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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SONIA SEVERINO, on behalf of herself
and others similarly situated,

Plaintiff,

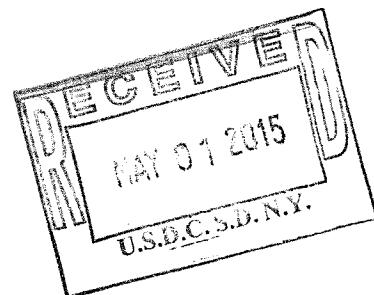
v.

URBAN DECAY COSMETICS, LLC and
L'OREAL USA, INC.,

Defendants.

JUDGE SCHOFIELD

15 CV 3416



Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, SONIA SEVERINO (hereinafter, "Plaintiff"), on behalf of herself and others similarly situated, by and through her undersigned attorneys, hereby files this Class Action Complaint against Defendants, URBAN DECAY COSMETICS, LLC and L'OREAL USA, INC., (collectively, "Defendants") and states as follows based upon her own personal knowledge and the investigation of her counsel:

NATURE OF THE ACTION

1. This is a consumer protection class action arising out of Defendants' deceptive practices in the marketing, advertising, and promotion of their Urban Decay Lush Lash System (hereinafter "Lush Lash System" or "Product"). As alleged with specificity herein, through an extensive, widespread, comprehensive, and uniform nationwide marketing campaign, Defendants claim that the Lush Lash System actually grows lashes by 25% in two weeks, 40% in four weeks, and 63% in six weeks. Defendants claim that the Lush Lash System is able to grow lashes because it contains a "growth accelerating serum." Defendants' lash growth claims however, are false, misleading, and reasonably likely to deceive the public because there is nothing in the Lush Lash System that could actually grow lashes.

2. Defendants make the same grow lash claims on all of the Lush Lash System products and throughout the Lush Lash System products' marketing materials. Each person who purchased the Lush Lash System has been exposed to Defendants' misleading advertising message multiple times. For example, on the front of the packaging for the Lush Lash System, Defendants represent in all capital letters, printed in large, bolded font, that the Lush Lash System will result in "25% LONGER THICKER LASHES IN TWO WEEKS." Also in all capital letters on the front of the Lush Lash System packaging, Defendants state that the Product contains "growth accelerating serum." On the back of the Lush Lash System packaging in all capital letters, printed in large, bolded font, Defendants state "LONGER THICKER LASHES 25% IN TWO WEEKS 40% IN FOUR WEEKS 60% IN SIX WEEKS." The only reason a consumer would purchase the Lush Lash System is to obtain the advertised lash growth benefits and longer lashes.

3. However, nothing in the Lush Lash System is demonstrated to actually make eye lashes grow, particularly at the rates claimed by Defendants. As a result of the misleading lash growth

message conveyed by Defendants' marketing campaign, Defendants have caused Plaintiff and other consumers to purchase a product that does not perform as represented. Plaintiff and other similarly situated consumers have been harmed in the amount they paid for the Lush Lash System.

4. Plaintiff brings this action on behalf of herself and all other similarly situated consumers nationwide, who, from the applicable limitations period up to and including the present (the "Class Period"), purchased the Product. Plaintiff seeks to end Defendants' dissemination of this false and misleading advertising message, correct the false and misleading perception it has created in the minds of consumers, and to obtain redress for those who have purchased the Lush Lash System.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d). This is a putative class action whereby: (i) the proposed class consists of over 100 class members; (ii) at least some of the proposed class members have a different citizenship from Defendants; and (iii) the amount in controversy exceeds the sum of value of \$5,000,000.00, excluding interest and costs.

6. This Court has personal jurisdiction over Defendants because their Product is advertised, marketed, distributed, and sold throughout New York State; Defendants engaged in the wrongdoing alleged in this Complaint throughout the United States, including in New York State; Defendants are authorized to do business in New York State; and Defendants have sufficient minimum contacts with New York and/or otherwise have intentionally availed themselves of the markets in New York State, rendering the exercise of jurisdiction by the Court

permissible under traditional notions of fair play and substantial justice. Moreover, Defendants are engaged in substantial and not isolated activity within New York State.

7. Venue is proper in the Southern District pursuant to 28 U.S.C. § 1391(a) and (b), because a substantial part of the events giving rise to Plaintiff's claims occurred in this District and Defendants are subject to personal jurisdiction in this District. Plaintiff purchased Defendants' Product in New York County.

PARTIES

8. Plaintiff is a citizen of the State of New York and resides in New York County, New York. In the twelve month period prior to the filing of this Complaint, Plaintiff was exposed to and saw Defendants' grow lash claims on www.urbandecay.com and by reading the Product label at a Sephora cosmetics store located in New York County. In reliance on the grow lash claims, Plaintiff purchased the Product for personal consumption through Sephora's website, www.sephora.com. The retail purchase price was approximately \$42.00 for one tube of the Product. Plaintiff purchased the Product believing it would provide the advertised grow lash benefits. When purchasing the Product, Plaintiff read and relied upon the representations on the Product label and on Sephora's website prior to purchasing it. As a result of her purchases, Plaintiff suffered injury in fact and lost money. Had Plaintiff known the truth about Defendants' misrepresentations and omissions, she would not have purchased the Product. Plaintiff is not claiming physical harm or seeking the recovery of personal injury damages.

9. Defendant URBAN DECAY COSMETICS, LLC ("URBAN DECAY") was a limited liability company organized under the laws of the state of Delaware, with its principal place of business at 833 W. 16th Street, Newport Beach, CA 92663. URBAN DECAY developed and manufactured cosmetic products for consumer and professional markets. It provides cosmetic

products throughout the United States through a network of suppliers. On November 26, 2012, URBAN DECAY was acquired by Defendant L'OREAL USA INC. Upon information and belief, URBAN DECAY COSMETICS, LLC dissolved after November 26, 2012 when it was purchased by L'OREAL USA INC.

10. L'OREAL USA INC. ("L'OREAL") is a domestic corporation organized under the laws of the state of Delaware, with its principal place of business located at 575 Fifth Avenue, New York, NY 10017 and an address for service of process at Corporation Service Company, 80 State Street, Albany, NY 12207. L'OREAL develops, manufactures, and advertises cosmetic products for consumer and professional markets. It provides skincare, hair care, hair color, makeup, perfume, and fragrance products throughout the United States through a network of suppliers. Subsequent to the acquisition of URBAN DECAY by L'OREAL on November 26, 2012 but before the dissolution of URBAN DECAY's corporate entity, L'OREAL owned and controlled URBAN DECAY COSMETICS, LLC. Pursuant to L'OREAL's 10-K Annual Report filed with the Securities Exchange Commission, URBAN DECAY has been "fully consolidated" with L'OREAL from December 17, 2012 onwards, the date when the acquisition was finalized.

FACTUAL ALLEGATIONS

The Lush Lash System

11. Defendants manufacture, market, and sell the Urban Decay cosmetics line as part of L'OREAL's "L'Oreal Luxe" brand.

12. The Urban Decay cosmetics line is sold at stores such as Macy's and Sephora, at boutiques, and through e-commerce websites such as Sephora.com, Urbandecay.com, Macys.com, Ulta.com and Amazon.com.

13. Defendants manufacture, distribute, market, and sell nationwide the Lush Lash System, an eyelash serum and mask. The Lush Lash System is a wand containing two separate applicators and liquids at either end of the wand.

14. At one end is a clear liquid that Defendants refer to as the “growth accelerating serum.” This gel-like serum is applied to the roots of the lashes. At the other end of the wand is the “conditioning mask,” which is applied before applying mascara. The Product retails for approximately \$42.00. See the Product below:



Defendants’ False and Deceptive Advertising of the Lush Lash System

15. Throughout their advertising of the Lush Lash System, Defendants have consistently conveyed the very specific message to consumers that the Product, with its “accelerating serum” and “conditioning mask,” will cause “25% LONGER THICKER LASHES IN TWO WEEKS” and that “the results get ridiculously more impressive, showing 40% improvement in 4 weeks, and 63% in 6 weeks.”

16. Since launching the Lush Lash System, Defendants have consistently conveyed their uniform, deceptive message to consumers throughout the United States, including New York, that the Product will cause eye lashes to grow measurable amounts in two, four, and six weeks.

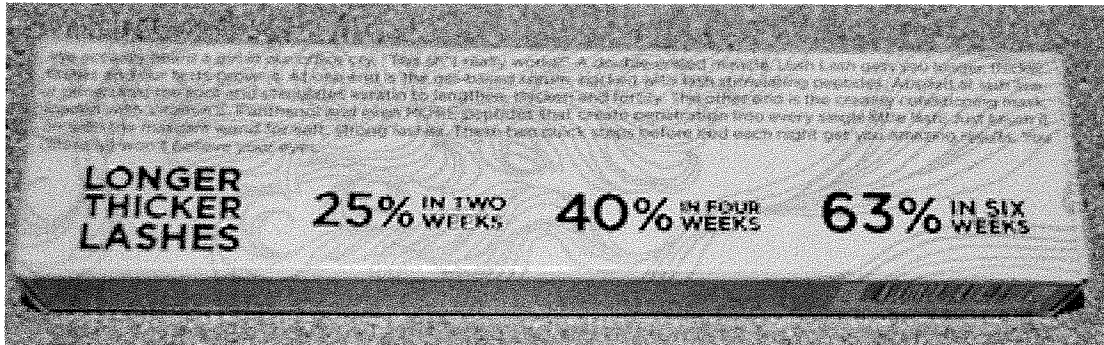
This lash growth message has been made and repeated across a variety of media including Defendants' websites and online promotional materials, and at the point of purchase, on the front and back of the Lush Lash System's packaging and labeling where it cannot be missed by consumers. In truth, Defendants' grow lash claims are false, misleading, and deceptive.

17. Defendants' false, misleading, and deceptive marketing campaign begins with the front of the Product's package and label. The front of every Lush Lash System's packaging and labeling states prominently in all capital letters, printed in large, bolded font, that the Lush Lash System will provide "25% LONGER THICKER LASHES IN TWO WEEKS." The front of the Lush Lash System packaging and labeling also states in all capital bolded letters that the Lush Lash System contain "GROWTH ACCELERATING SERUM." See front of Product packaging and labeling below:

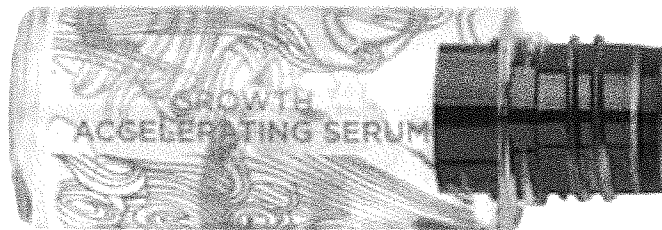


18. Defendants reinforce the false and deceptive grow lash claims on the back of the Lush Lash System's packaging and labeling, which states in all capital letters, printed in large, bolded

font, that the Lush Lash System will provide “LONGER THICKER LASHES,” “25% IN TWO WEEKS,” 40% IN FOUR WEEKS,” and “63% IN SIX WEEKS.”



19. The labeling on the wand of the Lush Lash System also contains the false and misleading lash growth claims at issue, by stating all capital letters that the clear liquid on the left side of the wand is “growth accelerating serum.”



20. Defendants’ marketing in other media repeats and reinforces the false and misleading lash growth claims made on the packaging and labeling for the Lush Lash System. For example, Defendants’ Urban Decay website stated the following:

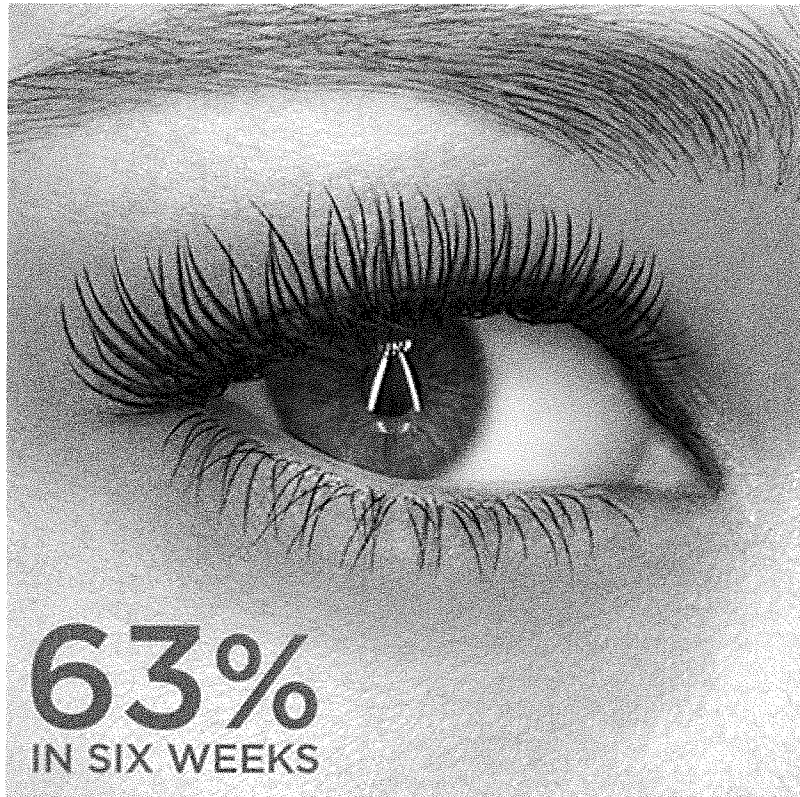
Who wouldn’t want to boost their lash cache? This double-ended miracle worker holds TWO products that really perform. These are clinical results you can take to the beauty bank.

<http://www.urbandecay.com/urban-decay/eye-makeup/lush-lash-system/281.html>

21. Although Defendants represent that the Product’s grow lash claims come from “clinical results”, nowhere on the Product’s packaging or website do Defendants reference the

confirmatory study or studies. Defendants also fail to make the clinical results available to the public.

22. To illustrate the physical effects of the Product, Defendants also include on their website an image of a woman's eye with long lashes and the statement in bold, all capital letters, "63% IN SIX WEEKS."



<http://www.urbandecay.com/urban-decay/eye-makeup/lush-lash-system/281.html>

No images of the model's eyelashes before the six weeks of use are provided for comparison.

23. Defendants' website also reinforces the lash growth claims by stating, "Our unique formula delivers instant length and volume and allows them to grow LONGER!"

24. Defendants described how the Product works on their website:

How does this stuff work? The clear gel-like serum accelerates the growth of your lashes with peptides. Use the tiny brush to apply it at your lash line. It penetrates at the root and stimulates keratin to lengthen, thicken and fortify your lashes. Simply brush it on each night before bed. The conditioning mask applies with a wand and loads your lashes with

growth peptides and high potency ingredients like Panthenol and Vitamin E. Your conditioned lashes can now resist loss and breakage from being too dry and brittle. All this all adds up to incredible lash magnification!

<http://www.urbandecay.com/urban-decay/eye-makeup/lush-lash-system/281.html>

Defendants' Lash Growth Claims Are False and Misleading

25. In truth, the Product does not actually grow or thicken eyelashes and certainly not within the short time frames advertised by Defendants.

26. Not even Latisse®,¹ the only prescription strength eyelash growth product approved by the U.S. Food and Drug Administration, can grow lashes in two weeks. Several well conducted scientific studies of Latisse® did not yield visible eyelash growth results for several months. *See, e.g.,* Smith, S., Eyelash Growth in Subjects Treated with Bimatoprost: A Multicenter, Randomized, Double-Masked, Vehicle-Controlled, Parallel-Group Study, 65(5) J Am Acad Dermatol. 801-6 (2012) (clinical effects of bimatoprost were seen starting at 8 weeks); Yoelin, et al., Safety, Effectiveness and Subjective Experience with Topical Bimatoprost 0.03% for Eyelash Growth (May 2010) (improvement in eyelashes seen within 3 months); Cohn, J., Enhancing the Growth of Natural Eyelashes: The Mechanism of Bimatoprost-Induced Eyelash Growth, Derm. Surgery 1361 (2010). After sixteen weeks of using prescription-strength Latisse®, participants' lashes were 25% longer.²

27. Upon information and belief, there is nothing contained in the Lush Lash System that can cause eyelashes to grow 25% in two weeks, 40% in four weeks, and/or 63% in six weeks, rates much faster than those documented by Latisse®. Defendants do not provide the public with any peer-reviewed, independent clinical studies that show the Product or any of its ingredients,

¹ The active ingredient in LATISSE® is bimatoprost. The Lush Lash System does not contain bimatoprost.

² <http://professional.latisse.com/About-Latisse/Efficacy/Fullness-Length-Darkness> (last visited Jan. 26, 2015).

including “peptides”, Panthenol, or Vitamin E, cause eyelashes to physically grow and/or become thicker within the claimed time frames. Thus, Defendants’ grow lash claims are false, misleading and reasonably likely to deceive the public.

28. A reasonable consumer would not interpret Defendants’ lash growth claims as being purely cosmetic in nature because Defendants’ statements are that lash growth will occur in measurable amounts within stated time frames. By contrast, Defendant L’OREAL’s Double Extend[®] Lash Boosting serum, a different eyelash serum, contains language that more clearly indicates that the product’s results are purely cosmetic by using phrases such as “visibly fuller” and “appear multiplied”.

29. However, with regard to the Lush Lash System, Defendants claim that the Product actually causes eyelash growth, not merely the visual of eye lash growth.

30. Defendants knew or should have known that the “accelerating growth serum” did not contain any ingredient that would actually cause lashes to grow, and thus, would not provide any of the warranted benefits as represented throughout Defendants’ advertising, including on the Products’ labels. In fact, there is no scientifically valid study published in reputable peer-reviewed journals demonstrating that any ingredient in the “growth accelerating serum” actually causes eye lashes to grow “25% in two weeks,” “40% in four weeks,” and “63% in six weeks.” To the contrary, the studies conducted for Latisse[®] confirm that prescription-strength ingredients, which are not even present in the Lush Lash System, will not cause lashes to grow at the claimed rates.

The Impact of Defendants’ Misleading and Deceptive Advertising

31. Even though the Product does not cause eyelashes to physically grow or become thicker, consumers pay a premium over other lash applications, which unlike the Product are not falsely

advertised as growing and thickening eyelashes. Typically, non-growth mascara such as Maybelline® Define-A-Lash® Lengthening Mascara is \$6.99 per 0.22 ounce bottle. The only reason a consumer would pay the premium price of \$42.00 for the Lush Lash System is to obtain the lash growth benefits, which the Product does not provide.

32. As the manufacturers, sellers and/or distributors of the Product, Defendants possess specialized knowledge regarding the content and effects of the ingredients contained in the Product on eyelash growth.

33. Defendants knew or should have known, but failed to disclose that the Product does not cause eyelashes to physically grow in length or thickness and certainly not within the time frames advertised by Defendants and they do not have competent and reliable clinical tests to support their “clinical results.”

34. As a result of Defendants’ deceptive grow lash claims, Plaintiff and other members of the proposed Class have purchased the Product that does not perform as advertised. Defendants have reaped enormous profits from their false, misleading and deceptive marketing and sale of the Product. Plaintiff and members of the proposed Class have been deceived and/misled by Defendants’ deceptive lash growth claims. Defendants’ lash growth claims were a material factor in influencing Plaintiff’s decision to purchase and use the Product. Plaintiff would not have purchased the premium priced Product had she known that Defendants’ lash growth claims were false and misleading.

CLASS ACTION ALLEGATIONS

35. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this nationwide action on behalf of herself and all members of the following class of similarly situated individuals or entities(the “Nationwide Class”):

All persons or entities that the Product for personal use in the United States. Excluded from this Class are Defendants’ current and former officers, directors, and employees, and those who purchased the Product for the purpose of resale. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

36. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff also brings this action against Defendants for herself and all members of the following sub-class of similarly situated individuals and entities (the “New York Subclass”):

All persons or entities that purchased the Product for personal use in New York. Excluded from this Class are Defendants’ current and former officers, directors, and employees, and those purchased the Product for the purpose of resale.

37. Plaintiff reserves the right to revise the Class definitions based on facts learned in the course of litigating this matter.

38. **Numerosity.** While the exact number and identities of purchasers of the Product are unknown to Plaintiff at this time, Plaintiff is informed and believes that the Nationwide Class and the New York Subclass (collectively, the “Class” or “Class Members”) contain thousands of purchasers and are so numerous that individual joinder of all Class members is impracticable.

39. **Existence and Predominance of Common Questions of Law and Fact.** Questions of law and fact arise from Defendants’ conduct described herein. Such questions are common to all Class members and predominate over any questions affecting only individual Class members and include:

- a. Whether Defendants' grow lash claims discussed above are true, or are misleading, or objectively likely to deceive;
- b. Whether Defendants' marketing and advertising of the Product is false, fraudulent, deceptive, unlawful, or misleading;
- c. Whether Defendants have breached warranties made to the consuming public about their Product;
- d. Whether Defendants' marketing, promotion, advertising and sale of the Product is and was a deceptive act or practice in the conduct of business directed at consumers, giving rise to consumer law violations in all other jurisdictions;
- e. Whether Plaintiff and members of the Class sustained monetary loss and the proper measure of loss;
- f. Whether Defendants' conduct constitutes unjust enrichment, and whether equity calls for disgorgement of unjustly obtained or retained funds, restitution to, or other remedies for the benefit of the Class;
- g. Whether Plaintiff and other members of the Class are entitled to other appropriate remedies, including equitable relief; and
- h. Whether Defendants' conduct rises to the level of reprehensibility under applicable law such that the imposition of punitive damages is necessary and appropriate to fulfill the societal interest in punishment and deterrence, and the amount of such damages and/or their ratio to the actual or potential harm to the Class.

40. **Typicality.** Plaintiff's claims are typical of those of the Class members because, *inter alia*, Plaintiff and the other Class members were all injured by same uniform conduct, as detailed

herein, and were subject to Defendants' lash growth claims that accompanied each and every Lush Lash System product that Defendants sold. Plaintiff is advancing the same claims and legal theories on behalf of herself and all members of the Class.

41. ***Adequacy of Representation.*** Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained competent counsel experienced in prosecuting nationwide consumer class actions. Plaintiff understands the nature of his claims herein, has no disqualifying conditions, and will vigorously represent the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of the Class.

42. ***Superiority.*** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by any individual Class member is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Defendants. Thus, it would not be economically feasible for an individual class member to prosecute a separate action on an individual basis, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

43. The prerequisites to maintaining a class action for equitable relief pursuant to Rule 23(b)(2) are also met, as Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final equitable relief with respect to the Class as a whole.

44. Plaintiff seeks preliminary and permanent equitable relief on behalf of the entire Class, on grounds generally applicable to the entire Class, to prevent Defendants from engaging in the acts described, and requiring Defendants to provide full restitution to Plaintiff and Class members.

45. Unless a Class is certified, Defendants will retain monies received as a result of their conduct that were taken from Plaintiff and Class members.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT) (On Behalf of New York Subclass)

46. Plaintiff realleges and incorporates herein by reference all allegations contained above as if fully set forth herein, and further alleges as follows:

47. Plaintiff brings this claim individually and on behalf of the other members of the Class for violations of NY GBL § 349.

48. Defendants' business acts and practices and/or omissions alleged herein constitute deceptive acts or practices under NY GBL § 349, which were enacted to protect the consuming public from those who engage in unconscionable, deceptive or unfair acts or practices in the conduct of any business, trade or commerce.

49. The practices of Defendants described throughout this Complaint, were specifically directed to consumers and violate the NY GBL § 349 for, inter alia, one or more of the following reasons:

- a. Defendants engaged in deceptive, unfair and unconscionable commercial practices in failing to reveal material facts and information about the Product,

which did, or tended to, mislead Plaintiff and the Class about facts that could not reasonably be known by them;

- b. Defendants failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;
- c. Defendants caused Plaintiff and the Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations and/or remedies by and through its conduct;
- d. Defendants failed to reveal material facts to Plaintiff and the Class with the intent that Plaintiff and the Class members rely upon the omission;
- e. Defendants made material representations and statements of fact to Plaintiff and the Class that resulted in Plaintiff and the Class reasonably believing the represented or suggested state of affairs to be other than what they actually were;
- f. Defendants intended that Plaintiff and the members of the Class rely on their misrepresentations and omissions, so that Plaintiff and Class members would purchase the Product; and
- g. Defendants knowingly and falsely represented and advertised that the Product was fit to be used for the purpose for which it was intended, to grow longer and thicker eyelashes, when Defendants knew that the Product did not work as promised.

50. Under all of the circumstances, Defendants' conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

51. Defendants' actions impact the public interest because Plaintiff and members of the Class were injured in exactly the same way as thousands of others purchasing the Product as a result of and pursuant to Defendants' generalized course of deception.

52. By committing the acts alleged in this Complaint, Defendants have misled Plaintiff and the Class into purchasing the Product, in part or in whole, due to an erroneous belief that the Product will physically cause lashes to grow longer and thicker in as little as two weeks. This is a deceptive business practice that violates NY GBL § 349.

53. Defendants' grow lash claims misled Plaintiff and the members of the Class. Had Plaintiff and members of the Class known of the true facts about the Product's failure to work as promised, they would not have purchased the Product and/or paid substantially less for another product.

54. The foregoing deceptive acts, omissions and practices were directed at consumers.

55. The foregoing deceptive acts, omissions and practices set forth in connection with Defendants' violations of NY GBL § 349 proximately caused Plaintiff and other members of the Classes to suffer actual damages in the form of, inter alia, monies spent to purchase the Product, and are entitled to recover such damages, together with equitable and declaratory relief, appropriate damages, including punitive damages, attorneys' fees and costs.

COUNT II

NEGLIGENT MISREPRESENTATION (On Behalf of the Nationwide Class)

56. Plaintiff realleges and incorporates herein by reference all allegations contained above as if fully set forth herein, and further alleges as follows:

57. Defendants, directly or through their agents and employees, made false representations, concealments, and nondisclosures to Plaintiff and members of the Class.

58. In making the representations of fact to Plaintiff and members of the Class described herein, Defendants have failed to fulfill their duties to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendants' negligence and carelessness.

59. Defendants, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true. As the manufacturer, distributor, and marketer of the Product, Defendants were in a unique position to know the truth about the grow lash claims. Defendants made and intended the misrepresentations to induce the reliance of Plaintiff and members of the Class.

60. Plaintiff and members of the Class reasonably relied upon these false representations and nondisclosures by Defendants when purchasing the Product, which reliance was justified and reasonably foreseeable.

61. As a result of Defendants' wrongful conduct, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for the Product, and any interest that would have been accrued on those monies, all in an amount to be determined according to proof at time of trial.

COUNT III

BREACH OF EXPRESS WARRANTIES (On Behalf of the Nationwide Class)

62. Plaintiff realleges and incorporates herein by reference all allegations contained above as if fully set forth herein, and further alleges as follows:

63. The Uniform Commercial Code section 2-313 provides that an affirmation of fact or promise, including a description of the goods, becomes part of the basis of the bargain and creates an express warranty that the goods shall conform to the promise and to the description.

64. At all times, New York and other states have codified and adopted the provisions of the Uniform Commercial Code governing the express warranty of merchantability.

65. Plaintiff, and each member of the Class, formed a contract with Defendants at the time Plaintiff and the other members of the Class purchased the Lush Lash System. The terms of that contract include the lash growth promises and affirmations of fact made by Defendants on the Product's labels and packages as described above. The lash growth claims made by Defendants constitute express warranties that became part of the basis of the bargain, and are part of a standardized contract between Plaintiff and the members of the Class on the one hand, and Defendants on the other. Plaintiff and the Class members placed importance on Defendants' lash growth claims.

66. All conditions precedent to Defendants' liability under this contract have been performed by Plaintiff and the Class.

67. Defendants breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing a Product that grows or thickens eyelashes, let alone in the time frames represented, as described above.

68. As a proximate result of Defendants' breach of their warranties, Plaintiff and Class members have suffered damages in an amount of the purchase price of the Lush Lash System products they purchased.

COUNT IV

**UNJUST ENRICHMENT
(On Behalf of the Nationwide Class)**

69. Plaintiff realleges and incorporates herein by reference all allegations contained above as if fully set forth herein, and further alleges as follows:

70. Defendants received certain monies as a result of their uniform deceptive marketing of the Product that are excessive and unreasonable.

71. Plaintiff and the Class conferred a benefit on Defendants through purchasing the Product, and Defendants have knowledge of this benefit and have voluntarily accepted and retained the benefits conferred on them.

72. Defendants will be unjustly enriched if they are allowed to retain such funds, and each Class member is entitled to an amount equal to the amount they enriched Defendants and for which Defendants have been unjustly enriched.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Classes, seeks judgment against Defendants, as follows:

- a. An Order that this action be maintained as a class action and appointing Plaintiff as representative of the Nationwide Class and New York Subclass;
- b. An Order appointing the undersigned attorneys as class counsel in this action;
- c. Awarding restitution and disgorgement of all amounts obtained by Defendants as a result of their misconduct, together with interest thereon from the date of payment, to Plaintiff and the proposed Class members;

- d. Awarding declaratory relief as permitted by law or equity, including: directing Defendants to identify, with Court supervision, victims of their conduct and pay them all money they are required to pay;
- e. Statutory pre-judgment and post-judgment interest on any amounts;
- f. Awarding attorneys' fees and costs; and
- g. Such other relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff, on behalf of herself and the Class, demands a trial by jury on all questions of fact raised by the Complaint.

Dated: May 1, 2015

Respectfully submitted,

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