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SANTA ANA

1 EAGAN AVENATTI, LLP
2 Michael J. Avenatti, State Bar No. 206929
3 mavenatti@eaganavenatti.com
4 Scott H. Sims, State Bar No. 234148
5 ssims@eaganavenatti.com
6 450 Newport Center Drive, 2nd Floor
7 Newport Beach, CA 92660
8 Telephone: 949.706.7000
9 Facsimile: 949.706.7050

6 THE X-LAW GROUP, P.C.
7 Filippo Marchino, State Bar No. 256011
8 filippo.marchino@xlawx.com
9 Damon Rogers, State Bar No. 263853
10 damon.rogers@xlawx.com
11 11100 Santa Monica Blvd., Suite 150
12 Los Angeles, CA 90025
13 Telephone: 213.536.4298
14 Facsimile: 213.226.4691

11 Attorneys for Plaintiff

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

16 ASHLEY STANWOOD, an individual,

17 Plaintiff,

18 vs.

19 MARY KAY, INC., a Delaware
20 Corporation,

21 Defendant.

CASE NO.: SACV12-0312 CJC (ANx)

22 SECOND AMENDED
23 NATIONWIDE AND
24 CALIFORNIA CLASS ACTION
25 COMPLAINT FOR:

- 26 1. FRAUD/FRAUDULENT
27 CONCEALMENT;
- 28 2. UNFAIR BUSINESS
PRACTICES (Cal. Bus. &
Prof. Code § 17200 et seq.)
- 3. FALSE ADVERTISING (Cal.
Bus. & Prof. Code § 17500 et
seq.); and
- 4. VIOLATIONS OF
CALIFORNIA'S
CONSUMERS LEGAL
REMEDIES ACT

DEMAND FOR JURY TRIAL

1 Plaintiff individually and on behalf of all others similarly situated, complains and
2 alleges as follows:

3
4 **I. OVERVIEW**

5 1. This class action arises out of the deceptive and misleading conduct of
6 Defendant Mary Kay, Inc. (“Defendant” or “Mary Kay”) related to its business
7 operations. Specifically, it relates to Defendant’s misleading conduct in marketing,
8 advertising, selling, promoting and/or distributing cosmetic products to consumers in
9 the United States by touting the company’s business operations as not testing *any* of its
10 products on animals. Companies that do not test on animals are sometimes referred to
11 as “cruelty free.” Since approximately 1990, Defendant engaged in an extensive and
12 long-term marketing and advertising campaign touting the company’s business
13 operations as not testing *any* of its products on animals. In reality, however, since at
14 least 1996 Defendant’s business operations included animal testing. Defendant tested
15 on animals in order to do business in China and other foreign countries, thereby reaping
16 hundreds of millions of dollars in sales. Defendant later purported to disclose, at least
17 on its website, that its business operations included animal testing “as required by law,”
18 but the disclosures were wholly inadequate and deceptive. Moreover, even when
19 Defendant placed inadequate and deceptive purported disclosures on its website, it
20 continued to claim in other arenas that its business operations were such that the
21 company did not test *any* of its products on animals.

22 2. The named plaintiff brings this suit individually, and on behalf of all others
23 similarly situated.

24 3. As a result of the unfair, unlawful, fraudulent and deceptive practices of
25 Defendant as described herein, Defendant has (a) concealed and misled consumers into
26 believing that Defendant’s business operations did not include testing *any* of its
27 cosmetic products on animals; (b) unfairly, unlawfully and improperly induced
28 consumers into purchasing cosmetic products from it by misleading consumers into

1 believing the company's business operations did not include animal testing on *any* of its
2 products (even the ones the consumer was not purchasing); (c) advertised, marketed
3 and/or labeled the company's business operations and its cosmetic products in a way
4 that was misleading in a material respect and/or likely to deceive consumers; and (d)
5 acted to conceal and mislead consumers so as to create a likelihood of confusion
6 regarding the Defendant, its business operations, its animal testing policies and
7 practices and whether each engaged in any animal testing whatsoever.

8 9 **II. JURISDICTION AND VENUE**

10 4. This Court has subject matter jurisdiction over this action pursuant to the
11 Class Action Fairness Act of 2005 and 28 U.S.C. § 1332 because there are over 100
12 members of the proposed class, at least one member of the proposed class has a
13 different citizenship from a defendant and the total matter in controversy exceeds
14 \$5,000,000. Venue is proper in the Central District of California because this district is
15 the district in which a substantial part of the events or omissions giving rise to the
16 claims occurred.

17 18 **III. PARTIES**

19 5. Plaintiff Ashley Stanwood ("Stanwood") is an individual consumer
20 residing in Los Angeles County, California who, during the proposed Class Period,
21 purchased a multitude of Defendant Mary Kay's cosmetic products within Los Angeles
22 County, California. Stanwood was exposed to Mary Kay's extensive and long term
23 marketing and advertising campaign touting the company and its business operations as
24 not testing *any* of its products on animals, which campaign is explained in more detail
25 below. By way of example only, Stanwood purchased the following Mary Kay
26 products: Concealer Beige 2, Mascara Waterproof Black, Mineral Eyes Colors,
27 Compacts and Brushes, and After Sun Replenishing Gel. Stanwood purchased Mary
28 Kay products from Jacqueline (last name presently unknown), a Mary Kay

1 representative with the phone number 213-***-9592. Jacqueline represented to
2 Plaintiff in approximately September 2011, as part of her purchase, that Mary Kay did
3 not test *any* of its products on animals. In buying the aforementioned products,
4 Stanwood relied on the representation made by Jacqueline that Mary Kay's business
5 operations did not animal test on *any* of its cosmetic products, and would not have
6 purchased any Mary Kay products (including the aforementioned products she
7 purchased) but for that representation (even if her particular product was not animal
8 tested). Further, in reliance on Mary Kay's concealment of the fact that its business
9 operations involved animal testing some of its products, she purchased Mary Kay
10 products she otherwise would not have purchased had it been disclosed that Mary Kay
11 engaged in any animal testing on any of its products (even products Plaintiff purchased
12 were not animal tested). Plaintiff thus lost money or property because, in reliance on
13 Mary Kay's representations and concealments, she purchased products she would not
14 have purchased but for those representations and concealments.

15 6. Defendant Mary Kay, Inc. is a Delaware Corporation, headquartered in
16 Texas, and registered to do business in California, which manufactured, marketed,
17 advertised, distributed, and/or produced Cosmetic Products during the Class Period in
18 the United States and in the Central District of California.

19 20 **IV. SUBSTANTIVE ALLEGATIONS**

21 7. During the Class Period, Mary Kay engaged in an extensive and long term
22 marketing and advertising campaign touting itself as a company that did not test any of
23 its products on animals and as a company that was committed to the elimination of
24 animal testing.

25 8. By way of example only, Mary Kay's marketing and advertising campaign
26 included the following:

- 27 a. During the Class Period and through 2012, Mary Kay represented to
28 the People for the Ethical Treatment of Animals ("PETA"), through

1 a pledge, that Mary Kay did not and would not test any of its
2 products on animals. Mary Kay did so to ensure the company's
3 placement on PETA's "Do Not Test" list. Mary Kay's
4 representations to PETA were false, and made with actual or
5 constructive knowledge that, and with the specific intent that, PETA
6 would repeat this misrepresentation to consumers, including
7 consumers considering whether to purchase Mary Kay products, and
8 that it would influence the conduct of consumers considering
9 whether to purchase Mary Kay products. PETA did in fact repeat
10 this misrepresentation to consumers, including consumers
11 considering whether to purchase Mary Kay products. Mary Kay's
12 actions in this regard were deceptive, misleading and false, as Mary
13 Kay was in fact animal testing during this time period.

14 b. During the Class Period, Mary Kay represented to the Coalition for
15 Consumer Information of Cosmetics (the "Coalition") that the
16 company did not and would not test any of its products on animals.
17 Mary Kay did so to ensure the company's placement on the
18 Coalition's "Leaping Bunny" list. The "Leaping Bunny" list is a list
19 of cosmetic companies that do no conduct any animal testing. Mary
20 Kay's representations to the Coalition were false, and made with
21 actual or constructive knowledge that, and with the specific intent
22 that, the Coalition would repeat the misrepresentation to consumers,
23 including consumers considering whether to purchase Mary Kay
24 products, and that it would influence the conduct of consumers
25 considering whether to purchase Mary Kay products. The Coalition
26 did in fact repeat this misrepresentation to consumers. Mary Kay's
27 actions in this regard were deceptive, misleading and false, as Mary
28 Kay was in fact animal testing during this time period.

1 c. During the Class Period and through at least March 18, 2009, Mary
2 Kay's website stated "Mary Kay does not conduct animal testing for
3 its products and is a PETA pledge member." Mary Kay's actions in
4 this regard were deceptive, misleading and false, as Mary Kay was
5 in fact animal testing during this time period.

6 d. During the Class Period Mary Kay specifically represented to its
7 sales force that Mary Kay did not test any of its products on animals,
8 with full knowledge and intent that its sales force would repeat those
9 representations to consumers, and that it would influence the
10 conduct of consumers considering whether to purchase Mary Kay
11 products. Mary Kay's sales force (including the Mary Kay
12 representative who sold products to Plaintiff Stanwood) did in fact
13 repeat to consumers that the company did not test any of its products
14 on animals.

15 9. Mary Kay initiated its extensive and long-term marketing and advertising
16 campaign around 1990, shortly after the company was lampooned by cartoonist
17 Berkeley Breathed in a series called "The Night of the Mary Kay Commandos."
18 Despite engaging in this marketing campaign, in or around 1995, Mary Kay opened its
19 first factory in China, and began animal testing around that time. Despite beginning to
20 test products on animals, Mary Kay did not stop marketing and advertising the
21 company's business operations as not testing any of its products on animals.

22 10. On information and belief, during the Class Period, in addition to the
23 specific examples above, Defendant made consistent and repeated misleading and/or
24 inadequate representations about the company's business operations as not testing *any*
25 products on animals.

26 11. Sometime after March 18, 2009, Defendant placed an inadequate and
27 misleading representation on its website, and possibly in other forums, purporting to
28 disclose that it does test some products on animals. That disclosure was misleading and

1 wholly inadequate to properly inform consumers. Specifically, Defendant stated on its
2 website that its business operations were such that it does not test any of its products on
3 animals “except when required by law.” This statement was wholly inadequate and
4 misleading as it implied Defendant conducted animal testing only when required by
5 American law, yet no American law required animal testing. Further, though
6 Defendant placed this inadequate and misleading representation on its website, it
7 continued its extensive marketing and advertising campaign in other forums touting the
8 company’s business operations as not animal testing any of its products. On
9 information and belief, Defendant knew the purported disclosure on its website was
10 inadequate and misleading, and the purported disclosures were made purely for the
11 purpose of trying to avoid legal liability while at the same time suggesting Defendant’s
12 business operations did not test *any* of its products on animals.

13 12. In addition to its affirmative misrepresentations, during the Class Period,
14 Defendant had a duty to disclose to all prospective purchasers of its products that its
15 business operations included animal testing on some of its products. Defendant had
16 such a duty irrespective of whether Defendant was animal testing on the particular
17 product purchased by the consumer. Defendant had a duty to disclose to Plaintiff and
18 the Class that its business operations included animal testing because (1) Defendant had
19 exclusive knowledge of a material fact (i.e. that the company’s business operations
20 included animal testing) not known or reasonably accessible to Plaintiff and the Class;
21 (2) Defendant actively concealed the material fact from Plaintiff and the Class; and (3)
22 after March 18, 2009 Defendant made partial representations, at least on its website,
23 regarding not performing animal testing except as “required by law”, but the partial
24 misrepresentation was misleading as Defendant did not disclose the material fact that it
25 was not referring to American law.

26 13. The commercial success of Defendant’s products during the Class Period
27 was positively influenced by its extensive and long term marketing and advertising
28 campaign and its direct representations regarding the company’s business operations

1 not testing any of its products on animals. Simply put, Defendant reaped hundreds of
2 millions of dollars in revenue from U.S. consumers, including Plaintiff, who relied on
3 Defendant's representations and failures to disclose and would not have purchased any
4 products of Defendant but for Defendant's misrepresentations and failures to disclose
5 described herein—i.e. Plaintiff would not have purchased any of Defendant's products
6 had she known Defendant's business operations included testing any products on
7 animals (even if the particular product she was purchasing was not tested on animals).
8 In other words, whether Defendant tests any of its products on animals whatsoever is
9 material information.

10 14. With full knowledge regarding the materiality, to an American consumer,
11 of whether Defendant tests any of its products on animals, Defendant made a profit
12 motivated decision to enter the Chinese market. Defendant subsequently began testing
13 certain of its products on animals and/or hired others to conduct animal testing of its
14 products.

15 15. However, rather than being up front with American consumers regarding
16 its animal testing policies and adequately disclosing that it was animal testing and was
17 not "cruelty" free, Defendant instead continued its extensive and long term marketing
18 and advertising campaigns touting itself as not testing *any* of its products on animals.
19 Defendant's unfair, deceptive and/or fraudulent representations, and its failures to
20 disclose regarding its animal testing, operations, policies, and practices was material.

21 16. Plaintiff did not suspect or discover, and through the exercise of
22 reasonable diligence could not have discovered, Defendant's wrongful conduct as
23 described herein until within the last year. Indeed, PETA, a "watchdog" organization
24 as it relates to animal testing, did not even discover Defendant was animal testing and
25 thus did take Defendant off its "Do Not Test" List until early 2012.

26 17. Defendant's misleading of the American public was not without motive.
27 In 2011, the Physician's Committee for Responsible Medicine ("PCRM"), a U.S. based
28 non-profit, commissioned random telephone surveys of the United States' general adult

1 public, which asked individuals about their views on the use of animals in cosmetics
2 testing. In the survey, 72 percent of respondents agreed that testing cosmetics on
3 animals is inhumane or unethical and 61 percent of respondents said that cosmetics and
4 personal care product companies should not be allowed to test products on animals.

5 18. On information and belief, the failure of Defendant to adequately inform
6 consumers regarding its business operations related to animal testing was willful, and
7 profit driven, in that Defendant recognized that if Defendant was honest and forthright
8 with their U.S. customers, Defendant would lose significant sales, profits, and market
9 share.

10 19. As a result of the unfair, unlawful, fraudulent, deceptive and/or misleading
11 practices in advertising and marketing as described herein, and in reliance on
12 Defendant's representations and omissions regarding its business operations related to
13 animal testing, Plaintiff purchased products from the Defendant. Plaintiff would not
14 have purchased any products from the Defendant but for Defendant's unfair, fraudulent,
15 and unlawful practices described herein.

16 17 18 **V. CLASS ACTION ALLEGATIONS**

19 **Fed. R. Civ. Proc. 23(b)(2)**

20 20. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure
21 23(b)(2) on behalf of herself and all purchasers of Defendant's cosmetic products from
22 January 1, 1996 to February 27, 2012 (the "Injunctive Relief Class"), with the
23 following subclasses:

- 24 i. All persons in the United States, including those in the State of California,
25 who purchased cosmetic products of Mary Kay, Inc. from January 1, 1996
26 to March 18, 2009.

1 ii. All persons in the United States, including those in the State of California,
2 who purchased cosmetic products of Mark Kay, Inc. from March 19, 2009
3 to February 27, 2012.

4 iii. All persons who purchased cosmetic products of Mary Kay, Inc. in the
5 State of California from January 1, 1996 to March 18, 2009.

6 iv. All persons who purchased cosmetic products of Mary Kay, Inc. in the
7 State of California from March 19, 2009 to February 27, 2012.

8 21. Excluded from the Injunctive Relief Class is any person or entity in which
9 any judge, justice or judicial officer presiding over this matter and members of their
10 immediate families and judicial staff, have any controlling interest. Excluded from the
11 Injunctive Relief Class is any partner or employee of Class Counsel.

12 22. Class certification is proper under Fed. R. Civ. Proc. 23(b)(2) because
13 Defendant has acted (or refused to act) on grounds generally applicable to the
14 Injunctive Relief Class thereby making appropriate injunctive relief with respect to the
15 Injunctive Relief Class as a whole.

16 23. Plaintiff reserves the right to modify the definition of the Injunctive Relief
17 Class after further discovery, and further reserves the right to only seek class
18 certification under Fed. R. Civ. Proc. 23(b)(2) for injunctive relief and not to seek class
19 certification under Fed. R. Civ. Proc. 23(b)(3) for monetary damages.

20 **Fed. R. Civ. Proc. 23(b)(3)**

21 24. Plaintiff separately brings this action pursuant to Federal Rule of Civil
22 Procedure 23(b)(3) on behalf of herself and all purchasers of Defendant's cosmetic
23 products from January 1, 1996 to February 27, 2012 (the "Damages Class"), with the
24 following subclasses:

25 i. All persons in the United States, including those in the State of California,
26 who purchased cosmetic products of Mary Kay, Inc. from January 1, 1996
27 to March 18, 2009.
28

1 all members in one action is impracticable. While the exact number and identities of
2 Damages Class Members is unknown to Plaintiff at this time and can only be
3 ascertained through appropriate discovery directed at Defendant, Plaintiff believes and
4 therefore alleges that there are in excess of one million (1,000,000) members of the
5 Damages Class.

6 30. Typicality of Claims. Plaintiff's claims are typical of those of other
7 Injunctive Relief Class Members and also of other Damages Class Members, all of
8 whom have suffered similar harm due to Defendant's course of conduct as described
9 herein.

10 31. Adequacy of Representation. Plaintiff is an adequate representative of the
11 Injunctive Relief Class and the Damages Class and will fairly and adequately protect
12 the interests of both Classes and has retained attorneys who are highly experienced in
13 the handling of class actions, and Plaintiff and her counsel intend to prosecute this
14 action vigorously.

15 32. Predominance of Common Questions of Law or Fact. Common questions
16 of fact and law exist as to all Class Members that predominate over any questions
17 affecting only individual Class Members. These common legal and factual questions,
18 which do not vary among Class Members, and which may be determined without
19 reference to the individual circumstances of any Class member, include, but are not
20 limited to, the following:

21 • Whether injunctive relief is appropriate and necessary related to
22 Defendant's business operations including testing products on animals.

23 • Whether Defendant engaged in false, deceptive, and/or unfair marketing
24 and/or advertising by marketing and/or advertising the company's business operations
25 as not testing any products on animals.

26 • Whether Defendant's disclosures regarding the company's business
27 operations related to animal testing were inadequate so as to be false, deceptive, and/or
28 unfair.

1 • Whether Defendant’s conduct was an “unfair practice”, within the
2 meaning of the California’s Unfair Competition Laws (the “UCL”- California Business
3 & Profession Code section 17200) in that it offends established public policy and is
4 immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

5 • Whether Defendant’s conduct was an “unlawful” practice within the
6 meaning of the UCL.

7 • Whether Defendant’s conduct was a “fraudulent practice”, within the
8 meaning of the UCL in that it is likely to mislead consumers.

9 • Whether Defendant’s practices were likely to deceive a consumer acting
10 reasonably in the same circumstances.

11 • Whether the conduct complained of constitutes a violation of California’s
12 Consumer Legal Remedies Act (the “CLRA”).

13 • Whether Defendant’s conduct caused harm to the Class.

14 • Whether the members of the Class are entitled to restitution and/or
15 suffered damages.

16 33. Superiority. A class action is superior to other available methods for the
17 fair and efficient adjudication of this controversy, because individual litigation of the
18 claims of all Class Members is impracticable. Requiring each individual class member
19 to file an individual lawsuit would unreasonably consume the amounts that may be
20 recovered. Even if every Class Member could afford individual litigation, the
21 adjudication of more than a million identical claims would be unduly burdensome to
22 the courts. Individualized litigation would also present the potential for varying,
23 inconsistent, or contradictory judgments and would magnify the delay and expense to
24 all parties and to the court system resulting from multiple trials of the same factual
25 issues. By contrast, the conduct of this action as a class action, with respect to some or
26 all of the issues presented herein, presents no management difficulties, conserves the
27 resources of the parties and of the court system, and protects the rights of the Class
28 Members. Plaintiff anticipates no difficulty in the management of this action as a class

1 action. The prosecution of separate actions by individual Class Members may create a
2 risk of adjudications with respect to them that would, as a practical matter, be
3 dispositive of the interests of the other Class Members not parties to such adjudications
4 or that would substantially impair or impede the ability of such non-party Class
5 Members to protect her interests.

6
7 **FIRST CAUSE OF ACTION FOR FRAUD/FRAUDULENT**
8 **CONCEALMENT**

9 34. Plaintiff restates and re-alleges paragraphs 1 through 33 as if fully set forth
10 herein.

11 35. As alleged herein, Defendant engaged in an extensive and long term
12 marketing and advertising campaign representing, including to Plaintiff and the Class,
13 that its business operations did not include animal testing on any of its products.
14 Defendant further fraudulently concealed from Plaintiff and the Class material
15 information regarding the fact that its business operations include animal testing some
16 of its products.

17 36. In making the above statements and in concealing the material information
18 discussed herein, Defendant acted fraudulently and deceitfully with knowledge that
19 Plaintiff and the Class would rely on its actions, misstatements, and/or concealments.
20 Defendant made the aforesaid material representations and/or concealed material facts
21 in order to induce Plaintiff and the Class to act in reliance on the misrepresentations and
22 statements.

23 37. Plaintiff and the Class at all times did reasonably and justifiably rely both
24 directly and indirectly on the actions, representations and/or omissions of Defendant
25 described herein. Plaintiff would not have purchased any products from Defendant had
26 Defendant properly disclosed that its business operations included animal testing on
27 some products (i.e. had Defendant disclosed it was not a “cruelty free” company).
28

1 38. As a direct and proximate result of Defendant's fraudulent representations
2 and failures to disclose, Plaintiff and the Class have suffered actual damages in an
3 amount not presently known, but which will be shown by proof at time of trial,
4 including incidental and consequential damages, and reasonable attorneys' fees.

5 39. Plaintiff is informed and believes and thereon alleges that Defendant
6 undertook the aforesaid illegal acts intentionally or with conscious disregard of the
7 rights of Plaintiff and the Class, and did so with fraud, oppression, and malice.
8 Therefore, Plaintiff and the Class are also entitled to recover punitive damages from
9 Defendant in an amount that will be shown by proof at trial.

10
11 **SECOND CAUSE OF ACTION FOR**
12 **VIOLATIONS OF CALIFORNIA'S UNFAIR BUSINESS PRACTICES ACT**
13 **(CAL. BUS. & PROF. CODE §17200 ET SEQ.)**
14

15 40. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33
16 and 35 through 37 as if fully set forth herein.

17 41. California Business & Professions Code § 17200 et seq., also known as the
18 California Unfair Competition Law ("UCL"), prohibits acts of "unfair competition,"
19 including any unlawful, unfair, fraudulent, or deceptive business act or practice as well
20 as "unfair, deceptive, untrue or misleading advertising."

21 **DEFENDANT'S ACTS ARE FRAUDULENT AND/OR DECEPTIVE**

22 42. Defendant's acts, conduct and business practices as alleged above are
23 fraudulent and/or deceptive.

24 **DEFENDANT'S ACTS ARE UNFAIR**

25 43. Defendant's acts, conduct and practices as alleged above are unfair.
26 Defendant, through deceptive and misleading advertising and representations, induced
27 Plaintiff and Class Members to purchase Defendant's cosmetic products they otherwise
28

1 would not have purchased. This injury is not outweighed by any countervailing
2 benefits to consumers or competition.

3 DEFENDANT'S ACTS ARE UNLAWFUL

4 44. By engaging in the false, deceptive, and misleading conduct alleged above,
5 Defendant has engaged in unlawful business acts and practices in violation of the UCL
6 by violating state and federal laws, including but not limited to California Business and
7 Professions Code section 17500 et seq., which makes false and deceptive advertising
8 unlawful.

9 45. As a direct and proximate result of Defendant's unlawful, unfair and
10 fraudulent business practices, Plaintiff and the members of the Class have been injured
11 in fact. Plaintiff purchased cosmetic products in justifiable reliance on Defendant's
12 false and misleading representations regarding its business operations not including
13 animal testing on any products, and she would not have purchased any of Defendant's
14 Cosmetic Products had Defendant made adequate disclosures. Defendant's unfair,
15 deceptive and fraudulent and unlawful business practices thus caused Plaintiff to lose
16 money or property.

17 46. Defendant's unlawful, unfair, deceptive and fraudulent business practices
18 as alleged above present a continuing threat to Plaintiff, the Class and members of the
19 public because Defendant persists and continues to engage in such practices, and will
20 not cease doing so unless enjoined or restrained by this Court.

21 47. Under California Business & Profession Code § 17203, Plaintiff, on behalf
22 of herself, Class Members and members of the general public, seeks an order of this
23 Court:

- 24 a) For injunctive relief requiring Defendant to disclose, on its website and on
25 the packaging of all of its cosmetic products, that Defendant as a company
26 has engaged in animal testing; and
27 b) Restitution of all monies paid to Defendant.
28

THIRD CAUSE OF ACTION FOR
VIOLATIONS OF CALIFORNIA FALSE ADVERTISING LAW
(CAL. BUS. & PROF. CODE §17500 et seq.)

1
2
3
4 48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33,
5 35 through 37 and 41 through 46, as if fully set forth herein.

6 49. California Business & Professions Code § 17500 et seq., also known as
7 California False Advertising Law, makes it “unlawful for any person, ... corporation or
8 association, or any employee thereof with intent directly or indirectly to dispose of ...
9 personal property ... or anything of any nature whatsoever ... to make or disseminate or
10 cause to be made or disseminated from this state before the public in any state, in any
11 newspaper or other publication, or any advertising device, or by public outcry or
12 proclamation, or in any other manner or means whatsoever, including over the Internet,
13 any statement, concerning that ... personal property ... or concerning any circumstance
14 or matter of fact connected with the proposed performance or disposition thereof, which
15 is untrue or misleading, and which is known, or which by the exercise of reasonable
16 care should be known, to be untrue or misleading...”

17 50. As alleged above, Defendant disseminated or caused to be disseminated to
18 the general public through various media deceptive advertising regarding its business
19 operations related to animal testing. These advertisements were false, misleading
20 and/or inadequate as set forth herein.

21 51. Defendant continues to disseminate or cause to be disseminated such false,
22 deceptive and/or inadequate statements as alleged herein.

23 52. The false, deceptive and/or inadequate statements regarding Defendant’s
24 business operations regarding animal testing, as disseminated by Defendant, or as
25 caused to be disseminated by Defendant, have deceived Plaintiff and are likely to
26 deceive the consuming public.

1 53. While disseminating or causing to be disseminated the false, deceptive and
2 misleading statements, as alleged above, the Defendant knew or should have known
3 that the statements were false, deceptive and/or misleading.

4 54. As a direct and proximate result of Defendant's false, deceptive and/or
5 misleading advertising, Plaintiff and the members of the class have been injured in fact,
6 in that they purchased cosmetic products in reliance on Defendant's false, deceptive
7 and misleading advertising they would not have purchased had the truth been
8 adequately disclosed. Plaintiff lost money or property.

9 55. Defendant's false, deceptive and misleading advertising as alleged above
10 presents a continuing threat to Plaintiff, the Class, and members of the public because
11 Defendant persists and continues to disseminate false and misleading advertising, and
12 will not cease doing so unless and until enjoined or restrained by this Court.

13 56. Under California Business & Professions Code § 17535, Plaintiff, on
14 behalf of herself, the Class Members, and members of the general public, seeks an
15 order of this Court:

- 16 a) For injunctive relief requiring Defendant to disclose, on its website and on
17 the packaging of all of its cosmetic products, that Defendant as a company
18 has engaged in animal testing; and
19 b) Restitution of all monies paid to Defendant.

20
21 **FOURTH CAUSE OF ACTION FOR**
22 **VIOLATIONS OF CONSUMERS LEGAL REMEDIES ACT**
23 **(CALIFORNIA CIVIL CODE §1750 et seq.)**

24 57. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33,
25 35 through 37, 41 through 46, and 49 through 55 as if fully set forth herein.

26 58. This cause of action is brought pursuant to California Consumers Legal
27 Remedies Act, California Civil Code § 1750, et seq. ("CLRA")
28

1 59. Plaintiff is a consumer as defined by the CLRA and Defendant is either a
2 supplier and/or seller as defined by the CLRA.

3 60. Defendant's conduct described herein involves consumer transactions as
4 defined by the CLRA.

5 61. In violation of the CLRA, Defendant represented to American consumers
6 that the company did not conduct animal testing on any of its products, which was
7 false; and/or represented to American consumers that they did not conduct animal
8 testing "except when required by law" without disclosing that no American law
9 requires animal testing. The latter representation was misleading and inadequate in that
10 no American law requires animal testing.

11 62. Under California Civil Code § 1780, Plaintiff, on behalf herself, the Class
12 Members, and members of the general public, seeks an order of this Court:

13 (a) For injunctive relief requiring Defendant to disclose, on its website and on
14 the packaging of all of its cosmetic products, that Defendant as a company has
15 engaged in animal testing; and

16 (b) Plaintiff further intends to amend the Complaint pursuant to Civil Code
17 §1782(d) should Defendant not timely comply with the impending preliminary
18 notice to be served in compliance with Civil Code §1782.

19
20 **PRAYER FOR RELIEF**

21 Plaintiff, on behalf of herself and on behalf of the Class, respectfully prays for
22 judgment against Defendant as follows:

23 **On the First Cause of Action:**

24 1. That the Court determine that the relevant claims in this complaint may be
25 maintained as a class action under Federal Rule of Civil Procedure 23(b)(2) and/or
26 23(b)(3).
27
28

1 2. For injunctive relief requiring Defendant to disclose, on its website and on
2 the packaging of all of its cosmetic products, that Defendant as a company has engaged
3 in animal testing.

4 3. For compensatory damages in an amount in excess of \$100 million, with
5 the exact amount to be proven at trial;

6 4. For punitive damages in an amount to punish Defendant for its conduct
7 and dissuade Defendant from engaging in similar conduct in the future, in an amount to
8 be proven at trial;

9 5. For prejudgment and post judgment interest to the extent permitted by law;

10 6. For an award of attorney's fees, costs, and expenses incurred in the
11 investigation, filing, and prosecution of this action to the extent permitted by law; and

12 7. For such other and further relief as the Court deems just and proper.

13 **On the Second Cause of Action:**

14 1. That the Court determine that the relevant claims in this complaint may be
15 maintained as a class action under Federal Rule of Civil Procedure 23(b)(2) and/or
16 23(b)(3).

17 2. For injunctive relief requiring Defendant to disclose, on its website and on
18 the packaging of all of its cosmetic products, that Defendant as a company has engaged
19 in animal testing.

20 3. For restitution of all monies paid to Defendant, in an exact amount to be
21 proven at trial.

22 4. For prejudgment and post judgment interest to the extent permitted by law;

23 5. For an award of attorney's fees, costs, and expenses incurred in the
24 investigation, filing, and prosecution of this action to the extent permitted by law; and

25 6. For such other and further relief as the Court deems just and proper.

1 **On the Third Cause of Action:**

2 1. That the Court determine that the relevant claims in this complaint may be
3 maintained as a class action under Federal Rule of Civil Procedure 23(b)(2) and/or
4 23(b)(3).

5 2. For injunctive relief requiring Defendant to disclose, on its website and on
6 the packaging of all of its cosmetic products, that Defendant as a company has engaged
7 in animal testing.

8 3. For restitution of all monies paid to Defendant, in an exact amount to be
9 proven at trial.

10 4. For prejudgment and post judgment interest to the extent permitted by law;

11 5. For an award of attorney's fees, costs, and expenses incurred in the
12 investigation, filing, and prosecution of this action to the extent permitted by law; and

13 6. For such other and further relief as the Court deems just and proper.

14 **On the Fourth Cause of Action:**

15 1. That the Court determine that the relevant claims in this complaint may be
16 maintained as a class action under Federal Rule of Civil Procedure 23(b)(2) and/or
17 23(b)(3).

18 2. For injunctive relief requiring Defendant to disclose, on its website and on
19 the packaging of all of its cosmetic products, that Defendant as a company has engaged
20 in animal testing.

21 3. For an award of attorney's fees, costs, and expenses incurred in the
22 investigation, filing, and prosecution of this action to the extent permitted by law; and

23 4. For such other and further relief as the Court deems just and proper.
24

25 Dated: July 18, 2012

EAGAN AVENATTI, LLP

26 By: 
27 Michael J. Avenatti
28 Attorneys for Plaintiff

JURY DEMAND

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

Dated: July 18, 2012

EAGAN AVENATTI, LLP

By: *Michael J. Avenatti*
Michael J. Avenatti
Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 450 Newport Center Drive, Second Floor, Newport Beach, CA 92660.

On July 18, 2012, I served the foregoing document described as: **SECOND AMENDED NATIONWIDE AND CALIFORNIA CLASS ACTION COMPLAINT** on the following person(s) in the manner indicated: [See attached service list]

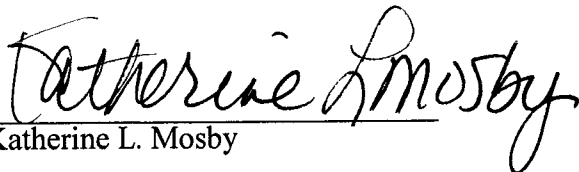
(BY MAIL) I am familiar with the practice of Eagan Avenatti for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Eagan Avenatti, Newport Beach, California, following ordinary business practices.

(BY OVERNIGHT MAIL) I am familiar with the practice of Eagan Avenatti for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by FedEx/Overnite Express that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by FedEx/Overnite Express with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by FedEx/Overnite Express at Eagan Avenatti, Newport Beach, California, following ordinary business practices.

(BY ELECTRONIC MAIL) On this date, I caused a copy of said document to be transmitted via electronic mail to the e-mail addresses listed on the attached service list.

(FEDERAL) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on July 18, 2012, at Newport Beach, California.


Katherine L. Mosby

Case No. SACV 12-00312-CJC

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3 Skadden Arps, et al
4 300 South Grand Avenue, Suite 3400
5 Los Angeles, CA 90071
6 Telephone: 213-687-5000
7 Fax: 213-687-5600

8 Gibson Dunn and Crutcher, LLP
9 333 South Grande Avenue, 45th Floor
10 Los Angeles, CA 90071
11 Telephone: 213-229-7000
12 Fax: 213-229-7520
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