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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PAMELA CRAWFORD, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

BEACHBODY, LLC,

Defendant.

Case No.: '14CV1583 GPC KSC

CLASS ACTION

COMPLAINT FOR:

**VIOLATION OF CALIFORNIA FALSE
ADVERTISING LAW, CONSUMERS
LEGAL REMEDIES ACT, AND UNFAIR
COMPETITION LAW; AND BREACH
OF EXPRESS AND IMPLIED
WARRANTIES**

DEMAND FOR JURY TRIAL

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

6 **INTRODUCTION**

7 1. Over the past decade, defendant Beachbody built a substantial business around
8 DVD fitness videos and dietary supplements. More recently, it expanded into so-called “anti-
9 aging” skincare products under the brand name Derm Exclusive, featuring a product called
10 Fill & Freeze. Using a “celebrity plastic surgeon” and famous actresses, and relying on a
11 clinical pilot study and consumer perception study, Beachbody widely markets Fill & Freeze
12 through various websites, videos and television infomercials as an “instant wrinkle eraser.”
13 Beachbody claims that Fill & Freeze not only “eliminates the appearance of wrinkles . . .
14 instantly,” but also provides long lasting therapeutic results by “promot[ing] cell renewal.”
15 Beachbody also claims that with pads, “serum,” and a moisturizer, Fill & Freeze delivers
16 results “as good as – or even better than – the top in-office cosmetic procedures.”

17 2. Plaintiff purchased Derm Exclusive because she believed Beachbody’s
18 “guaranteed” promises that the instant results last all day and also lead to a long term skin
19 transformation “without surgery or invasive techniques.” But nothing of the sort happened.

20 3. Through clever phraseology, and enticing personalities, Beachbody’s marketing
21 of its Derm Exclusive product line, including Fill & Freeze, is fraudulent, based on product
22 claims that are false and deceptively misleading.

23 **THE PARTIES**

24 4. Plaintiff Pamela Crawford is a resident of San Diego, California.

25 5. Defendant Beachbody, LLC is a Delaware company with its principal place of
26 business at 3301 Exposition Blvd., 3rd Floor, Santa Monica, California 90404. Prior to
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November 30, 2012, Beachbody, LLC was a California company with its principal place of business also at the address noted above in Santa Monica, California.

JURISDICTION AND VENUE

6. 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 Beachbody. In addition, more than two-thirds of the members of the class reside in states other than the state in which Beachbody 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.

7. The Court has personal jurisdiction over Beachbody pursuant to Cal. Code Civ. P. § 410.10, because it's principle place of business is in the state.

8. Venue is proper in this Southern District of California pursuant to 28 U.S.C. § 1391(b) and (c), because Beachbody 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

A. Beachbody's Derm Exclusive Marketing Campaign

9. Beachbody is a California-based company primarily engaged in the sale of DVD fitness videos, including P90X, INSANITY, Slim in 6, Turbo Jam, Brazil Butt Lift, Hip Hop Abs, and Power 90, and a wide variety of dietary supplements directed to meal replacement, muscle enhancement, increased energy, weight loss, and wellness, such as Shakeology, E&E Energy and Endurance, Hardcore Base Shake, Fuel Shot, M.A.X. Creatine, Cordastra, Core Omega-3, and Herbal Immune Boost. Beachbody has long promoted, advertised and marketed its fitness videos and dietary supplements through television infomercials, including those featuring celebrity fitness trainers such as Tony Horton and Shaun T.

1 10. After over a decade in the fitness and dietary supplement industry, Beachbody
2 more recently expanded its business into the beauty category with a line of “anti-aging”
3 skincare products called “Derm Exclusive.” The signature item in the Derm Exclusive line is
4 known as “Fill & Freeze,” a water-based lotion contained in a plastic pen-like tube with a
5 small brush at one end that is used to apply to wrinkles on the skin around the eyes and lips,
6 as a “one touch botox and collagen treatment” to make “crow’s feet, laugh lines, expression
7 lines, virtually disappear – instantly.”

8 11. Beachbody sells Fill & Freeze in the form of its 0.12 fluid ounce plastic tube,
9 which Beachbody claims is a 90-day supply, for approximately \$44.00 each (before shipping
10 and handling). It also sells a 4-piece Derm Exclusive “system” featuring Fill & Freeze along
11 with pads, serum, and moisturizer, generally as an introductory 30-day supply at the cost of
12 about \$39.95 plus \$6.95 for shipping and handling, which then automatically renews with a
13 90-day supply every three months, billed in monthly installments also at about \$39.95 plus
14 \$9.95 for shipping and handling. Beachbody also sells the individual items in the 4-piece kit
15 separately and in different combinations, as well as several other items as part of the Derm
16 Exclusive line such as Facial Cleanser, Age Defense Moisturizer, and Volume Lip Therapy,
17 including as part of a 7-piece “Ultimate Kit.”

18 12. Beachbody repeatedly advertises, promotes and markets Fill & Freeze as an
19 “instant wrinkle eraser” that “eliminates the appearance of wrinkles by visibly restoring skin
20 to its natural, smooth state – instantly!” Beachbody claims that Fill & Freeze works in “just
21 minutes a day,” so that you can “look 10 years younger in just minutes.” And Beachbody
22 claims that the instant results of Fill & Freeze “last for up to 8 hours.”

23 13. Beachbody uses a “celebrity plastic surgeon” and TV host, Dr. Andrew Ordon,
24 to promote Derm Exclusive. Calling him “the man behind this revolutionary wrinkle eraser,”
25 Beachbody relies on Dr. Ordon in order to equate Fill & Freeze with actual plastic surgery
26 and other in-office procedures by medical doctors, for example claiming that Fill & Freeze
27 technology is “clinically proven” to give results “similar to what you’d see if you came into
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1 [Dr. Ordon's] office for professional procedures," and that Dr. Ordon "spent nearly 30 years
2 looking for an instant breakthrough to reduce the appearance of wrinkles without surgery or
3 invasive techniques [and] finally found it, in Derm Exclusive's Fill & Freeze."

4 14. Beachbody even advertises Dr. Ordon stating that Fill & Freeze not only has
5 instant results, but "it also has long term benefits with continued use [because it] helps
6 promote cell renewal."

7 15. As such, not only does Beachbody promise that "[t]he powerful 4 peptide
8 combination in Fill & Freeze" provides "instant" cosmetic results, but Beachbody also claims
9 that Fill & Freeze goes much further, providing lasting, long term or even permanent
10 therapeutic results.

11 16. In addition to selling Fill & Freeze as its principal stand-alone product in the
12 Derm Exclusive line, Beachbody also sells it as the main featured item in a "4-piece system"
13 that includes so-called "Intensive Repair Serum," "Micro Peel Resurfacing Pads," and
14 "Collagen Lift Moisturizer." Beachbody claims that its Serum "helps undo years of sun
15 damage," and that its Moisturizer "stimulat[es] new collagen production."

16 17. As with its Fill & Freeze alone, Beachbody similarly claims that the 4-piece
17 "Derm Exclusive system" is just as good and even better than medical cosmetic procedures
18 performed by doctors. For example, "based on a clinical pilot study," Beachbody represents
19 that "[i]n 7 days" the "Derm Exclusive system" "exfoliates 6 times better than a professional
20 microdermabrasion," "[i]n 14 days" it reduces lines and wrinkles "2 times better than a
21 chemical peel," and "[i]n 28 days" it "brightens uneven skin tone and fades age spots equal
22 to a photofacial." Beachbody also touts a so-called "consumer perception study" as a basis
23 for additional efficacy product claims, including a 90% success rate for "fewer lines and
24 wrinkles."

25 18. Again relying on its "celebrity plastic surgeon" spokesperson, Beachbody
26 promises that "Dr. Ordon's complete regimen uses professional-grade, dermatologist-
27 recommended ingredients" so "[n]ow you can recapture the look and feel of youthful skin
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1 without a trip to the doctor's office." Beachbody quotes Dr. Ordon himself as stating that
2 "[n]ow you have access to breakthrough skincare treatments that achieve the kind of anti-
3 aging results that my in-office patients see every day. And I'm proud that I can make these
4 amazing instant results available to everyone, right at home."

5 19. Beachbody further claims that "[y]ou don't have to wait months for an
6 appointment at Dr. Ordon's Beverly Hills office [because the] Derm Exclusive system is so
7 effective, it's clinically proven to deliver results as good as - or even better than - the top in-
8 office cosmetic procedures."

9 20. Similar to its claims that Fill & Freeze provides lasting therapeutic benefits,
10 Beachbody expressly represents that "Dr. Ordon's complete anti-aging regimen," "his entire
11 4-piece system," provides "dramatic, long-term results" and "long-lasting skin transformation
12 right at home."

13 21. The above are just some of the dozens of variations of the product claims,
14 statements, representations and promises that Beachbody makes throughout its widespread,
15 prominent marketing of Fill & Freeze and the Derm Exclusive 4-piece system. Beachbody
16 employs these types of statements throughout many websites, including
17 at www.beachbody.com and [http://www.beachbody.com/product/beauty/derm-
18 exclusive/anti-aging-skin-care-at-home.do](http://www.beachbody.com/product/beauty/derm-exclusive/anti-aging-skin-care-at-home.do), numerous video promotions including on
19 YouTube, social media sites like Facebook and Twitter, and several variations of television
20 infomercials, which, in addition to its so-called celebrity Beverly Hills plastic surgeon for
21 "some of the hottest faces in Hollywood," also feature famous actresses such as Minnie
22 Driver. And these product claims are repeatedly "guaranteed" by Beachbody – for example,
23 on one of its Derm Exclusive web pages, Beachbody expressly sets forth its "GUARANTEE"
24 no less than four times. Attached hereto as Exhibit A is a copy of Beachbody's Derm
25 Exclusive website page containing many of the type of product claims noted above.
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27
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B. Plaintiff's Purchase and Use of Beachbody's Derm Exclusive Products

22. In about April 2013, plaintiff Pamela Crawford watched one of Beachbody's Derm Exclusive television infomercials featuring Dr. Ordon and Minnie Driver. Crawford was particularly intrigued by several of the product claims in the infomercial, including for example, Beachbody's primary product claims and overall central themes, namely (i) that Fill & Freeze would instantly remove wrinkles that would last throughout the day, (ii) that using Fill & Freeze would also have far more lasting, longer term results, (iii) that using Fill & Freeze at home would be an effective substitute for in-office treatments and procedures by medical doctors especially those performed by a famous celebrity plastic surgeon, and (iv) that the 4-piece Derm Exclusive kit featuring Fill & Freeze would also have lasting, long term results, and also be an effective substitute for top in-office cosmetic procedures (collectively "Primary Product Claims" or "Central Themes").

23. Relying at least on these Primary Product Claims in the infomercial, Crawford ordered and paid for the introductory 30-day Derm Exclusive 4-piece kit.

24. Crawford received her kit, and used the Fill & Freeze product in the morning and again at night, and also used the other items in the kit. As Crawford used Fill & Freeze during the first month, she realized that the "instant" results from her morning application did not last throughout the day as promised by Beachbody. Nevertheless, she continued using it each morning, as well as in the evening. And she continued using Fill & Freeze together with the other items in the 4-piece kit as directed.

25. Within about a month, her Derm Exclusive order automatically renewed with the 90-day supply, and she was automatically charged for it.

26. However, by this time Crawford also realized that Fill & Freeze alone and together with the other items in the 4-piece kit simply were not delivering the even more lasting, long term results promised by Beachbody. She called the Beachbody Derm Exclusive phone number to cancel all further automatic renewals of the 4-piece system. During that call, the Beachbody Derm Exclusive customer service representative convinced Crawford to

1 continue buying Fill & Freeze alone. Crawford continued to purchase, receive, and use Fill
2 & Freeze, and that order also automatically renewed.

3 27. After many months of using Fill & Freeze as directed, Crawford never received
4 the results promised by Beachbody, particularly that it would last all day and especially that
5 it would provide the asserted lasting, long term benefits. Crawford cancelled all further
6 renewals.

7 **BEACHBODY'S DERM EXCLUSIVE MARKETING IS FRAUDULENT**

8 28. As noted above, as support for its Derm Exclusive general and specific product
9 claims, including its Primary Product Claims, Beachbody relies on a so-called clinical pilot
10 study, as well as a consumer perception study. But neither study adequately supports
11 Beachbody's bold, unqualified representations and promises.

12 29. For example, Beachbody claims that "a clinical pilot study" establishes that it is
13 "6 times better than a professional microdermabrasion" in 7 days, "2 times better than a
14 chemical peel" in 14 days, and is "equal to a photofacial" in 28 days.

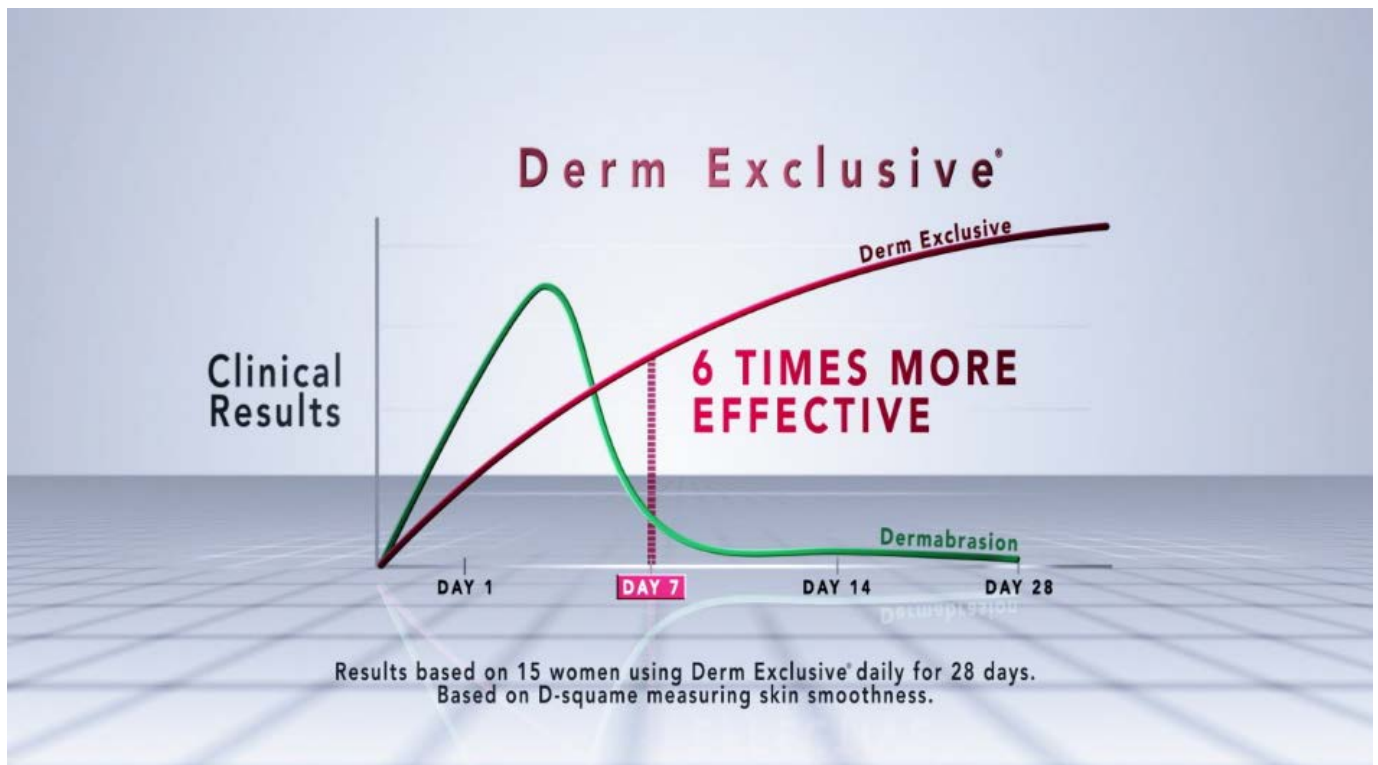
15 30. Significantly, however, a pilot study, by its very nature, does not provide
16 conclusive, or even reliable results. Instead, a pilot study is a small-scale preliminary study
17 conducted in order to evaluate feasibility, time, cost, adverse events, and statistical variability
18 in an attempt to predict an appropriate sample size and improve upon study design prior to
19 performing a full-scale research project or clinical study. *See, e.g.,* Andrew C. Leon et al.,
20 *The Role and Interpretation of Pilot Studies in Clinical Research*, J. Psychiatr. Res. 45(5) at
21 626-29 (May 2011) ("A pilot study is not a hypothesis testing study. . . . [A] pilot study does
22 not provide a meaningful effect size estimate for planning subsequent studies due to the
23 imprecision inherent in data from small samples. Feasibility results do not necessarily
24 generalize beyond the inclusion and exclusion criteria of the pilot design. . . . For purpose of
25 contrast, a hypothesis testing clinical trial is designed to compare randomized treatment
26 groups in order to draw an inference about efficacy/effectiveness and safety in the patient
27 *population*, based on *sample* results.").

31. In addition, Beachbody's its pilot study is supposedly "based on 15 women using Derm Exclusive daily for 28 days." But Beachbody does not disclose how many women were in the comparison group, i.e., who received a chemical peel, microdermabrasion, or photofacial. In any event, such a small group of 15 women does not provide statistically-significant results.

32. Moreover, there is no indication Beachbody, after performing its pilot study, engaged in a full-scale study, suggesting that it knew that a full, statistically relevant, properly designed and administered study would *not* support its marketing representations.

33. Even substantively considered, and even if the results Beachbody touts are literally true, its representations based on those results are highly misleading.

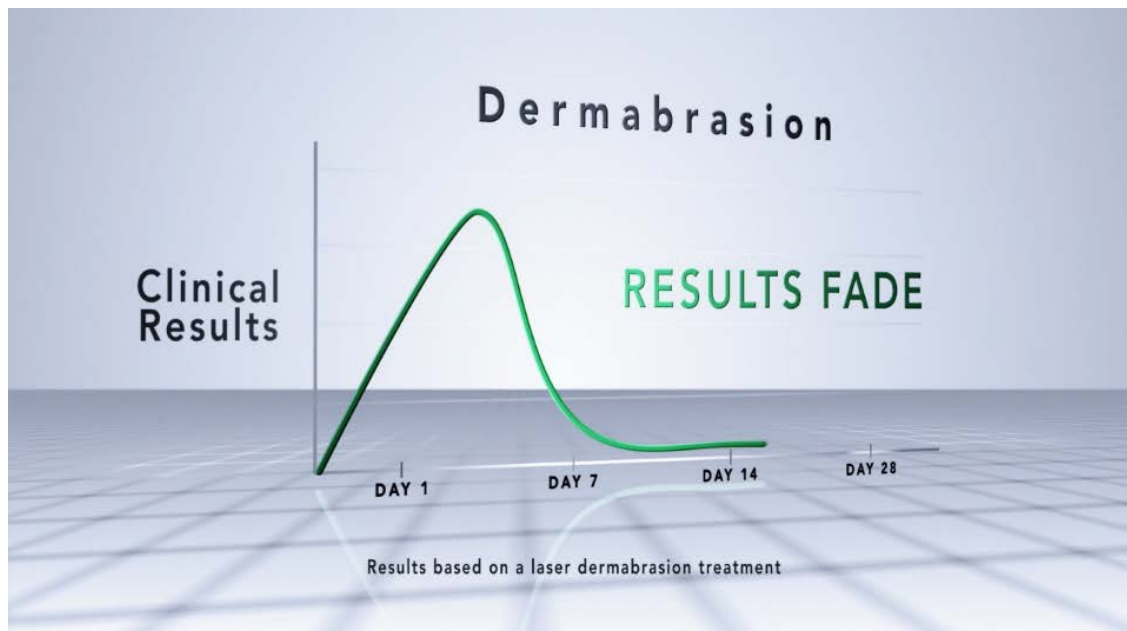
34. For example, Beachbody represents via a line graph that "Clinical Results" show that Derm Exclusive is "6 TIMES MORE EFFECTIVE" than a dermabrasion procedure, after 7 days, as follows:



35. This is deceptive, because the results just reflect the unremarkable proposition that the effects of an in-office procedure fade over time, for example, as dead skin cells once again build up on the outer layer of the skin. On the other hand, those who use Derm Exclusive every day - including its fancy-sounding “Micropeel Resurfacing Pads” - are removing dead skin cells continuously. So of course there will be fewer dead skin cells on the face of a person who has just scrubbed her face, with anything in fact, as opposed to someone who got a procedure a week earlier and did nothing since. Thus the perceived results do not relate to the formulation of the Derm Exclusive products.

36. In fact, this graphs actually *contradicts* numerous variations of Beachbody’s more general representation that Derm Exclusive is “equal to” or “better than” in-office procedures, as seen by comparing the “Day 1” (through about Day 5) results of dermabrasion to Derm Exclusive.

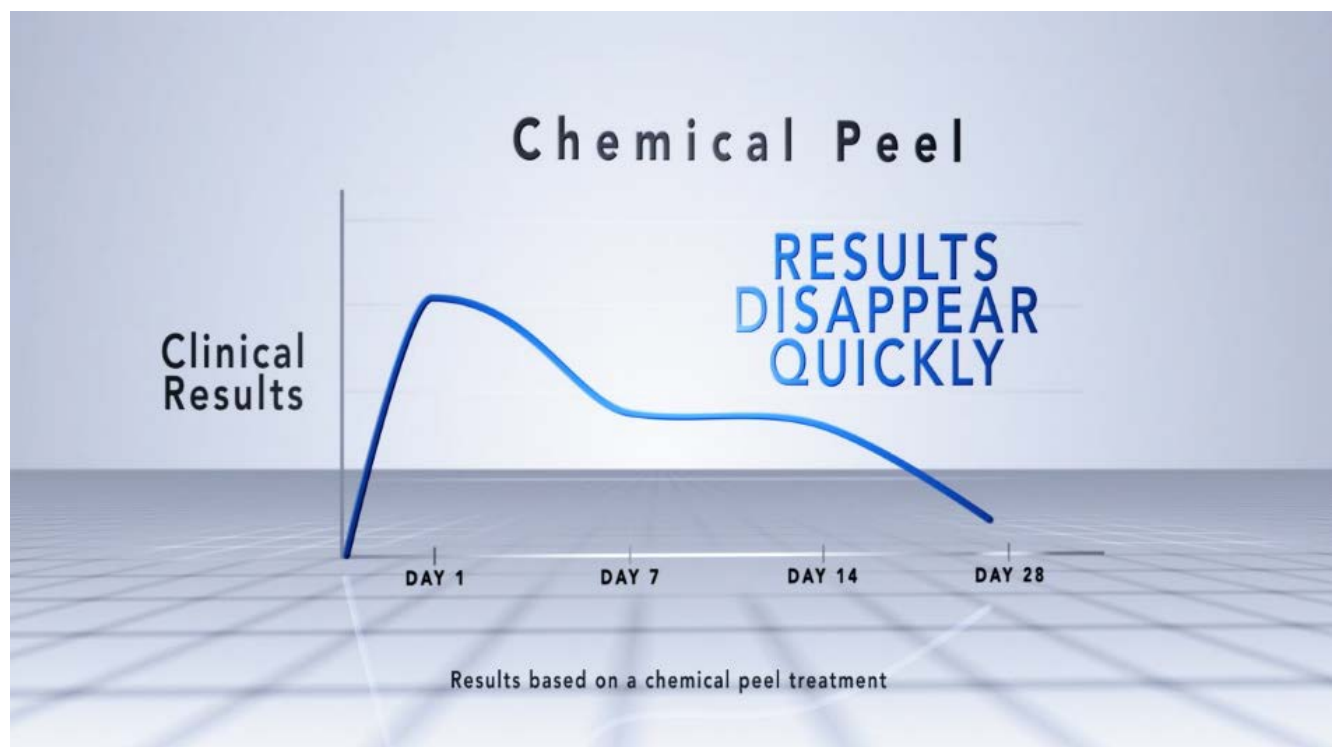
37. As demonstrated in another of Beachbody’s line graphs (shown below), Beachbody itself admits the unremarkable nature of these results, noting that the effects of a dermabrasion just “fade” over time. But this does not support Beachbody’s efficacy representations; instead, like a dermabrasion, any “results” of using Derm Exclusive would also “fade” shortly after ceasing use. But Beachbody deceptively only compares such faded results of a one-time dermabrasion to women actively using Derm Exclusive every day.



38. The same problems are apparent in Beachbody's below comparison of Derm Exclusive to an in-office peel, namely that the in-office procedure, although more effective initially, is not as effective days later as compared to continued use of Derm Exclusive:



39. And as with a dermabrasion, Beachbody admits in its graph below that the results of a one-time chemical peel merely "disappear quickly":



1 40. In addition to its pilot study, Beachbody asserts that “[b]ased on a consumer
2 perception study after 30 days of use,” “96% reported smoother skin,” “92% saw improved
3 radiance,” and “90% noticed fewer lines and wrinkles.” These representations are carefully
4 juxtaposed with the claim, “Guaranteed results—or your money back.”

5 41. Although these “results” may be literally true, they are deceptively misleading
6 in their implication that Derm Exclusive will provide similar results for consumers generally.
7 By its nature, such a “consumer perception survey” is highly subjective, nothing more than
8 people using a product in relatively uncontrolled settings, then saying what they think they
9 see. Such a “survey” is not likely to have been designed and administered in any way that
10 would be a reasonable prediction of the results of use by and perception of other purchasers.
11 It is also likely to include a biased and statistically insignificant sampling among women who
12 Beachbody recruited specifically for this purpose.

13 42. Although Beachbody relies on the pilot “study” and consumer perception
14 “survey” to establish its specific and general advertising claims, it provides scant details,
15 concealing the underlying study and survey themselves, and instead relying on its own
16 characterizations of the results.

17 43. In sum, Beachbody relies on results from studies that, as demonstrated by
18 Beachbody’s own descriptions and graphic depictions, are unreliable and inadequate to
19 support Beachbody’s many Derm Exclusive product claims.

20 44. Not surprisingly, therefore, the actual experience of Crawford using Fill &
21 Freeze and the 4-piece Derm Exclusive “system” also demonstrates that these products do
22 not deliver the results represented, promised and indeed guaranteed by Beachbody.

23 45. Simply stated, Beachbody’s Derm Exclusive marketing campaign is fraudulent.
24 Not merely are dozens of Beachbody’s specific product claims, representations, promises and
25 guarantees, including the Primary Product Claims, in and of themselves false and misleading.
26 But also the total collocation of these statements, cleverly phrased and confusingly
27 interwoven with each other, and used with a number of other devices, including a celebrity
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1 plastic surgeon TV host, form an overall deceptive marketing campaign promoting Central
2 Themes that plainly are not true.

3 **BEACHBODY’S DERM EXCLUSIVE PRODUCTS ARE ALSO MISBRANDED**
4 **COSMETICS AND UNAPPROVED NEW DRUGS**

5 46. The Federal Food, Drug, and Cosmetic Act (“FDCA”), 21 U.S.C. §§ 301 *et seq.*
6 governs the sale of foods, drugs, and cosmetics in the United States. The California
7 counterpart to the FDCA, known as the Sherman Food, Drug and Cosmetic Law, incorporates
8 FDCA’s regulations. *See, e.g.*, Cal. Health & Safety Code §§ 109925, 110110, 111550.

9 47. The FDCA defines cosmetics as “articles intended to be rubbed, poured,
10 sprinkled, or sprayed on, introduced into, or otherwise applied to the human body . . . for
11 cleansing, beautifying, promoting attractiveness, or altering appearance,” 21 U.S.C. §
12 321(i)(1).

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

16 49. The FDA has explained that “[s]ome products meet the definitions of both
17 cosmetics and drugs,” for example, “when a product has two intended uses” as with an anti-
18 dandruff shampoo,” which “is a cosmetic because its intended use is to cleanse the hair,” and
19 also “is a drug because its intended use is to treat dandruff. . . . Such products must comply
20 with the requirements for both cosmetics and
21 drugs.” [http://www.fda.gov/cosmetics/guidancecomplianceregulatoryinformation/ucm0742](http://www.fda.gov/cosmetics/guidancecomplianceregulatoryinformation/ucm074201.htm)
22 [01.htm](http://www.fda.gov/cosmetics/guidancecomplianceregulatoryinformation/ucm074201.htm).

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

26 51. Under the FDCA and the Sherman Law, Beachbody’s Derm Exclusive products,
27 including Fill & Freeze, constitute cosmetics because, they are intended to be “applied to the
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human body . . . for cleansing, beautifying, promoting attractiveness, or altering appearance.” These products also qualify as drugs because, as Beachbody’s advertising demonstrates, these products are intended to affect the structure or function of the body’s skin by treating wrinkles, lines, tone, smoothness, age spots, and sun damage, including through “cell renewal,” “long-lasting skin transformation,” “stimulat[ion of] new collagen production,” and thus “restoring skin to its natural, smooth state.”

52. Both a drug and a cosmetic is misbranded “[i]f its labeling is false or misleading in any particular.” 21 U.S.C. §§ 352(a) (drug), 362(a) (cosmetic); Cal. Health & Safety Code §§ 111330 (drug), 111730 (cosmetic). In addition, “[i]n determining whether the labeling or advertisement of a food, drug, device, or cosmetic is misleading, all representations made or suggested by statement, word, design, device, sound, or any combination of these, shall be taken into account.” Cal. Health & Safety Code § 110290.

53. Because Beachbody’s Fill & Freeze and Derm Exclusive product claims are false and misleading as noted above, these products are misbranded under the FDCA and Sherman Law.

54. Furthermore, 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. Beachbody’s Fill & Freeze and other Derm Exclusive products have not received premarket FDA approval, and do not conform to a monograph for a drug category. As such, they are unapproved new drugs that are being marketed unlawfully in the United States under 21 U.S.C. § 355(a).

55. In addition, as both cosmetics and drugs, these products are also misbranded by failing to identify their active ingredients under 21 U.S.C. § 362(c) and 21 C.F.R. § 701.3(d) (applying to cosmetics), and 21 U.S.C. § 352(c) and 21 C.F.R. § 201.66 (applying to drugs).

PLAINTIFF’S RELIANCE AND INJURIES

56. As noted above, Crawford purchased Beachbody’s Fill & Freeze alone and as part of the 4-piece Derm Exclusive “system” relying on numerous Beachbody

1 representations, at least including Beachbody's Primary Product Claims and overall Central
2 Themes, namely (i) that Fill & Freeze would instantly remove wrinkles that would last
3 throughout the day, (ii) that using Fill & Freeze would also have far more lasting, longer term
4 results, (iii) that using Fill & Freeze at home would be an effective substitute for in-office
5 treatments and procedures by medical doctors especially those performed by a famous
6 celebrity plastic surgeon, and (iv) that the 4-piece Derm Exclusive kit featuring Fill & Freeze
7 would also have lasting, long term results, and also be an effective substitute for top in-office
8 cosmetic procedures. These representations were (and are) false and misleading, and had (and
9 have) the capacity, tendency, and likelihood to confuse or confound Crawford and other
10 consumers acting reasonably.

11 57. Crawford paid more for these products than she otherwise would have absent
12 Beachbody's misrepresentations, and would not have been willing to pay the prices she did,
13 or to purchase these products at all, absent Beachbody's misrepresentations.

14 58. By using false and misleading product claims, Beachbody has been able to sell
15 these products, and further to command a price significantly above a fair market price. Absent
16 its false and misleading product claims, Beachbody would not have been able to sell these
17 products at the prices charged, and likely at any price.

18 59. Because Beachbody's Derm Exclusive products do not actually provide the
19 results promised, their true value was (and is) \$0, and Crawford and all other Fill & Freeze
20 and Derm Exclusive purchasers were injured at least in the amounts of their purchases.

21 **CLASS ACTION ALLEGATIONS**

22 60. Pursuant to Rule 23, plaintiff seeks to represent a class of persons in the United
23 States who have purchased Beachbody's Fill & Freeze and other Derm Exclusive products
24 primarily for personal, family, or household use, and not for resale.

25 61. The members in the proposed class are so numerous that individual joinder of
26 all members is impracticable, and the disposition of the claims of all class members in a single
27 action will provide substantial benefits to the parties and Court.

1 62. Questions of law and fact common to plaintiff and the class include, but are not
2 necessarily limited to the following:

- 3 a. Whether Beachbody's Fill & Freeze and Derm Exclusive product claims,
4 including its Primary Product Claims, are established by the studies on which
5 Beachbody relies to make the claims (including the clinical pilot study and
6 consumer perception survey);
- 7 b. Whether (i) Fill & Freeze instantly removes wrinkles and lasts throughout
8 the day, (ii) using Fill & Freeze has far more lasting, longer term results, (iii)
9 using Fill & Freeze at home is an effective substitute for in-office treatments
10 and procedures by medical doctors especially those performed by a famous
11 celebrity plastic surgeon, and (iv) the 4-piece Derm Exclusive kit featuring
12 Fill & Freeze has lasting, long term results, and is also an effective substitute
13 for top in-office cosmetic procedures.
- 14 c. Whether any of the Derm Exclusive products are effective in reasonably
15 providing the promised results;
- 16 d. Whether Beachbody's advertising for Fill & Freeze and Derm Exclusive is
17 literally false because the products do not deliver the results advertised;
- 18 e. Whether Beachbody's advertising for Fill & Freeze and Derm Exclusive,
19 even if not literally false, is nevertheless misleading in that it is either
20 substantially less effective than Beachbody represents, or likely to confuse or
21 confound consumers acting reasonably;
- 22 f. Whether Beachbody's labeling and advertising for Fill & Freeze and Derm
23 Exclusive violated any FDCA or Sherman Law statute, regulation, or other
24 provision;
- 25 g. The proper equitable and injunctive relief;
- 26 h. The proper amount of actual or compensatory damages;
- 27 i. The proper amount of restitution or disgorgement;
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j. The proper amount of punitive damages; and

k. The proper amount of reasonable litigation expenses and attorneys' fees.

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

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

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

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

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

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW,

CAL. BUS. & PROF. CODE §§ 17500 *ET SEQ.*

68. Plaintiff repeats and realleges, as if fully set forth herein, the allegations contained in the preceding paragraphs.

69. The California False Advertising Law ("FAL") prohibits any statement in connection with the sale of goods "which is untrue or misleading," Cal. Bus. & Prof. Code § 17500.

70. As described herein, each of Beachbody's Fill & Freeze and Derm Exclusive product claims, including its Primary Product Claims, are literally false and/or at least highly misleading to reasonable consumers.

71. Beachbody knew, or reasonably should have known, that these product claims are untrue and/or misleading.

72. As a result, plaintiff and the class members have suffered irreparable harm and are entitled at least to restitution and injunctive relief.

SECOND CAUSE OF ACTION
VIOLATION OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT,
CAL. CIV. CODE §§ 1750 *ET SEQ.*

73. Plaintiff repeats and realleges, as if fully set forth herein, the allegations contained in the preceding paragraphs.

74. The CLRA prohibits deceptive practices in connection with the conduct of a business that provides goods, property, or services primarily for personal, family, or household purposes.

75. Beachbody's policies, acts, and practices were designed to, and did, result in the purchase and use of the accused products primarily for personal, family, or household purposes, and such policies, acts and practices violated and continue to violate the following sections of the CLRA:

- a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have;
- b. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another;
- c. § 1770(a)(9): advertising goods with intent not to sell them as advertised; and
- d. § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

76. As a result, plaintiff and the class members have suffered irreparable harm and are entitled at least to restitution, damages, injunctive relief, and attorneys' fees.

77. In compliance with Cal. Civ. Code § 1780(d), plaintiff's affidavit of venue is filed concurrently herewith.

1 78. In compliance with Civ. Code § 1782, plaintiff sent written notice of her claim
2 to Beachbody more than 30 days before bringing this action.

3 **THIRD CAUSE OF ACTION**

4 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW,**
5 **CAL. BUS. & PROF. CODE §§ 17200 *ET SEQ.***

6 79. Plaintiff repeats and realleges, as if fully set forth herein, the allegations
7 contained in the preceding paragraphs.

8 80. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice,”
9 Cal. Bus. & Prof. Code § 17200.

10 **Fraudulent**

11 81. Beachbody’s Fill & Freeze and Derm Exclusive product claims, including its
12 Primary Product Claims and Central Themes, are false or misleading, and therefore are
13 fraudulent.

14 **Unlawful**

15 82. As alleged herein, Beachbody has illegally marketed Fill & Freeze and Derm
16 Exclusive as new drugs in violation of 21 U.S.C. § 355(a) and Cal. Health & Safety Code §§
17 110110, 111550, and therefore has engaged in “unlawful” activities under the UCL.

18 83. As alleged herein, Beachbody also has misbranded Fill & Freeze and Derm
19 Exclusive products, violating 21 U.S.C. § 362(c) and 21 C.F.R. § 701.3(d) (applying to
20 cosmetics), and 21 U.S.C. § 352(c) and 21 C.F.R. § 201.66 (applying to drugs). Misbranding
21 is a “[p]rohibited act[]” under the FDCA, 21 U.S.C. § 331, and the California counterpart
22 Sherman Law, Cal. Health & Safety Code §§ 110110, 111330, 111345, 111360, 111375,
23 111550, and therefore Beachbody has engaged in “unlawful” activities under the UCL.

24 84. As alleged herein, Beachbody also has used false and/or misleading product
25 claims in advertising Fill & Freeze and Derm Exclusive, and has violated express and implied
26 warranties.

FOURTH CAUSE OF ACTION

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

90. Plaintiff repeats and realleges, as if fully set forth herein, the allegations contained in the preceding paragraphs.

91. In selling Fill & Freeze and other Derm Exclusive products to plaintiff and class members, Beachbody made affirmations of fact and promise regarding the results that these products would provide, including the Primary Product Claims, as promised and indeed expressly guaranteed.

92. Plaintiff and class members relied on these affirmations as part of the basis of the bargain between them and Beachbody for their purchases, thereby creating Beachbody's express warranty that these products conform to these affirmations.

93. However, these affirmations were false and/or misleading, as the products did not (and do not) deliver the asserted results.

94. Beachbody's sale of Fill & Freeze and Derm Exclusive products constitute breach of express warranty under Cal. Comm. Code § 2313.

95. As a result, plaintiff and class members are entitled at least to damages.

FIFTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF FITNESS, CAL. COMM. CODE § 2315

96. Plaintiff repeats and realleges, as if fully set forth herein, the allegations contained in the preceding paragraphs.

97. "Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is . . . an implied warranty that the goods shall be fit for such purpose." Cal. Comm. Code § 2315.

98. Beachbody has engaged in the sale of Fill & Freeze and Derm Exclusive products with reason to know that these products were being purchased by plaintiff and class members for the purposes advertised by Beachbody, including the Primary Product Claims,

1 and that these purchasers were relying on Beachbody's skill or judgment to furnish goods
2 suitable for these purposes, including its purported scientific testing and the "expert" opinion
3 of "celebrity plastic surgeon" Dr. Ordon. These products did not (and do not) fulfill these
4 purposes.

5 99. Beachbody's sale of Fill & Freeze and Derm Exclusive products constitute
6 breach of express warranty under Cal. Comm. Code § 2315.

7 100. As a result, plaintiff and class members are entitled at least to damages.

8 **PRAYER FOR RELIEF**

9 101. Wherefore, plaintiff, on behalf of herself, all others similarly situated and the
10 general public, prays for judgment against Beachbody as to each and every cause of action,
11 including:

12 A. An Order declaring this action to be a proper class action,
13 appointing plaintiff and her counsel to represent the class, and requiring
14 Beachbody to bear the costs of class notice;

15 B. An Order enjoining Beachbody from selling Fill & Freeze and
16 other Derm Exclusive products;

17 C. An Order enjoining Beachbody from selling Fill & Freeze and
18 other Derm Exclusive products in a false or misleading manner, including
19 without limitation through use of the Primary Product Claims;

20 D. An Order enjoining Beachbody from selling Fill & Freeze in any
21 manner that constitutes a violation of the FAL, CLRA, and/or UCL;

22 E. An Order enjoining Beachbody from selling Fill & Freeze and
23 other Derm Exclusive products in any manner that constitutes misbranding or
24 other violation under the FDCA and Sherman Law, pursuant to the UCL;

25 F. An Order enjoining Beachbody from selling Fill & Freeze and
26 other Derm Exclusive products in any manner that constitutes a breach of
27 express and/or implied warranties;
28

1 G. An Order requiring Beachbody to engage in a corrective
2 advertising campaign and engage in any further necessary affirmative
3 injunctive relief, such as recalling existing product;

4 H. An Order awarding declaratory relief, and any further
5 retrospective or prospective injunctive relief permitted by law or equity,
6 including enjoining Beachbody from continuing the unlawful practices
7 alleged herein, and injunctive relief to remedy Beachbody's past conduct;

8 I. An Order requiring Beachbody to pay restitution to restore all
9 funds acquired by means of any act or practice declared by this Court to be an
10 unlawful, unfair, or fraudulent business act or practice, false or misleading
11 advertising, or violation of the FAL, CLRA, and UCL, and/or breach of
12 warranty, plus pre- and post-judgment interest thereon;

13 J. An Order requiring Beachbody to disgorge or return all monies,
14 revenues, and profits obtained by means of any wrongful or unlawful act or
15 practice;

16 K. An Order requiring Beachbody to pay all actual and statutory
17 damages permitted under the causes of action alleged herein;

18 L. An Order requiring Beachbody to pay punitive damages on any
19 cause of action so allowable if plaintiff proves Beachbody's conduct was
20 knowing, intentional, deliberate, willful, malicious, oppressive, or reckless;

21 M. An Order awarding attorneys' fees and costs to plaintiff and the
22 class;

23 N. An Order providing for all other such equitable and legal relief
24 as may be just and proper.
25
26
27
28

JURY DEMAND

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

Dated: July 1, 2014

/s/Jack Fitzgerald
Jack Fitzgerald

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

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RONALD A. MARRON**

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

Attorneys for Plaintiff and the Proposed Class

Exhibit A



BEACHBODY®

To order call: 1 (800) 313-2609

derm
EXCLUSIVE®

Derm Exclusive

Want to look

10 YEARS YOUNGER
in just minutes?

Here's how to do it



Dr. Andrew Ordon

Board-certified Plastic Surgeon and TV Host

"I spent nearly 30 years looking for an instant breakthrough to reduce the appearance of wrinkles without surgery or invasive techniques. I finally found it, in Derm Exclusive's Fill & Freeze."

—Dr. Andrew Ordon



What if you could make crow's feet, laugh lines, expression lines, virtually disappear—instantly?

Well now you can, thanks to Derm Exclusive's Fill & Freeze. In just minutes a day, you can help your skin look years younger, with results that are visible from the very first use!



"I can put Fill & Freeze on, and before my very eyes, the lines disappear."
--Kim R.

Sure, lots of skincare products promise quick results. But until you try Derm Exclusive for yourself, you won't believe how good your skin can look.

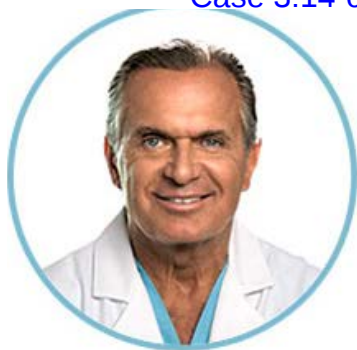
And starting today, you can get a second Fill & Freeze instant wrinkle eraser absolutely **FREE!** Keep reading to find out how.



How does Fill & Freeze work?

Ask the man behind this revolutionary wrinkle eraser—celebrity plastic surgeon Dr. Andrew Ordon.





DR. ORDON

“The powerful 4 peptide combination in Fill & Freeze eliminates the appearance of wrinkles by visibly restoring skin to its natural, smooth state—instantly! The technology is clinically proven to give you skin-smoothing, youth-restoring results similar to what you'd see if you came into my office for professional procedures.”

And Dr. Ordon knows how to deliver results.

After all, he's responsible for restoring a youthful look to some of the hottest faces in Hollywood. And booking an appointment at his Beverly Hills plastic surgery office is next to impossible. But you don't have to wait, because Dr. Ordon can help you look years younger today!

But don't take our word for it...



“I'm getting better results with Derm Exclusive than any other treatment that I've ever had. The crow's feet...the fine lines are going away. My skin looks brighter. I look younger!”
—Audra O.

Sure, instant results are great.
HOW DO YOU GET RESULTS THAT LAST?

With Dr. Ordon's complete anti-aging regimen, you can look years younger now, with results that just keep getting better. Day by day, the Derm Exclusive system lifts, firms, smoothes, and re-energizes your skin, for dramatic, long-term results.

And now you can get a long-lasting skin transformation right at home, because Dr. Ordon wants you to have his entire 4-piece system PLUS a second Fill & Freeze wrinkle eraser **ABSOLUTELY FREE**.



get a
second
Fill & Freeze
FREE



Try Derm Exclusive now

YES! I WANT TO LOOK YEARS YOUNGER
IN MINUTES. ORDER NOW >>

Just \$39.95 (+\$6.95 S&H)
30-DAY MONEY-BACK GUARANTEE! (less s&h)

With today's order, you'll automatically receive a new 90 day supply every 3 months for only \$39.95 per month (+\$9.95 per shipment). You can cancel or customize your kit any time by calling customer service.



Say goodbye to **WRINKLES...SAGGING... DARK SPOTS...DULLNESS.**



Most of us have at least one of these skin concerns, if not more. That's why Dr. Ordon's complete regimen uses professional-grade, dermatologist-recommended ingredients that target all the major signs of aging. You don't have to settle for looking older. Now you can recapture the look and feel of youthful skin without a trip to the doctor's office.

Skip the doctor visit? Believe it.

You don't have to wait months for an appointment at Dr. Ordon's Beverly Hills office. The Derm Exclusive system is so effective, it's clinically proven to deliver results as good as—or even better than—the top in-office cosmetic procedures.

In 7 days

exfoliates 6 times better than a professional microdermabrasion.*

In 14 days

visibly reduces fine lines and wrinkles 2 times better than a chemical peel.*

In 28 days

brightens uneven skin tone and fades age spots equal to a photofacial.*

It only takes minutes a day to fight wrinkles. Lift sagging skin. Fade dark spots. And restore your skin's youthful, healthy looking glow. So you feel vibrant, radiant, with the confidence of knowing that you look your absolute best.

*Results vary. Results based on a clinical pilot study comparing a professional chemical peel, microdermabrasion, and photofacial against women using Derm Exclusive for 28 days.



Dr. Ordon is sharing his secret to younger-looking skin with women everywhere, **INCLUDING YOU!**

Here's everything you need to **LOOK YOUNGER.**

MICRO PEEL RESURFACING PADS

Helps reveal smoother, brighter, younger-looking skin by gently polishing away dulling surface cells.

INTENSIVE REPAIR SERUM

Helps undo years of sun damage by fading dark spots, discoloration, and evening out skin tone.



COLLAGEN LIFT MOISTURIZER

Helps lift and tighten sagging skin by stimulating new collagen production, restoring youthful-looking support and elasticity.

FILL & FREEZE WRINKLE TREATMENT

Just a touch to eye, frown, and smile lines, and the deep-penetrating peptides help eliminate the appearance of wrinkles, so you look years younger in minutes!

plus

All these professional youth-restoring treatments would cost you hundreds of dollars in Dr. Ordon's Beverly Hills office. But now you can get the complete Derm Exclusive system, including a second Fill & Freeze instant wrinkle eraser for only \$39.95 (+s&h).

Order now and get a second instant wrinkle eraser—a \$59.95 value—**FREE!**

get a
second
Fill & Freeze
FREE



Still wondering if Derm Exclusive
will work for you?

100% SATISFACTION

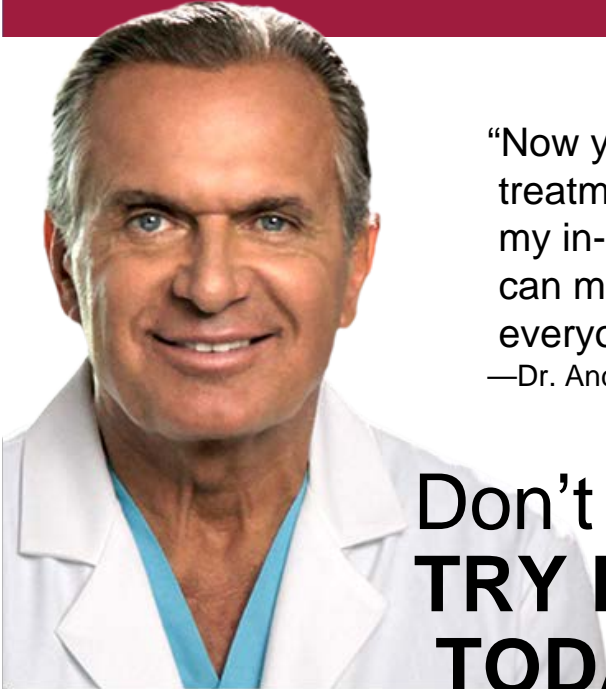
30

DAY MONEY BACK

GUARANTEE

GUARANTEE

Well, stop wondering. Because you can order it right now and try it for yourself absolutely risk free with Dr. Ordon's 30-day money-back guarantee. Try all the products for 30 days. If you don't see smoother, younger, healthier-looking skin, simply return the products within 30 days for a full refund of the purchase price (less s&h).



"Now you have access to breakthrough skincare treatments that achieve the kind of anti-aging results that my in-office patients see every day. And I'm proud that I can make these amazing instant results available to everyone, right at home."

—Dr. Andrew Ordon, board certified plastic surgeon and TV host

Don't wait to look years younger.
**TRY DERM EXCLUSIVE
TODAY!**

YES! I WANT TO LOOK YEARS YOUNGER
IN MINUTES. ORDER NOW >>

Just \$39.95 (+\$6.95 S&H)
30-DAY MONEY-BACK GUARANTEE! (less s&h)

With today's order, you'll automatically receive a new 90 day supply every 3 months for only \$39.95 per month (+\$9.95 per shipment). You can cancel or customize your kit any time by calling customer service.



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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

Pamela Crawford

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

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

Law Office of Jack Fitzgerald, PC

2870 4th Ave., Ste. 205

San Diego, CA 92103 Ph: (619) 692-3840

DEFENDANTS

Beachbody, LLC

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

Angel A. Garganta, Venable LLP, San Francisco.

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 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 checked="" 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 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 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 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 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 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. § 1332(d)(2)(A), the Class Action Fairness Act

Brief description of cause:

False Advertising

VII. REQUESTED IN COMPLAINT:☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

THE LAW OFFICE OF JACK FITZGERALD, PC

JACK FITZGERALD (SBN 257370)

jack@jackfitzgeraldlaw.com

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San Diego, California 92103

Phone: (619) 692-3840

Fax: (619) 362-9555

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ron@consumersadvocates.com

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Phone: (619) 696-9006

Fax: (619) 564-6665

Attorneys for Plaintiff and the Proposed Classes

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PAMELA CRAWFORD, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

BEACHBODY, LLC,

Defendant.

**AFFIDAVIT OF VENUE
PURSUANT TO CAL. CIV.
CODE § 1780(d)**

1 I, Pamela Crawford, declare as follows:

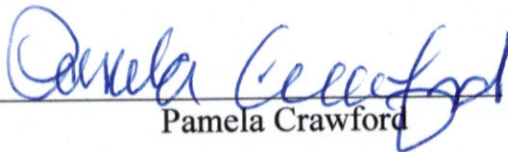
2 1. I am the Plaintiff in this action. I make this affidavit as required by California
3 Civil Code § 1780(d).

4 2. The Complaint in this action is filed in a proper place for the trial of this action
5 because defendant is doing business in this county.

6 3. The Complaint in this action is further filed in a proper place for the trial of this
7 action because the transactions that are the subject of the action occurred, in part, in this
8 county.

9
10 I declare under penalty of perjury under the laws of the United States that the foregoing
11 is true and correct to the best of my knowledge.

12 Executed this 12th day of May, 2014, at San Diego, California.

13
14 
15 Pamela Crawford