs may not be lawfully marketed in the United States without prior
2 approval from the FDA as described in 21 U.S.C. § 355(a), in the form of a New Drug
3 Application approval.

4 68. CDI has filed no New Drug Application for Pores No More, nor has the FDA
5 ever approved any such application for Pores No More.

6 **PLAINTIFF'S INJURY**

7 69. Plaintiff was damaged by CDI's breach of its express "Oil Free" warranty
8 because CDI sold plaintiff something different than what it promised, represented, and
9 warranted.

10 70. Plaintiff was also damaged by CDI's breach of its express "Oil Free" warranty
11 because Pores No More has substantially less value with oil ingredients than it would if it
12 were actually "oil free."

13 71. Plaintiff sustained legally cognizable injury in the form of lost money as a result
14 of CDI's misbranding, which was in the nature of an omission, *i.e.*, CDI's failure to disclose
15 Pores No More's active drug ingredients and their proportions, as well as the failure to
16 provide adequate directions for use. Had CDI labeled Pores No More in conformance with
17 applicable FDCA and Sherman Law cosmetic and drug regulations, plaintiff may have been
18 unwilling to purchase Pores No More at the price she paid, and may not have purchased Pores
19 No More at all.

20 72. Plaintiff sustained legally cognizable injury in the form of lost money as a result
21 of CDI's marketing Pores No More in a manner that causes the product to be a new drug
22 within the meaning of the FDCA. Since manufactures may not lawfully market or sell *any*
23 new drug, Pores No More would not have been available for sale to plaintiff if CDI had acted
24 lawfully.

25 **CLASS ACTION ALLEGATIONS**

26 73. Pursuant to Rule 23, plaintiff seeks to represent a class of California purchasers
27 of Pores No More.

1 74. The members in the proposed class are so numerous that individual joinder of
2 all members is impracticable, and the disposition of the claims of all class members in a single
3 action will provide substantial benefits to the parties and Court.

4 75. Questions of law and fact common to plaintiff and the class include, but are not
5 limited to the following:

- 6 a. Whether through Pores No More's packaging claims, CDI made an
7 express warranty that Pores No More is "oil free";
- 8 b. Whether Pores No More contains oil;
- 9 c. Whether Pores No More's packaging violates applicable FDCA and
10 Sherman Law regulations relating to drugs and cosmetics;
- 11 d. Whether CDI marketed and sold Pores No More as a new drug, in
12 violation of applicable FDCA and Sherman Law statutory and regulatory
13 provisions;
- 14 e. The proper equitable and injunctive relief;
- 15 f. The proper amount of actual or compensatory damages;
- 16 g. The proper amount of restitution or disgorgement;
- 17 h. The proper amount of punitive damages; and
- 18 i. The proper amount of reasonable litigation expenses and attorneys' fees.

19 76. Plaintiff's claims are typical of class members' claims in that they are based on
20 the same underlying facts, events, and circumstances relating to CDI's conduct.

21 77. Plaintiff will fairly and adequately represent and protect the interests of the class,
22 has no interests incompatible with the interests of the class, and has retained counsel
23 competent and experienced in class action litigation.

24 78. Class treatment is superior to other options for resolution of the controversy
25 because the relief sought for each class member is small such that, absent representative
26 litigation, it would be infeasible for class members to redress the wrongs done to them.

1 79. Questions of law and fact common to the class predominate over any questions
2 affecting only individual class members.

3 80. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P.
4 23(a), (b)(2), and (b)(3).

5 **FIRST CAUSE OF ACTION**

6 **BREACH OF EXPRESS WARRANTY, CAL. COMM. CODE § 2313**

7 81. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
8 as if fully set forth herein.

9 82. There was a sale of goods from CDI to plaintiff and the class members.

10 83. CDI made an affirmation of fact or promise that Pores No More is “oil free.”
11 This affirmation of fact, promise or description formed part of the basis of the bargain. CDI
12 thus expressly warranted the goods sold.

13 84. CDI breached the warranty in that Pores No More is not oil free.

14 85. Plaintiff and the class members suffered injury as a result of CDI’s breach in
15 that they paid money for a product because it was oil free, but the product was not oil free
16 and thus not what CDI represented.

17 86. Prior to filing this lawsuit, plaintiff, on behalf of herself and the class, gave CDI
18 notice of the breach.

19 87. Plaintiff, on behalf of herself and the class, seeks actual and punitive damages
20 for CDI’s breach of warranty.

21 **SECOND CAUSE OF ACTION**

22 **VIOLATION OF THE UNFAIR COMPETITION LAW,**

23 **CAL. BUS. & PROF. CODE §§ 17200 *ET SEQ.***

24 88. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
25 as if fully set forth herein.

26 89. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice,”
27 Cal. Bus. & Prof. Code § 17200.

Unlawful

90. CDI has misbranded Pores No More. Misbranding is a “[p]rohibited act[]” under the FDCA, 21 U.S.C. § 331, and therefore CDI has behaved in an “unlawful” manner under the UCL.

91. CDI has illegally marketed a new drug in violation of 21 U.S.C. § 355(a) and Cal. Health & Safety Code § 110110, and therefore has behaved in an “unlawful” manner under the UCL.

Unfair

92. CDI’s conduct with respect to the labeling, advertising, and sale of Pores No More, specifically breaching its express warranty and violating labeling regulations, is unfair because CDI’s conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

93. CDI’s conduct with respect to the labeling, advertising, and sale of Pores No More, specifically breaching its express warranty and violating labeling regulations, is also unfair because it violates public policy as declared by specific constitutional, statutory or regulatory provisions, including but not limited to portions of the Federal Food, Drug, and Cosmetic Act, and portions of the California Sherman Law.

94. CDI’s conduct with respect to the labeling, advertising, and sale of Pores No More is also unfair because the consumer injury is substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves can reasonably avoid.

* * *

95. In accordance with Cal. Bus. & Prof. Code § 17203, plaintiff seeks an order enjoining CDI from continuing to conduct business through unlawful or unfair acts and practices, and to commence a corrective advertising campaign.

1 96. On behalf of herself and the class, plaintiff also seeks an order for the restitution
2 of all monies from the sale of Pores No More that were unjustly acquired through acts of
3 unlawful or unfair competition.

4 **PRAYER FOR RELIEF**

5 97. Wherefore, plaintiff, on behalf of herself, all others similarly situated and the
6 general public, prays for judgment against CDI as to each and every cause of action,
7 including:

8 A. An Order declaring this action to be a proper class action,
9 appointing plaintiff and her counsel to represent the class, and requiring CDI
10 to bear the costs of class notice;

11 B. An Order enjoining CDI from warranting, representing,
12 promising, or otherwise claiming that Pores No More is “oil free” so long as
13 it contains oil;

14 C. An Order enjoining CDI from selling Pores No More unless it is
15 properly labeled in accordance with all applicable FDCA and Sherman Law
16 statutes and regulations;

17 D. An Order awarding declaratory relief, and any further
18 retrospective or prospective injunctive relief permitted by law or equity,
19 including enjoining CDI from continuing the unlawful practices alleged
20 herein, and injunctive relief to remedy CDI’s past conduct, including
21 compelling CDI to engage in a corrective advertising campaign;

22 G. An Order requiring CDI to pay restitution to restore all funds
23 acquired by means of any act or practice declared by this Court to be an
24 unlawful or unfair business act or practice, plus pre-and post-judgment
25 interest thereon;

1 H. An Order requiring CDI to disgorge or return all monies,
2 revenues, and profits obtained by means of any wrongful or unlawful act or
3 practice;

4 I. An Order requiring CDI to pay all actual and statutory damages
5 permitted;

6 J. An Order requiring CDI to pay punitive damages if plaintiff
7 proves CDI's conduct was knowing, willful, malicious, oppressive, or
8 reckless;

9 K. An Order awarding attorneys' fees and costs to plaintiff and the
10 class;

11 L. An Order providing for all other such equitable relief as may be
12 just and proper.

13 **JURY DEMAND**

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

15 Dated: December 18, 2013

16 
By: Jack Fitzgerald

17 **THE LAW OFFICE OF JACK FITZGERALD, PC**
18 **JACK FITZGERALD**

19 The Palm Canyon Building
20 2870 Fourth Avenue, Suite 205
21 San Diego, California 92103
22 Phone: (619) 692-3840
23 Fax: (619) 362-9555

24 **LAW OFFICES OF RONALD A. MARRON, APLC**

25 **RONALD A. MARRON**

26 **SKYE RESENDES**

27 **ALEXIS WOOD**

28 651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665

Attorneys for Plaintiff and the Proposed Class

Exhibit 1

loción antienvjecimiento
con acabado mate
piel grasa y mixta

crema opacizzante antieta
pelli grasse e miste

zmatňující pleťová voda
proti stárnutí pleti
mastná/smišená pleť

matterende anti-aging lotion
vette/gemengde huid

anti-aging-lotion mit
mattierender Wirkung
fettige haut/mischhaut

αντιγηραντική λοσιόν για
ματ αποτέλεσμα
Για λιπαρό/μικτό δέρμα

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przeciwdziałająca starzeniu
się skóry
cera tłusta/mieszana

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матирующий лосьон

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CD229



oily/combo skin

pores no more® anti-aging mattifying lotion

Fast absorbing, oil-free,
anti-aging lotion that refines
pores and mattifies shine.

- helps delay the natural signs of aging by maintaining the longevity & activity of stem cells in the skin
- stimulates new cell turnover improving the appearance of lines & wrinkles
- increases water reserves, limits water loss & improves lipid barrier function to balance moisture levels
- helps refine pores while controlling excess oil & mattifying shine
- oil-free, leaves a matte finish with a smooth, silky feel

Dr. Brandt recommends:

After cleansing with pores no more® cleanser, apply to face. Use am and/or pm. Due to the presence of botanical ingredients, this product may change in color over time. For best results use in conjunction with your favorite pores no more® skincare products.



dr. brandt® skincare is much more than just a "doctor brand". As a practicing celebrity dermatologist, Dr. Fredric Brandt has made it his eternal quest to attain state-of-the-art ingredients

and technologically advanced delivery systems that mimic his in-office procedures. Expect flawless, ageless looking skin in minimal time, when you take the doctor home with you®

drbrandtskincare.com

peaux mixtes à grasses

pores no more® anti-aging lotion mattifie

Lotion anti-âge qui resserre les pores et matifie le teint. Non-grasse et légère, elle pénètre facilement.

- aide à ralentir les signes naturels du vieillissement en stimulant l'activité des cellules souches de l'épiderme
- aide à diminuer l'apparence des rides & ridules
- limite la perte d'eau & améliore les fonctions de la barrière lipidique pour maintenir le niveau d'hydratation de la peau
- aide à resserer les pores tout en contrôlant la production de sébum
- lotion non-grasse pour un fini soyeux & matifiant

Dr. Brandt recommande:

Appliquer sur l'ensemble du visage après avoir nettoyé votre peau à l'aide du nettoyant purifiant pores no more® cleanser. Utiliser matin et soir. En raison de la présence d'ingrédients botaniques la couleur du produit peut légèrement varier au cours du temps. Pour obtenir un résultat optimal, utiliser combiné aux autres produits de soins pores no more®.

La ligne de soins dr. brandt® skincare est bien plus qu'une marque développée par un médecin. Dermatologue réputé, le Dr. Fredric Brandt est bien déterminé à découvrir les ingrédients les plus modernes et les systèmes de pointe qui reproduisent les procédures qu'il réalise dans son cabinet. En faisant confiance au docteur, vous aurez très rapidement la peau lisse et jeune dont vous rêvez.

drbrandtskincare.com

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INGREDIENTS: WATER (AQUA), C12-15 ALKYL BENZOATE, DIMETHICONE/VINYL DIMETHICONE COPOLYMER, CAPRIC/CAPRYLIC TRIGLYCERIDE, HYDROGENATED POLYISOBUTENE, GLYCERIN, STEARYL ALCOHOL, CETEARETH-20, DIMETHICONE, CYCLOPENTASILOXANE, DIMETHICONE, MALUS DOMESTICA FRUIT CELL CULTURE EXTRACT, PHENOXYETHANOL, TOCOPHERYL ACETATE, XYLITYLGLUCOSIDE, STEARIC ACID, ANHYDROXYTOL, SILICA, ERIORUM FLESHERI EXTRACT, ALLANTOIN, LAVANDULA ANGUSTIFOLIA (LAVENDER) OIL, XYLITOL, ACRYLATES/C10-30 ALKYL ACRYLATE COPOLYMER, XANTHAN GUM, ETHYLHEXYLGLYCERIN, PHYTOSPHINGOSINE, SODIUM HYDROXIDE, RETINOL, LECITHIN, MELALEUCA ALTERNIFOLIA (TEA TREE) LEAF OIL, SODIUM ASCORBATE, POTASSIUM SORBATE.

net wt. 1.7 oz / 50 g

Exhibit 2

pores no more®

dr. brandt®

take the doctor home with you®



\$35

cleanser

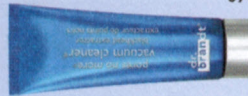
exfoliates & removes dead skin cells, keeps pores clean, & prevents clogging - SALICYLIC ACID
antibacterial - TEA TREE OIL
calms the skin - WILLOW BARK



\$40

poresolution™

exfoliates and removes dead skin cells, keeps pores clean, and prevents clogging - SALICYLIC ACID
gently sweeps away dead skin cells and smooths texture - LACTIC ACID
regulates skin's PH and helps create a healthy skin environment - Pro-D.B.S



\$45

vacuum cleaner®
blackhead extractor

extracts dirt, excess oil & sebum - SILICONE DIOXIDE
loosens blackheads & unclogs pores - SALICYLIC ACID
exfoliates & softens skin - GLYCOLIC ACID
helps tighten pores - EJITSU ROSE



\$60

anti-aging
mattifying lotion

helps delay the natural signs of aging - APPLE STEM CELLS
increases cellular renewal rate - STABILIZED RETINOL
provides a matte finish by absorbing surface oils - MICRONIZED POWDER



\$45

pore refiner
pore refiner TINTED

immediately minimizes the appearance of pores - MICROSPHERES
absorbs oil & reduces shine - FLAXSEED
antibacterial - TEA TREE OIL

pore thing with EVERMAT™
t-zone pore tightener



\$45

strengthens pore walls, tightens pores & refines skin grain & texture - LENTIL SEED EXTRACT
provides a matte finish & helps tighten pores - EVERMAT™
anti-inflammatory, helps tighten pores - EJITSU ROSE



\$55

pore effect
refining cream

helps unclog pores - SALICYLIC ACID
antibacterial - TEA TREE OIL
attracts & retains moisture - HYALURONIC ACID

blemishes no more®



\$35

oil-free hydrator

with ACTIVE IMPURITY SHIELD®
hydrating lotion
hydrates & moisturizes - HYDRAPORINE
inhibits bacteria growth

\$35

intensity solution®
with ACTIVE IMPURITY SHIELD®
intense maximum strength clarifying solution
freshens the skin - COWFRESH
absorbs & regulates oil & sebum production

\$25

cleansing pads

with ACTIVE IMPURITY SHIELD®
cleanses & moisturizes - PRODEW 400

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fast absorbing, oil-free, anti-aging lotion with apple stem cells

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1.7 oz / 50 g

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“An apple a day keeps the *lines* away.” This lightweight lotion formulated with apple stem cells to help delay the natural signs of aging by maintaining the longevity and activity of stem cells in the skin. Simultaneously, retinol stimulates new cell turnover and improves the appearance of fine lines and wrinkles. Dr. Brandt's multi-tasking formula provides the best of both worlds, delivering anti-aging and pore minimizing/mattifying benefits.

- oil-free
- helps delay the natural signs of aging by maintaining the longevity & activity of stem cells in the skin
- stimulates new cell turnover, improving the appearance of lines & wrinkle
- increases water reserves, limits water loss & improves lipid barrier function to balance moisture levels

Save 33% when you purchase our [pores/oily skincare solution bundle](#). It includes this product!

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The Time to Repair Sun Damage

By: Christopher O'Connell Now that the weather is cooling down and the holidays are approaching, it's a great time for...

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His best selling skin care arsenal controls oil, erases shine and refines large pores and include: a pore refiner, vacuum cleaner blackhead extractor, clarifying solution and pore thing t-zone pore tightener, as well as an anti-aging mattifying lotion.

Anti-aging Skin Care Products - lineless, flaws no more, time arrest, light years away

Dr. Brandt's anti-aging skin care products minimize fine lines and wrinkles, restore sagging skin, promote luminosity, reduce dark spots and lighten skin.

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Dr. Brandt's acne skin care products fight bacteria and breakouts and target blemish prone skin.

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Dr. Brandt's dietary supplements provide essential anti-oxidants taste great while detoxifying and clarifying your skin from the inside-out.

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fast absorbing, oil-free, anti-aging lotion with apple stem cells

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Dr. Brandt recommends: After cleansing with [pores no more cleanser](#), apply to face. Use am and/or pm.

*Due to the presence of botanical ingredients, this product may change in color over time.

dr. brandt recommends



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\$55.00



pores no more pore refiner
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pores no more vacuum cleaner
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Summer Skin S.O.S.

The heat and humidity of the summer season can take a toll on your skin. Increased oil production can...

Reduce Large Pores - **pores no more**
His best selling skin care arsenal controls oil, erases shine and refines large pores and include: a **pore refiner**, **vacuum cleaner** blackhead extractor, **clarifying solution** and **pore thing t-zone pore tightener**, as well as an **anti-aging mattifying lotion**.

Anti-aging Skin Care Products - **lineless, flaws no more, time arrest, light years away**
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Acne Skin Care Products - **blemishes no more**
Dr. Brandt's acne skin care products fight bacteria and breakouts and target blemish prone skin.

Detoxify and Clarify Your Skin - **anti-oxidant water boosters**
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fast absorbing, oil-free, anti-aging lotion with apple stem cells

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1.7 oz / 50 g

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- oil-free
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Save 33% when you purchase our [pores/oily skincare solution bundle](#). It includes this product!

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- UV protection is an essential step in any skincare regimen, regardless of skin type
- Follow-up with [dr brandt UV SPF 30](#) to protect skin against free radicals.

dr. brandt recommends



pores no more pore effect
\$55.00



pores no more pore refiner
\$45.00



pores no more vacuum cleaner
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Mini vs. Full Fractional

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fast absorbing, oil-free, anti-aging lotion with apple stem cells

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1.7 oz / 50 g

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- Key Ingredients:
- Alpine Extract** - helps minimize the size of pores, control oil production and prevent inflammation.
 - Apple Stem Cells** - helps delay the natural signs of aging by maintaining the longevity and activity of stem cells in the skin.
 - Aquaxyl** - increases water reserves, limits water loss and improves lipid barrier function.
 - Micronized Powder** - provides a matte finish by absorbing surface oils.

- **Retinol** - increases cellular renewal rate, making skin appear softer and smoother. Improves appearance of lines and wrinkles.

Full ingredient list

WATER (AQUA), C12-15 ALKYL BENZOATE, DIMETHICONE/VINYL DIMETHICONE CROSSPOLYMER, CAPRIC/CAPRYLIC TRIGLYCERIDE, HYDROGENATED POLYISOBUTENE, GLYCERIN, STEARYL ALCOHOL, CETEARETH-20, DIMETHICONE, CYCLOPENTASILOXANE, DIMETHICONOL, MALUS DOMESTICA FRUIT CELL CULTURE EXTRACT, PHENOXYETHANOL, TOCOPHERYL ACETATE, XYLITYLGLUCOSIDE, STEARIC ACID, ANHYDROXYLITOL, SILICA, EPILOBIUM FLEISHERI EXTRACT, ALLANTOIN, LAVANDULA ANGUSTIFOLIA (LAVENDER) OIL, XYLITOL, ACRYLATES/C10-30 ALKYL ACRYLATE CROSSPOLYMER, XANTHAN GUM, ETHYLHEXYLGLYCERIN, PHYTOSPHINGOSINE, SODIUM HYDROXIDE, RETINOL, LEPTUM MELALEUCA ALTERNIFOLIA (TEA TREE) LEAF

dr. brandt recommends



pores no more pore effect
\$55.00



pores no more pore refiner
\$45.00



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pores no more anti-aging mattifying lotion

fast absorbing, oil-free, anti-aging lotion with apple stem cells

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2

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1.7 oz / 50 g

2013 Allure Best of Beauty Award Winner “Best Facial Moisturizer For Oily Skin”
“An apple a day keeps the *lines* away.” This lightweight lotion formulated with apple stem cells to help delay the natural signs of aging by maintaining the longevity and activity of stem cells in the skin. Simultaneously, retinol stimulates new cell turnover and improves the appearance of fine lines and wrinkles. Dr. Brandt's multi-tasking formula provides the best of both worlds, delivering anti-aging and pore minimizing/mattifying benefits.

- oil-free
- helps delay the natural signs of aging by maintaining the longevity & activity of stem cells in the skin
- stimulates new cell turnover, improving the appearance of lines & wrinkle
- increases water reserves, limits water loss & improves lipid barrier function to balance moisture levels

Save 33% when you purchase our [pores/oily skincare solution bundle](#). It includes this product!

SHIPS FREE!

more info

Item#	Product	Qty	Price
100000000229	pores no more anti-aging mattifying lotion		\$60.00
	In Stock		

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videos

usage

doctor’s tips

ingredients

results

testimonials



After 4 weeks of treatment*:

- 100% reported improvement in the appearance of lines & wrinkles
- 100% reported that excess oil is under control
- 100% reported less shine/ matte finish
- 100% reported that the pores look refined

dr. brandt recommends



pores no more pore effect
\$55.00



pores no more pore refiner
\$45.00



pores no more vacuum cleaner
\$45.00

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DR. BRANDT BLOG

1 2 3

Summer Skin S.O.S.

The heat and humidity of the summer season can take a toll on your skin. Increased oil production can...

Reduce Large Pores - pores no more
His best selling skin care arsenal controls oil, erases shine and refines large pores and include: a [pore refiner](#), [vacuum cleaner](#)

Anti-aging Skin Care Products - lineless, flaws no more, time arrest, light years away
Dr. Brandt's anti-aging skin care products minimize fine lines and wrinkles, restore sagging

Acne Skin Care Products - blemishes no more
Dr. Brandt's acne skin care products fight bacteria and breakouts and target blemish prone skin.

Detoxify and Clarify Your Skin - anti-oxidant water boosters
Dr. Brandt's dietary supplements provide essential anti-oxidants taste great while detoxifying and

Customized Skin Care Products and Solutions



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pores no more anti-aging mattifying lotion

fast absorbing, oil-free, anti-aging lotion with apple stem cells

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more info

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	In Stock		

add to wish list

add to cart

videosusagedoctor’s tipsingredientsresults**testimonials**

Total number of Testimonials: 3

Submit

"Really good product. I really like it. I Would purchase it again. I can definitely see a difference in my skin after one month. I use it under my make up."
– VGV

"This lotion was exactly what I needed for my combination skin. It smells good and works great! Keeps oil controlled but also makes skin soft. I will definitely buy this again. "

"I have used this product for 1 and 1/2 years and it works very well. I tried it in the summer to decrease the shiny skin after having made up on for a few hours. What surprised me is how well it decreased the size of my pores and just makes my 55 year old skin look better. I wish I had started using this earlier. I use this lotion and add a mineral powder--Clinique- works for me and then blush. The end of the day my face is the same matte finish as the morning. "

dr. brandt recommends



pores no more pore effect
\$55.00



pores no more pore refiner
\$45.00



pores no more vacuum cleaner
\$45.00

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Dr. Brandt

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DR. BRANDT BLOG

1

2

3

The Time to Repair Sun Damage

By: Christopher O'Connell Now that the weather is cooling down and the holidays are approaching, it's a great time for...

dr. brandt® skincare is the natural evolution of Dr. Brandt's professional dermatology practice and clinical research. His house calls skin care products are known for mimicking the in-office procedures he's famous for: dr. brandt microdermabrasion, detoxigen experience, collagen booster, and crease release. Expect beautiful, age-less looking skin, when you take the doctor home with you®.

Reduce Large Pores - pores no more

His best selling skin care arsenal controls oil, erases shine and refines large pores and include: a pore refiner, vacuum cleaner blackhead extractor, clarifying solution and pore thing t-zone pore tightener, as well as an anti-aging mattifying lotion.

Anti-aging Skin Care Products - lineless, flaws no more, time arrest, light years away

Dr. Brandt's anti-aging skin care products minimize fine lines and wrinkles, restore sagging skin, promote luminosity, reduce dark spots and lighten skin.

Acne Skin Care Products - blemishes no more

Dr. Brandt's acne skin care products fight bacteria and breakouts and target blemish prone skin.

Detoxify and Clarify Your Skin - anti-oxidant water boosters

Dr. Brandt's dietary supplements provide essential anti-oxidants taste great while detoxifying and clarifying your skin from the inside-out.

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http://www.drbrandtskincare.com/product/pores+no+more+anti-aging+mattifying+lotion.do?sortby=ourPicks[12/17/2013 2:38:08 PM]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge John F. Walter and the assigned
Magistrate Judge is Margaret A. Nagle.

The case number on all documents filed with the Court should read as follows:

2:13CV9311 JFW MANx

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

December 18, 2013

Date

By J.Prado

Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

☐ Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

☐ Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) SUSAN TRAN, on behalf of herself and all others similarly situated		DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) COSMETIC DERMATOLOGY, INC.																									
(b) County of Residence of First Listed Plaintiff <u>San Luis Obispo</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>		County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i>																									
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. Ronald A. Marron (SBN 175650) Jack Fitzgerald (SBN 257370) Law Offices of Ronald A. Marron, APLC The Law Office of Jack Fitzgerald, PC 651 Arroyo Drive, San Diego, CA 92103 2870 4th Ave, Ste. 205, San Diego, CA 92103 619-696-9006 619-692-3840		Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. Eduardo I. Rasco Rosenthal Rosenthal Rasco Kaplan, LLC 20900 N.E. 30th Ave, Ste. 600, Aventura, FL 33180 305-937-0300																									
II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2. U.S. Government Defendant <input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)		III. CITIZENSHIP OF PRINCIPAL PARTIES -For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table border="1" style="width:100%; border-collapse: collapse;"><thead><tr><th></th><th>PTF</th><th>DEF</th><th></th><th>PTF</th><th>DEF</th></tr></thead><tbody><tr><td>Citizen of This State</td><td><input checked="" type="checkbox"/> 1</td><td><input type="checkbox"/> 1</td><td>Incorporated or Principal Place of Business in this State</td><td><input type="checkbox"/> 4</td><td><input type="checkbox"/> 4</td></tr><tr><td>Citizen of Another State</td><td><input type="checkbox"/> 2</td><td><input type="checkbox"/> 2</td><td>Incorporated and Principal Place of Business in Another State</td><td><input type="checkbox"/> 5</td><td><input checked="" type="checkbox"/> 5</td></tr><tr><td>Citizen or Subject of a Foreign Country</td><td><input type="checkbox"/> 3</td><td><input type="checkbox"/> 3</td><td>Foreign Nation</td><td><input type="checkbox"/> 6</td><td><input type="checkbox"/> 6</td></tr></tbody></table>			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 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
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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. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1. Original Proceeding <input type="checkbox"/> 2. Removed from State Court <input type="checkbox"/> 3. Remanded from Appellate Court <input type="checkbox"/> 4. Reinstated or Reopened <input type="checkbox"/> 5. Transferred from Another District (Specify) _____ <input type="checkbox"/> 6. Multi-District Litigation																											
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check "Yes" only if demanded in complaint.) CLASS ACTION under F.R.Cv.P. 23: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No MONEY DEMANDED IN COMPLAINT: \$ <u>To be determined</u>																											
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Diversity, Class Action Fairness Act, 28 U.S.C. 1332 (d)(2)(A); Cal Code Civ. P. 410.10; Breach of Express Warranty, Cal. Comm. Code 2313; California Unfair Competition Law, Cal. Bus. & Prof. Code 17200, et seq.																											
VII. NATURE OF SUIT (Place an X in one box only.) <table border="1" style="width:100%; border-collapse: collapse;"><thead><tr><th>OTHER STATUTES</th><th>CONTRACT</th><th>REAL PROPERTY CONT.</th><th>IMMIGRATION</th><th>PRISONER PETITIONS</th><th>PROPERTY RIGHTS</th></tr></thead><tbody><tr><td><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/ICC Rates/Etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org. <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Info. 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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court?	STATE CASE WAS PENDING IN THE COUNTY OF:	INITIAL DIVISION IN CACD IS:
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action?	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF?	A DEFENDANT?	
	Then check the box below for the county in which the majority of DEFENDANTS reside.	Then check the box below for the county in which the majority of PLAINTIFFS reside.	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
	<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western

Question C: Location of plaintiffs, defendants, and claims? (Make only one selection per row)	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below. If none applies, answer question C2 to the right. →	C.2. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below. If none applies, go to the box below. ↓
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Western

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed **in this court** and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed **in this court** that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT): _____

DATE: December 18, 2013

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))