

1 BONNETT, FAIRBOURN, FRIEDMAN
 & BALINT, P.C.
 2 ELAINE A. RYAN (*To be Admitted Pro Hac Vice*)
 PATRICIA N. SYVERSON (CA SBN 203111)
 3 LINDSEY M. GOMEZ-GRAY (*To be Admitted Pro Hac Vice*)
 2325 E. Camelback Rd. Suite 300
 4 Phoenix, AZ 85016
 5 eryl@bffb.com
 psyverson@bffb.com
 lgomez-gray@bffb.com
 6 Telephone: (602) 274-1100

7 BONNETT, FAIRBOURN, FRIEDMAN
 & BALINT, P.C.
 8 Manfred P. Muecke (CA SBN 222893)
 600 W. Broadway, Suite 900
 9 San Diego, California 92101
 mmuecke@bffb.com
 10 Telephone: (619) 756-7748

11 STEWART M. WELTMAN, LLC
 Stewart M. Weltman (*To be Admitted Pro Hac Vice*)
 12 53 W. Jackson Suite 364
 Chicago, IL 60604
 13 sweltman@weltmanlawfirm.com
 Telephone: (312) 588-5033
 14 (Of Counsel Levin Fishbein Sedran & Berman)

15 Attorneys for Plaintiff

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

18 ASHLEY FRANZ, On Behalf of
 19 Herself and All Others Similarly
 Situated,

20 Plaintiff,

21 v.

22 BEIERSDORF, INC., a Delaware
 23 corporation and BEIERSDORF
 NORTH AMERICA, INC., a
 24 Delaware corporation,

25 Defendants.

Case No.: '14CV2241 LAB RBB

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF THE UNFAIR
 COMPETITION LAW, Business
 and Professions Code §17200 *et*
seq.; and
2. VIOLATION OF THE
 CONSUMERS LEGAL
 REMEDIES ACT,
 Civil Code §1750 *et seq.*

DEMAND FOR JURY TRIAL

26
27
28

1 Plaintiff Ashley Franz brings this action on behalf of herself and all others
2 similarly situated against Defendants Beiersdorf, Inc. and Beiersdorf North
3 America, Inc. and states:

4 **NATURE OF ACTION**

5 1. Defendants manufacture, market, sell and distribute NIVEA Skin
6 Firming Hydration Body Lotion with CoQ10 Plus formulated with Co-Enzyme Q10
7 Complex, Hydra-IQ and glycerin (“NIVEA CoQ10 Lotion”). On the front of each
8 and every Nivea CoQ10 Lotion bottle, where consumers cannot miss it, Defendants
9 represent that the Product “improves skin firmness within 2 weeks”.¹ Defendants
10 reaffirm on the back of every bottle that the Product is “proven to firm and tighten
11 skin’s surface in as little as two weeks” (collectively, the “skin firming
12 representations”).

13 2. In truth, NIVEA CoQ10 Lotion is not proven to improve skin firmness
14 within or in as little as two weeks or ever. The only ingredient contained in the
15 Product capable of firming and tightening the skin is CoQ10.² A High Performance
16 Liquid Chromatography (“HPLC”) analysis capable of detecting substances present
17 in concentrations as little as one part per million, a thin layer chromatography
18 (“TLC”) analysis and a mass spectral analysis (“MSA”) of the Product have all
19 shown the Product contains woefully insufficient amounts of CoQ10 to provide any
20 skin firming benefit. And, the trace amounts of CoQ10 in the Product have not
21 been reduced to a particle size capable of readily penetrating the skin’s stratum
22 corneum surface reducing the odds that what little CoQ10 is in the Product actually
23 reaches beneath the epidermis to the dermal layer of skin responsible for much of
24

25 ¹ Recently, Defendants changed the front label from “improves skin firmness within
26 2 weeks” to “improves skin firmness in as little as two weeks.” Both of these
27 representations are false, misleading and reasonably likely to deceive consumers.

28 ² Hydra-IQ, glycerin and the other ingredients in the Product are skin moisturizers
and softeners.

1 the skin's tensile strength. Defendants' skin firming representations are false,
2 misleading and reasonably likely to deceive the public.

3 3. As a result of Defendants' deceptive skin firming representations,
4 consumers – including Plaintiff and members of the proposed Class – have been
5 deceived into purchasing what they believed to be a Product “proven” to firm skin
6 within or in as little as 2 weeks when, in fact, the trace amounts of oversized
7 CoQ10 particles in the Product are incapable of firming and tightening the skin
8 “within two weeks”, or “in as little as two weeks” or ever. Plaintiff and Class
9 members paid a substantial (approximately \$4.00) price premium for the skin
10 firming Nivea CoQ10 Lotion over Defendants' other Hydra-IQ and glycerin lotions
11 that do not claim to improve skin firmness within or in as little as 2 weeks.

12 4. Plaintiff brings this action on behalf of herself and other similarly
13 situated consumers who have purchased NIVEA CoQ10 Lotion to halt the
14 dissemination of this false, misleading and deceptive advertising message, correct
15 the false and misleading perception it has created in the minds of consumers, and
16 obtain redress for those who have purchased NIVEA CoQ10 Lotion. Based on
17 violations of California's unfair competition laws (detailed below), Plaintiff seeks
18 injunctive and restitutionary relief for consumers who purchased the Product.

19 **JURISDICTION AND VENUE**

20 5. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2).
21 The matter in controversy, exclusive of interest and costs, exceeds the sum or value
22 of \$5,000,000 and is a class action in which there are in excess of 100 class
23 members and Class members are citizens of a state different from Defendants.

24 6. This Court has personal jurisdiction over Defendants because
25 Defendants are authorized to conduct and do business in California. Defendants
26 have marketed, promoted, distributed, and sold NIVEA CoQ10 Lotion in California
27 and Defendants have sufficient minimum contacts with this State and/or sufficiently
28

1 avail themselves of the markets in this State through their promotion, sales,
2 distribution and marketing within this State to render the exercise of jurisdiction by
3 this Court permissible.

4 7. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)
5 because a substantial part of the events or omissions giving rise to Plaintiff's claims
6 occurred while she resided in this judicial district. Venue is also proper under
7 18 U.S.C. §1965(a) because Defendants transact substantial business in this
8 District.

9 **PARTIES**

10 8. Plaintiff Ashley Franz is a citizen of California and resides in San
11 Diego, California. In or around 2012, Plaintiff purchased NIVEA CoQ10 Lotion
12 from a third-party retailer in San Diego, California. Prior to purchasing the
13 Product, Plaintiff was exposed to and saw Defendants' skin firming representations
14 by reading the NIVEA CoQ10 Lotion label. Plaintiff purchased NIVEA CoQ10
15 Lotion in reliance on Defendants' skin firming representations. She paid a
16 substantial premium for the NIVEA CoQ10 Lotion. The NIVEA CoQ10 Lotion
17 Plaintiff purchased did not firm or tighten her skin within 2 weeks as represented,
18 or ever. As a result, Plaintiff suffered injury in fact and lost money. If Defendants
19 were to remove the skin firming representations, such that the Product was priced
20 according to its true value, Plaintiff may purchase the Product in the future to use as
21 a skin moisturizer but not skin firmer or tightener.

22 9. Defendant Beiersdorf, Inc. is a Delaware corporation with its principal
23 place of business in Wilton, Connecticut. Beiersdorf, Inc. manufactures,
24 distributes, markets and sells NIVEA CoQ10 Lotion and created the deceptive skin
25 firming representations, which it caused to be disseminated to consumers
26 nationwide, including in California.

27 10. Defendant Beiersdorf North America, Inc. is a Delaware corporation
28

1 with its principal place of business in Wilton, Connecticut. Beiersdorf North
2 America, Inc. manufactures, distributes, markets and sells NIVEA CoQ10 Lotion
3 and created the deceptive skin firming representations, which it caused to be
4 disseminated to consumers nationwide, including in California.

5 11. Plaintiff is informed and believes, and thus alleges, that at all times
6 herein mentioned, each of the Defendants was the agent, employee, representative,
7 partner, joint venturer, and/or alter ego of the other Defendant and, in doing the
8 things alleged herein, was acting within the course and scope of such agency,
9 employment, representation, on behalf of such partnership or joint venture, and/or
10 as such alter ego, with the authority, permission, consent, and/or ratification of the
11 other Defendant

12 **FACTUAL ALLEGATIONS**

13 ***NIVEA CoQ10 Lotion***

14 12. Defendants manufacture, market and sell the Nivea line of skin and
15 body care products. This lawsuit concerns one of those products – NIVEA Skin
16 Firming Hydration Body Lotion with CoQ10 Plus. Defendants launched NIVEA
17 CoQ10 Lotion in 2010. NIVEA CoQ10 Lotion is sold online and in virtually every
18 major food, drug, and mass retail outlet in the country.

19 13. Since the Product's launch, Defendants have consistently conveyed the
20 message to consumers throughout the United States, including California, that their
21 NIVEA CoQ10 Lotion is "proven" to "improve skin firmness within two weeks."
22 It is not. Defendants' skin firming representations are false, misleading and
23 deceptive.

24 14. The skin firming ingredient in Nivea CoQ10 Lotion is Co-Enzyme
25 Q10. Co-Enzyme Q10, also known as ubiquinone or CoQ10, is a vitamin-like
26 substance with antioxidant properties. CoQ10 is a deep orange color.

27 15. To be able to provide skin firming benefits, CoQ10 must penetrate the
28

1 skin's stratum corneum surface, the outermost layer of the epidermis, which acts as
2 an effective barrier to most compounds, and reach the living layers of epidermis
3 and the second layer of the skin, the dermis. The dermis is the fibrous-connective
4 tissue or supportive layer of the skin and is responsible for much of the skin's
5 tensile strength. Simply adding CoQ10 in its native (raw) state to a cream or lotion
6 and applying it topically results in minute to no absorption into the skin cells. To
7 ensure penetration into the living layers of the epidermis and dermis, the CoQ10
8 particles should be reduced in size by, for example, using nanoparticle technology.
9 Once properly processed, a therapeutically appropriate level of administration is
10 required to have any meaningful skin firming effect.

11 16. Reducing the CoQ10 in the Product to nanoparticle size is a very
12 expensive process and would be cost prohibitive if employed in this Product. But
13 even if nanotechnology has been employed – which is unlikely – the trace amounts
14 of CoQ10 in the Product cannot provide firmer more toned skin within or in as little
15 as two weeks or ever.

16 ***NIVEA CoQ10 Lotion Is Not Proven to Firm or Tighten the Skin In as Little as***
17 ***Two Weeks or Ever***

18 17. The NIVEA CoQ10 bottle states that the Product is “Proven to firm
19 and tighten the skin's surface in as little as two weeks.” By prefacing the skin
20 firming representations with the word “proven”, Defendants are representing to
21 consumers that credible scientific evidence supports the skin firming
22 representations. In fact, scientific analyses have shown that the Product contains
23 insufficient amounts of CoQ10 to provide skin firming benefits in as little as two
24 weeks, or ever, and the trace amounts of CoQ10 particles in the Product have not
25 been reduced in size to facilitate penetration into the dermal layer of the skin.

26 18. Three sensitive techniques in modern analytical chemistry – HPLC,
27 TLC and MSA – found no or only trace amounts of CoQ10 in the Product. The
28

1 HPLC analyses used UV detection, which can detect substances in concentrations
2 as little as one part per million. The Product contained just over one part per
3 million of CoQ10, a de minimis amount.

4 19. MSA, which looks for the presence of CoQ10 according to molecular
5 weight, confirmed that only a trace amount of the ingredient is present in the
6 Product.

7 20. And, a TLC analysis comparing a sample of the lotion extracted with
8 an organic solvent in which CoQ10 is soluble with an authentic sample on a TLC
9 silica gel plate failed to detect the presence of any CoQ10.

10 21. Thus, no less than three separate chemical analyses performed on the
11 Product consistently showed trace amounts, at most, of CoQ10 in the Product.
12 Further indicative of the trace amount of CoQ10 in the Product is its bright white
13 color without a hint of CoQ10's deep orange coloring.

14 22. The trace amount of CoQ10 in the Product is incapable of providing
15 skin firming benefits within or in as little as two weeks as represented, or ever,
16 particularly since the CoQ10 particles are not sufficiently processed to make them
17 readily capable of penetrating the skin.

18 23. Scientific studies that have reported skin firming benefits from CoQ10
19 used preparations containing much higher concentrations of CoQ10 than are in the
20 Product, with CoQ10 reduced to nanoparticle size. Even then the reported positive
21 effects at this much higher doses occurred well after two weeks and in some
22 instances after months of continued use – not within two weeks of use as
23 Defendants represent.

24 ***The Impact of Defendants' Wrongful Conduct***

25 24. Even though NIVEA CoQ10 Lotion contains insufficient amounts of
26 insufficiently processed CoQ10 to firm and tighten the skin's surface, Defendants
27 continue to unequivocally convey through their advertising and labeling one
28

1 uniform message: NIVEA CoQ10 Lotion is proven to provide firmer more toned
2 skin within or in as little as two weeks.

3 25. Each and every consumer who purchases NIVEA CoQ10 Lotion is
4 exposed to Defendants' deceptive skin firming representations because they appear
5 prominently and conspicuously, and almost exclusively on the front of each bottle
6 as follows:



24 26. The back panel of each NIVEA CoQ10 Lotion repeats the deceptive
25 skin firming representations, claiming that the Product is “proven to firm and
26 tighten skin’s surface in as little as two weeks”:³

27 ³ The former label used during most of the class period is attached as Exhibit A.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



27. As the manufacturer and/or distributor of NIVEA CoQ10 Lotion, Defendants possess specialized knowledge regarding the content and effects of the ingredients contained in NIVEA CoQ10 Lotion and are in a superior position to learn of the effects—and have learned of the effects—NIVEA CoQ10 Lotion has on consumers.

28. Specifically, Defendants knew or should have known, but failed to disclose that NIVEA CoQ10 Lotion contains de minimis amounts of CoQ10 and the trace amounts are unlikely to penetrate the skin's surface such that the Product

1 cannot provide firmer more toned skin within or in as little as two weeks or ever.

2 29. Plaintiff and Class members have been and will continue to be
3 deceived or misled by Defendants' deceptive skin firming representations. Plaintiff
4 purchased and used the Product during the Class period and in doing so, read and
5 considered the NIVEA CoQ10 Lotion labeling and packaging and based her
6 decision to buy the Product on the skin firming representations. Defendants' skin
7 firming representations were a material factor influencing Plaintiff's decision to
8 purchase and use the Product. Plaintiff would not have purchased the Product had
9 she known that Defendants' skin firming representations were false and misleading.

10 30. As a result, Plaintiff and the Class members have been damaged in
11 their purchases of the Product and have been deceived into purchasing a Product
12 that they believed, based on Defendants' representations, would firm and tone skin
13 within two weeks, when, in fact, it is incapable of firming and toning skin.

14 31. Based upon the purported skin firming representations conveyed in
15 their marketing and advertising campaign, Defendants are able to price NIVEA
16 CoQ10 Lotion at a substantial multi-dollar premium over Defendants' other Hydra-
17 IQ and glycerin lotions that do not make the deceptive skin firming
18 representations.⁴

19 32. Defendants have reaped enormous profits from their false marketing
20 and sale of NIVEA CoQ10 Lotion.

21 **CLASS DEFINITION AND ALLEGATIONS**

22 33. Plaintiff brings this action on behalf of herself and all other similarly
23 situated California consumers pursuant to Rule 23(a), (b)(2) and (b)(3) of the
24 Federal Rules of Civil Procedure and seeks certification of the following Class:

25 _____
26 ⁴ For example, a 16.9 ounce bottle of Nivea CoQ10 Lotion retails for \$10.79, while
27 16.9 ounce bottles of Nivea with Hydra-1Q Plus Almond Oil, Nivea with Hydra-1Q
28 Plus Shea Butter, Nivea with Hydra-1Q plus B5 and Nivea with Hydra-1Q Plus
Cocoa Butter and Vitamin E retail for \$6.79 at Walgreens on August 17, 2014.

1 **Multi-State Class Action**

2 All consumers who, within the applicable statute of
3 limitations period, purchased NIVEA CoQ10 Lotion in
4 California and states with similar laws.⁵

5 Excluded from this Class are Defendants and their
6 officers, directors and employees and those who
7 purchased NIVEA CoQ10 Lotion for the purpose of
8 resale.

9 34. In the alternative, Plaintiff seeks certification of the following class:

10 **California-Only Class**

11 All consumers who, within the applicable statute of
12 limitations period, purchased NIVEA CoQ10 Lotion in
13 California.

14 Excluded from this Class are Defendants and their
15 officers, directors and employees and those who
16 purchased NIVEA CoQ10 Lotion for the purpose of
17 resale.

18 35. *Numerosity.* The members of the Class are so numerous that joinder
19 of all members of the Class is impracticable. Plaintiff is informed and believes that
20 the proposed Class contains thousands of purchasers of NIVEA CoQ10 Lotion who
21 have been damaged by Defendants' conduct as alleged herein. The precise number
22 of Class members is unknown to Plaintiff.

23 36. *Existence and Predominance of Common Questions of Law and*
24 *Fact.* This action involves common questions of law and fact, which predominate
25 over any questions affecting individual Class members. These common legal and
26 factual questions include, but are not limited to, the following:

27 _____
28 ⁵ While discovery may alter the following, Plaintiff preliminarily avers that
Defendants violated the laws prohibiting unfair and deceptive trade practices of the
states and territories wherein Class members reside, including: Cal. Bus. & Prof.
Code §17200 et seq.; California Civil Code §1750 et seq.; Fla. Stat. §501.201 et
seq.; Fla. Stat. §§817.06; 815 Ill. Comp. Stat. 502/1, et seq.; Mass. Gen. Laws
ch.93A et seq.; Mich. Stat. §445.901 et seq.; Minn. Stat. §8.31 et seq.; Missouri
Stat. §407.010 et seq.; N.J. Rev. Stat. §56:8-1 et seq.; N.Y. Gen. Bus. Law §349 et
seq.; and Wash. Rev. Code. §19.86.010 et seq.

1 (a) whether the claims discussed above are true, or are misleading,
2 or objectively reasonably likely to deceive;

3 (b) whether Defendants' alleged conduct violates public policy;

4 (c) whether the alleged conduct constitutes violations of the laws
5 asserted;

6 (d) whether Defendants engaged in false or misleading advertising;
7 and

8 (e) whether Plaintiff and Class members are entitled to other
9 appropriate remedies, including corrective advertising and injunctive relief.

10 37. **Typicality.** Plaintiff's claims are typical of the claims of the members
11 of the Class because, *inter alia*, all Class members were injured through the
12 uniform misconduct described above and were subject to Defendants' deceptive
13 skin firming representations that accompanied each and every bottle of NIVEA
14 CoQ10 Lotion. Plaintiff is advancing the same claims and legal theories on behalf
15 of herself and all members of the Class.

16 38. **Adequacy of Representation.** Plaintiff will fairly and adequately
17 protect the interests of the members of the Class. Plaintiff has retained counsel
18 experienced in complex consumer class action litigation, and Plaintiff intends to
19 prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests
20 to those of the Class.

21 39. **Superiority.** A class action is superior to all other available means for
22 the fair and efficient adjudication of this controversy. The damages or other
23 financial detriment suffered by individual Class members is relatively small
24 compared to the burden and expense that would be entailed by individual litigation
25 of their claims against Defendants. It would thus be virtually impossible for
26 Plaintiff and Class members, on an individual basis, to obtain effective redress for
27 the wrongs done to them. Furthermore, even if Class members could afford such
28

1 individualized litigation, the court system could not. Individualized litigation
2 would create the danger of inconsistent or contradictory judgments arising from the
3 same set of facts. Individualized litigation would also increase the delay and
4 expense to all parties and the court system from the issues raised by this action. By
5 contrast, the class action device provides the benefits of adjudication of these issues
6 in a single proceeding, economies of scale, and comprehensive supervision by a
7 single court, and presents no unusual management difficulties under the
8 circumstances here.

9 40. Plaintiff seeks preliminary and permanent injunctive and equitable
10 relief on behalf of the entire Class, on grounds generally applicable to the entire
11 Class, to enjoin and prevent Defendants from engaging in the acts described, and
12 requiring Defendants to provide full restitution to Plaintiff and Class members.

13 41. Unless a Class is certified, Defendants will retain monies received as a
14 result of their conduct that were taken from Plaintiff and Class members. Unless a
15 Class-wide injunction is issued, Defendants will continue to commit the violations
16 alleged, and the members of the Class and the general public will continue to be
17 deceived.

18 42. Defendants have acted and refused to act on grounds generally
19 applicable to the Class, making appropriate final injunctive relief with respect to the
20 Class as a whole.

21 **COUNT I**

22 **Violation of Business & Professions Code §17200, et seq.**

23 43. Plaintiff repeats and re-alleges the allegations contained in the
24 paragraphs above, as if fully set forth herein.

25 44. Plaintiff brings this claim individually and on behalf of the Class.

26 45. As alleged herein, Plaintiff has suffered injury in fact and lost money
27 or property as a result of Defendants' conduct because she purchased NIVEA
28

1 CoQ10 Lotion in reliance on Defendants’ skin firming representations, but did not
2 receive a Product that improves skin’s firmness within or in as little as two weeks,
3 or ever.

4 46. The Unfair Competition Law, Business & Professions Code §17200, *et*
5 *seq.* (“UCL”), and similar laws in other states, prohibits any “unlawful,”
6 “fraudulent” or “unfair” business act or practice and any false or misleading
7 advertising.

8 47. In the course of conducting business, Defendants committed unlawful
9 business practices by, *inter alia*, making the skin firming representations (which
10 also constitutes advertising within the meaning of §17200) and omissions of
11 material facts, as set forth more fully herein, and violating Civil Code §§1572,
12 1573, 1709, 1711, 1770(a)(5), (7), (9) and (16) and Business & Professions Code
13 §§17200, *et seq.*, 17500, *et seq.*, and the common law. Plaintiff and the Class
14 reserve the right to allege other violations of law, which constitute other unlawful
15 business acts or practices. Such conduct is ongoing and continues to this date.

16 48. In the course of conducting business, Defendants committed “unfair”
17 business practices by, *inter alia*, making the skin firming representations (which
18 also constitutes advertising within the meaning of §17200) and omissions of
19 material facts regarding the NIVEA CoQ10 Lotion in their advertising campaign,
20 including the Product’s packaging, as set forth more fully herein. There is no
21 societal benefit from false advertising, only harm. Plaintiff and other Class
22 members paid for a proven effective fast acting skin firming Product, which they
23 did not receive. While Plaintiff and Class members were harmed, Defendants were
24 unjustly enriched by their false representations and omissions. Because the utility of
25 Defendants’ conduct (zero) is outweighed by the gravity of the harm Plaintiff and
26 Class members suffered, Defendants’ conduct is “unfair” having offended an
27 established public policy. Further, Defendants engaged in immoral, unethical,
28

1 oppressive, and unscrupulous activities that are substantially injurious to
2 consumers.

3 49. Further, as stated in this Complaint, Plaintiff alleges violations of
4 consumer protection, unfair competition and truth-in-advertising laws resulting in
5 harm to consumers. Defendants' acts and omissions also violate and offend the
6 public policy against engaging in false and misleading advertising, unfair
7 competition and deceptive conduct towards consumers. This conduct constitutes
8 violations of the unfair prong of Business & Professions Code §17200, et seq.

9 50. There were reasonably available alternatives to further Defendants'
10 legitimate business interests, other than the conduct described herein.

11 51. Business & Professions Code §17200, et seq., also prohibits any
12 "fraudulent business act or practice."

13 52. In the course of conducting business, Defendants committed
14 "fraudulent business act or practices" by, *inter alia*, making the skin firming
15 representations (which also constitutes advertising within the meaning of §17200)
16 and omissions of material facts regarding the NIVEA CoQ10 Lotion in their
17 advertising campaign, including the Product's packaging, as set forth more fully
18 herein.

19 53. Defendants misrepresented on each and every Product package that the
20 Product is "proven" to "improve[] skin firmness within 2 weeks" when, in fact, the
21 Product contains insufficient amounts of oversized CoQ10 particles to provide skin
22 firming benefits within or in as little as two weeks or ever.

23 54. Defendants' actions, claims, omissions and misleading statements, as
24 more fully set forth above, were also false, misleading and/or likely to deceive the
25 consuming public within the meaning of Business & Professions Code §17200, et
26 seq.

27 55. Plaintiff and other members of the Class have in fact been deceived as
28

1 a result of their reliance on Defendants' material representations and omissions,
2 which are described above. This reliance has caused harm to Plaintiff and other
3 members of the Class who each purchased Defendants' NIVEA CoQ10 Lotion.
4 Plaintiff and the other Class members have suffered injury in fact and lost money as
5 a result of these unlawful, unfair, and fraudulent practices.

6 56. Defendants knew, or should have known, that their material
7 representations and omissions would be likely to deceive the consuming public and
8 result in consumers purchasing Nivea CoQ10 Lotion and, indeed, intended to
9 deceive consumers.

10 57. As a result of their deception, Defendants have been able to reap unjust
11 revenue and profit.

12 58. Unless restrained and enjoined, Defendants will continue to engage in
13 the above-described conduct. Accordingly, injunctive relief is appropriate

14 59. Plaintiff, on behalf of herself, all others similarly situated, and the
15 general public, seeks restitution of all money obtained from Plaintiff and the
16 members of the Class collected as a result of unfair competition, an injunction
17 prohibiting Defendants from continuing such practices, corrective advertising and
18 all other relief this Court deems appropriate, consistent with Business &
19 Professions Code §17203.

20 **COUNT II**
21 **Violations of the Consumers Legal Remedies Act –**
22 **Civil Code §1750 *et seq.***

23 60. Plaintiff repeats and re-alleges the allegations contained in the
24 paragraphs above, as if fully set forth herein.

25 61. Plaintiff brings this claim individually and on behalf of the Class.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

62. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §1750, *et seq.* (the “Act”) and similar laws in other states.

63. Plaintiff is a consumer as defined by California Civil Code §1761(d). Defendants’ NIVEA CoQ10 Lotion is a “good” within the meaning of the Act.

64. Defendants violated and continue to violate the Act by engaging in the following practices proscribed by California Civil Code §1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of NIVEA CoQ10 Lotion:

(5) Representing that [NIVEA CoQ10 Lotion has] . . . approval, characteristics, . . . uses [and] benefits . . . which [it does] not have

* * *

(7) Representing that [NIVEA CoQ10 Lotion is] of a particular standard, quality or grade . . . if [it is] of another.

* * *

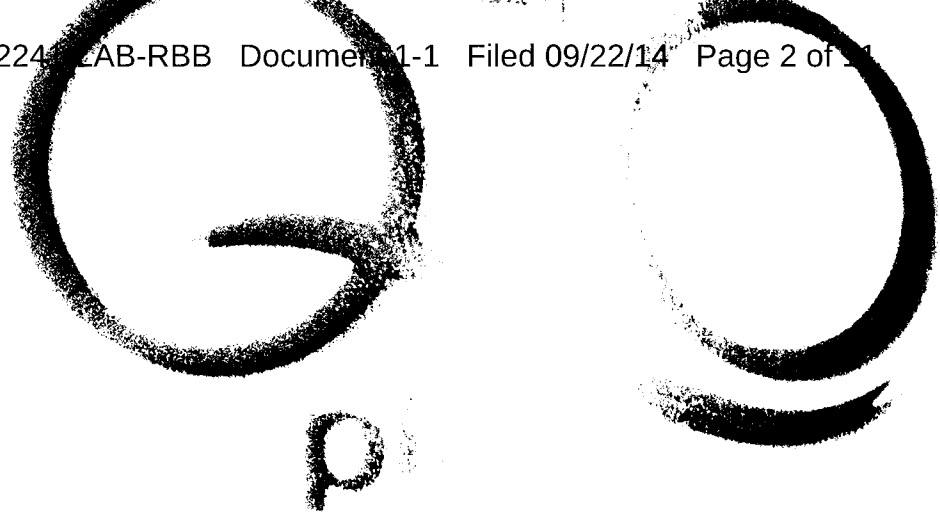
(9) Advertising goods . . . with intent not to sell them as advertised.

* * *

(16) Representing that [NIVEA CoQ10 Lotion has] been supplied in accordance with a previous representation when [it has] not.

65. Defendants violated the Act by representing and failing to disclose material facts on the NIVEA CoQ10 Lotion labeling and packaging and associated advertising, as described above, when it knew, or should have known, that the representations were false and misleading and that the omissions were of material facts it was obligated to disclose.

EXHIBIT A



Improve Firmness
Weeks

13.5 FL. OZ. 400mL

Formulated with: Hydration Technology
Enzyme Complex
Benefit: All day moisturization
Tighter, more resilient skin
Softer, smoother skin texture

Proven within 2 weeks, to provide:

- more hydrated skin
- softer feel
- more resilient skin
- softer, smoother skin texture



NIVEA's exclusive Hydra IQ technology supports skin's own hydration network to unleash deep, non-stop moisture that lasts more than 24 hours.

To Use: Smooth lotion over skin daily

dermatologically tested.

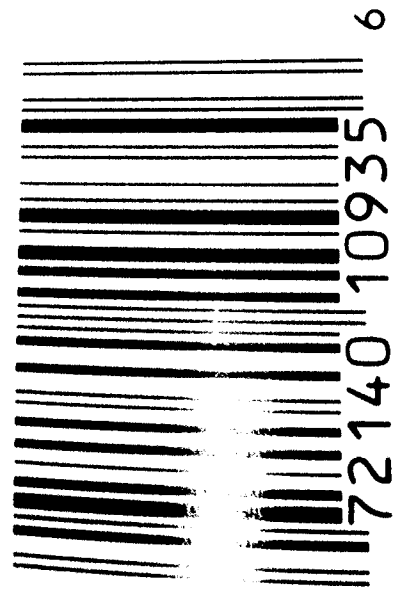
www.NIVEAUSA.com

Questions? Comments? Call 1-800-227-4703

Ingredients: Water, Glycerin, Mineral Oil, Glyceryl Stearate SE, Octyldodecanol, Alcohol Denat., Stearic Acid, Dicaprylyl Ether, Dimethicone, Creatine, Ubiquinone, Glyceryl Glucoside, N-Butyl Alcohol, Fragrance, Carbomer, Sodium Hydroxide,

I-Methylindantoin-2-Imide, Phenoxyethanol, Methylparaben, Ethylparaben.

Caution: Keep out of reach of children.
For external use only.
Avoid contact with eyes.
Stop use if irritation develops.



BDF
Beiersdorf

Beiersdorf Inc.



Light  Rich

NIVEA Skin Firming Moisturizer Proven to firm and tighten skin's surface in as little as two weeks.

Formulated with:

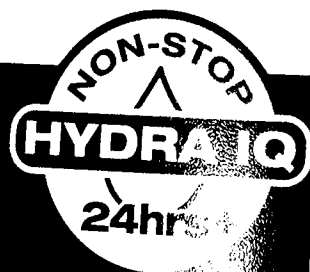
Hydra IQ Technology
Co-Enzyme Q10 Complex
Glycerin

Benefit:

All day moisturization
Tighter, more resilient skin
Softer, smoother skin texture

Proven within 2 weeks, to provide:

- ✓ Firmer, more toned skin
- ✓ Tighter feeling skin
- ✓ More resilient skin
- ✓ Softer, smoother skin texture



NIVEA's exclusive Hydra IQ technology supports skin's own hydration network to unleash deep, non-stop moisture that lasts more than 24 hours.

To Use: Smooth lotion over body daily.

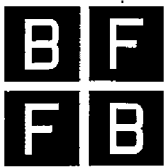
Dermatologically Tested.

www.NIVEAUSA.com

Questions? Comments? 1-800-227-4103

Ingredients: Water

EXHIBIT B



WILLIAM G. FAIRBOURN
VAN BUNCH⁹
ELAINE A. RYAN⁸
KATHRYN A. HONECKER³
GUY A. HANSON
MANFRED P. MUECKE⁵
T. BRENT JORDAN⁷
LINDSEY M. GOMEZ-GRAY
BARRETT N. LINDSEY

ANDREW S. FRIEDMAN
ROBERT J. SPURLOCK
WENDY J. HARRISON²
PATRICIA N. SYVERSON²
KIMBERLY C. PAGE⁴
WILLIAM F. KING
ANDREW M. EVANS
KEVIN R. HANGER

FRANCIS J. BALINT, JR.¹⁰
C. KEVIN DYKSTRA
ANDREW Q. EVERROD
JONATHAN S. WALLACK
CHRISTINA L. BANNON
TONNA K. FARRAR⁶
TY D. FRANKEL
ERIC D. ZARD

JERRY C. BONNETT,¹ Of Counsel
MICHAEL N. WIDENER, Of Counsel

¹Admitted Also in Colorado
²Admitted Also in California
³Admitted Also in Illinois
⁴Admitted Also in Alabama and Georgia
⁵Admitted Only in California
⁶Admitted Only in California, Kansas, Missouri and Oregon (located in Oregon)
⁷Admitted Only in Pennsylvania
⁸Admitted Also in Colorado, Idaho, Kansas, Missouri, Texas, Utah and Washington
⁹Admitted Also in Tennessee and West Virginia
¹⁰Admitted Also in Massachusetts and Virginia

September 22, 2014

VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7012 3460 0000 7080 8851)

Beiersdorf North America, Inc.
c/o C T Corporation System
818 W Seventh St
Los Angeles, California 90017

VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7012 3460 0000 7080 8868)

Beiersdorf North America, Inc.
General Counsel
45 Danbury Road
Wilton, CT 06897

Re: Franz v. Beiersdorf, Inc., et al.

Dear Sirs or Madams:

Our law firm together with Stewart Weltman, LLC (Of Counsel Levin Fishbein Sedran & Berman) represent Ashley Franz and all other consumers similarly situated in an action against Beiersdorf, Inc. and Beiersdorf North America, Inc. (collectively “Defendants”), arising out of, *inter alia*, misrepresentations, either express or implied, by Defendants to consumers that their NIVEA Skin Firming Body Lotion with CoQ10 Plus (“NIVEA CoQ10 Lotion”) is “proven to firm and tighten skin’s surface in as little as two weeks” (“skin firming representations”).

Ms. Franz and others similarly situated purchased NIVEA CoQ10 Lotion unaware that Defendants’ skin firming representations prominently featured on each and every Product package are false. Defendants’ NIVEA CoQ10 Lotion contains trace amount of oversized CoQ10 particles in the Product that are incapable of firming and tightening the skin “within two weeks”, “in as little as two weeks”, or ever. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

September 22, 2014
Page 2

Defendants' skin firming representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Defendants with the intent to induce the consuming public to purchase Nivea CoQ10 Lotion. The skin firming representations do not assist consumers; they simply mislead them.

Defendants' skin firming representations violate California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that [Nivea CoQ10 Lotion has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

* * *

- (7) Representing that [Nivea CoQ10 Lotion is] of a particular standard, quality or grade, . . . if [it is] of another.

* * *

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

* * *

- (16) Representing that [Nivea CoQ10 Lotion has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Defendants' skin firming representations also constitute violations of California Business and Professions Code §17200, *et seq.*

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all others similarly situated that Defendants immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Defendants should offer to refund the purchase price to all consumer purchasers of their Product, plus reimbursement for interest, costs, and fees.

Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Defendants

September 22, 2014
Page 3

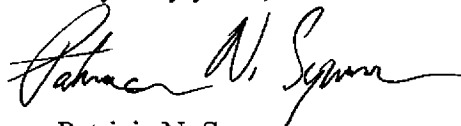
address these violations immediately.

Defendants must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Product;
2. Notify all such purchasers so identified that upon their request, Defendants will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for the Product, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all the Nivea CoQ10 Lotion purchasers who so request; and
4. Cease from expressly or impliedly representing to consumers that your Product is “proven” to “improve skin firmness within two weeks” when there is no reasonable basis for so claiming, as more fully described in the enclosed Complaint.

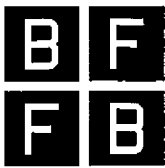
We await your response.

Very truly yours,



Patricia N. Syverson
For the Firm

PNS:lmg
Enclosures



JERRY C. BONNETT,¹ Of Counsel
MICHAEL N. WIDENER, Of Counsel

¹Admitted Also in Colorado
²Admitted Also in California
³Admitted Also in Illinois
⁴Admitted Also in Alabama and Georgia
⁵Admitted Only in California
⁶Admitted Only in California, Kansas, Missouri
and Oregon (located in Oregon)
⁷Admitted Only in Pennsylvania
⁸Admitted Also in Colorado, Idaho, Kansas,
Missouri, Texas, Utah and Washington
⁹Admitted Also in Tennessee and West Virginia
¹⁰Admitted Also in Massachusetts and Virginia

September 22, 2014

VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7012 3460 0000 7080 8851)

Beiersdorf North America, Inc.
c/o C T Corporation System
818 W Seventh St
Los Angeles, California 90017

VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7012 3460 0000 7080 8868)

Beiersdorf North America, Inc.
General Counsel
45 Danbury Road
Wilton, CT 06897

Re: Franz v. Beiersdorf, Inc., et al.

Dear Sirs or Madams:

Our law firm together with Stewart Weltman, LLC (Of Counsel Levin Fishbein Sedran & Berman) represent Ashley Franz and all other consumers similarly situated in an action against Beiersdorf, Inc. and Beiersdorf North America, Inc. (collectively "Defendants"), arising out of, *inter alia*, misrepresentations, either express or implied, by Defendants to consumers that their NIVEA Skin Firming Body Lotion with CoQ10 Plus ("NIVEA CoQ10 Lotion") is "proven to firm and tighten skin's surface in as little as two weeks" ("skin firming representations").

Ms. Franz and others similarly situated purchased NIVEA CoQ10 Lotion unaware that Defendants' skin firming representations prominently featured on each and every Product package are false. Defendants' NIVEA CoQ10 Lotion contains trace amount of oversized CoQ10 particles in the Product that are incapable of firming and tightening the skin "within two weeks", "in as little as two weeks", or ever. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

September 22, 2014
Page 2

Defendants' skin firming representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Defendants with the intent to induce the consuming public to purchase Nivea CoQ10 Lotion. The skin firming representations do not assist consumers; they simply mislead them.

Defendants' skin firming representations violate California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that [Nivea CoQ10 Lotion has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

* * *

- (7) Representing that [Nivea CoQ10 Lotion is] of a particular standard, quality or grade, . . . if [it is] of another.

* * *

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

* * *

- (16) Representing that [Nivea CoQ10 Lotion has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Defendants' skin firming representations also constitute violations of California Business and Professions Code §17200, *et seq.*

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all others similarly situated that Defendants immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Defendants should offer to refund the purchase price to all consumer purchasers of their Product, plus reimbursement for interest, costs, and fees.

Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Defendants

September 22, 2014
Page 3

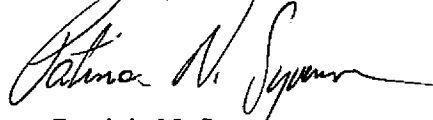
address these violations immediately.

Defendants must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Product;
2. Notify all such purchasers so identified that upon their request, Defendants will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for the Product, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all the Nivea CoQ10 Lotion purchasers who so request; and
4. Cease from expressly or impliedly representing to consumers that your Product is “proven” to “improve skin firmness within two weeks” when there is no reasonable basis for so claiming, as more fully described in the enclosed Complaint.

We await your response.

Very truly yours,



Patricia N. Syverson
For the Firm

PNS:lmg
Enclosures

1 BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.

2 ELAINE A. RYAN (*To be Admitted Pro Hac Vice*)

3 PATRICIA N. SYVERSON (CA SBN 203111)

LINDSEY M. GOMEZ-GRAY (*To be Admitted Pro Hac Vice*)

2325 E. Camelback Rd. Suite 300

Phoenix, AZ 85016

4 eryl@bffb.com

psyverson@bffb.com

5 lgomez-gray@bffb.com

Telephone: (602) 274-1100

6 BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.

7 Manfred P. Muecke (CA SBN 222893)

8 600 W. Broadway, Suite 900

San Diego, California 92101

9 mmuecke@bffb.com

Telephone: (619) 756-7748

10 STEWART M. WELTMAN, LLC

11 Stewart M. Weltman (*To be Admitted Pro Hac Vice*)

53 W. Jackson Suite 364

12 Chicago, IL 60604

sweltman@weltmanlawfirm.com

13 Telephone: (312) 588-5033

(Of Counsel Levin Fishbein Sedran & Berman)

14
15 Attorneys for Plaintiff

16
17 **UNITED STATES DISTRICT COURT**

18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 ASHLEY FRANZ, On Behalf of
20 Herself and All Others Similarly
Situating,

21 Plaintiff,

22 v.

23 BEIERSDORF, INC., a Delaware
24 corporation and BEIERSDORF
NORTH AMERICA, INC., a
25 Delaware corporation,

26 Defendants.

Case No.: '14CV2241 LAB RBB

CLASS ACTION

DECLARATION OF PATRICIA N.
SYVERSON PURSUANT TO
CALIFORNIA CIVIL CODE §1780(d)

1 I, Patricia N. Syverson, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of
3 the State of California. I am a shareholder of the law firm of Bonnett, Fairbourn,
4 Friedman & Balint, P.C., the counsel of record for plaintiff in the above-entitled
5 action.

6 2. Defendants Beiersdorf, Inc. and Beiersdorf North America, Inc. have
7 done and are doing business in the Southern District of California. Such business
8 includes the marketing, distributing and sale of their NIVEA Skin Firming Body
9 Lotion with CoQ10 Plus. Furthermore, Plaintiff Olvera purchased NIVEA Skin
10 Firming Body Lotion with CoQ10 Plus in San Diego, California.

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

13 Executed this 22nd day of September 2014, at Phoenix, Arizona.

14 BONNETT, FAIRBOURN, FRIEDMAN
15 & BALINT, P.C.
16 PATRICIA N. SYVERSON (203111)

17 s/ Patricia N. Syverson
18 Patricia N. Syverson
19 2325 E. Camelback Rd., Ste. 300
20 Phoenix, Arizona 85016
21 Telephone: (602) 274-1100
22 psyverson@bffb.com

23 Attorneys for Plaintiff
24
25
26
27
28

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

ASHLEY FRANZ, On Behalf of Herself and All Others Similarly Situated,

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Patricia N Syverson, Bonnett Fairbourn Friedman & Balint 2325 E. Camelback Rd. Suite 300, Phoenix, AZ 85016 602-274-1100

DEFENDANTS

BEIERSDORF, INC., a Delaware corporation and BEIERSDORF NORTH AMERICA, INC., a Delaware corporation,

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)

'14CV2241 LAB RBB

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

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

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

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 Incorporated or Principal Place of Business In This State
2 Incorporated and Principal Place of Business In Another State
3 Foreign Nation
4
5
6

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Labor, and Tax Suits.

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
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); 28:1331 - Federal Question
Brief description of cause: Violation of Bus. & Prof. Code §17200 & CLRA §1750

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 09/22/2014 SIGNATURE OF ATTORNEY OF RECORD /s/Patricia N. Syverson

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE