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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10

11 MICHAEL GONZALES, individually and  
on behalf of all others similarly situated,  
12

Plaintiff,  
13

v.  
14

PETER THOMAS ROTH LABS, LLC, a  
15 Delaware limited liability company; and  
DOES 1 through 10, inclusive,  
16

Defendants.  
17

Case No. 8:17-cv-1393

**CLASS ACTION**

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

**JURY TRIAL DEMAND**

## INTRODUCTION

1  
2 1. The average consumer spends a mere 13 seconds making an in-store  
3 purchasing decision, or between 10 to 19 seconds for an online purchase.<sup>1</sup> That  
4 decision is heavily dependent on a product's packaging, and particularly the package  
5 dimensions: "Most of our studies show that 75 to 80 percent of consumers don't even  
6 bother to look at any label information, no less the net weight . . . . Faced with a large  
7 box and a smaller box, both with the same amount of product inside . . . consumers are  
8 apt to choose the larger box because they think it's a better value."<sup>2</sup> This lawsuit  
9 charges Defendant with intentionally packaging its products in opaque packages that  
10 contain a false bottom and a false top, such that the actual volume of product is a small  
11 fraction of the exterior volume of the container. Consumers, in reliance on the size of  
12 the containers, purchased these products, which they would not have purchased had  
13 they known that the containers were substantially empty.

14 2. Michael Gonzales ("Plaintiff"), individually and on behalf of all others  
15 similarly situated, brings this Class Action Complaint for damages, injunctive relief,  
16 and any other available legal or equitable remedies, resulting from the unlawful and  
17 deceptive actions of Peter Thomas Roth Labs, LLC ("Defendant") with respect to the  
18 packaging of all products sold in California. Plaintiff alleges as follows upon personal  
19 knowledge as to himself and his own acts and experiences, and, as to all other matters,  
20 upon information and belief, including investigation conducted by his attorneys.

21 3. Plaintiff purchased Defendant's Peter Thomas Roth Rose Stem Cell Bio-  
22 Repair Precious Cream product in June of 2017 in Costa Mesa, California. Plaintiff  
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24 <sup>1</sup> [http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-yourbrands-](http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-yourbrands-20-second-windowdown.html)  
25 [20-second-windowdown.html](http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-yourbrands-20-second-windowdown.html) (citing the Ehrenberg-Bass Institute of Marketing Science's  
26 report "Shopping Takes Only Seconds...In-Store and Online").

27 <sup>2</sup>[http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/pro-](http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/product-packaging/overview/product-packaging-ov.htm)  
28 [duct-packaging/overview/product-packaging-ov.htm](http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/product-packaging/overview/product-packaging-ov.htm) (quoting Brian Wansink,  
professor and director of the Cornell Food and Brand Lab, who studies shopping  
behavior of consumers).

1 expected to receive a full container of the Peter Thomas Roth Rose Stem Cell Bio-  
2 Repair Precious Cream product, which is packaged in non-transparent containers, as  
3 depicted below. Plaintiff was surprised and disappointed when he opened the Peter  
4 Thomas Roth Rose Stem Cell Bio-Repair Precious Cream product to discover that the  
5 package had a false bottom and a false top, such that the actual volume of product was a  
6 small fraction of the exterior volume of the container. Had Plaintiff known about the  
7 false bottom and false top at the time of purchase, he would not have bought  
8 Defendant's product.

9 4. Defendant's conduct violates consumer protection and labeling laws.

#### 10 **JURISDICTION AND VENUE**

11 5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332,  
12 because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in which a  
13 member of the putative class is a citizen of a different state than Defendant, and the  
14 amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and  
15 costs. See 28 U.S.C. § 1332(d)(2).

16 6. The Court has jurisdiction over the state law claims because they form part  
17 of the same case or controversy under Article III of the United States Constitution.

18 7. The Court has personal jurisdiction over Defendant because its Peter  
19 Thomas Roth products are advertised, marketed, distributed and sold through the State  
20 of California; Defendant engaged in the wrongdoing alleged in this Complaint  
21 throughout the United States, including in the State of California; Defendant is  
22 authorized to do business in the State of California; and Defendant has sufficient  
23 minimum contacts with the State of California, rendering the exercise of jurisdiction by  
24 the Court permissible under traditional notions of fair play and substantial justice.  
25 Moreover, Defendant is engaged in substantial activity with the State of California.

26 8. Venue is proper in the United States District Court for the Central District  
27 of California pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events  
28 giving rise to the claims occurred within this judicial district, Defendant has marketed

1 and sold the products at issue in this action in this judicial district, and it conducts  
2 business within this judicial district. In addition, Plaintiff resides in this judicial  
3 district.

4 **PARTIES**

5 9. Plaintiff Michael Gonzales is a citizen of the State of California and  
6 resides in Orange, California. Plaintiff purchased a Peter Thomas Roth Rose Stem Cell  
7 Bio-Repair Precious Cream product for personal consumption during the last four years  
8 in Costa Mesa, California. Plaintiff purchased the Product in reliance on Defendant's  
9 packaging in containers made, formed or filled as to be misleading and containing false  
10 tops and false bottoms. Had Plaintiff known the truth about Defendant's  
11 misrepresentations, he would not have purchased the Peter Thomas Roth Rose Stem  
12 Cell Bio-Repair Precious Cream product.

13 10. Plaintiff is informed and believes, and upon such information and belief  
14 alleges, that Defendant Peter Thomas Roth Labs, LLC is a Delaware limited liability  
15 company with its principal place of business located in New York, New York. Plaintiff  
16 is informed and believes, and upon such information and belief alleges, that Defendant,  
17 at all times relevant, conducted business in the State of California and within the  
18 Central District of California.

19 11. The true names and capacities of the Defendants sued herein as DOES 1  
20 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such  
21 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is  
22 legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of  
23 Court to amend this Complaint to reflect the true names and capacities of the DOE  
24 Defendants when such identities become known.

25 12. At all relevant times, each and every Defendant was acting as an agent  
26 and/or employee of each of the other Defendants and was acting within the course  
27 and/or scope of said agency and/or employment with the full knowledge and consent of  
28 each of the Defendants. Each of the acts and/or omissions complained of herein were

1 alleged and made known to, and ratified by, each of the other Defendants (Peter  
2 Thomas Roth Labs, LLC and DOE Defendants will hereafter collectively be referred to  
3 as “Defendant”).

#### 4 **FACTUAL ALLEGATIONS**

##### 5 **California Law Prohibits False Bottoms, False Sidewalls, and False Lids or** 6 **Coverings in Packaging**

7 13. Many federal and state consumer protection and labeling laws prohibit  
8 deceptive packaging and labeling of products and commodities. In California, the Fair  
9 Packaging and Labeling Act (“CFPLA”) “is designed to protect purchasers of any  
10 commodity within its provisions against deception or misrepresentation. Packages and  
11 their labels should enable consumers to obtain accurate information as to the quantity of  
12 the contents and should facilitate value comparisons.” (California Business &  
13 Professions Code § 12601.)

14 14. In this context, the CFPLA provides: “No container wherein commodities  
15 are packed shall have a *false bottom, false sidewalls, false lid or covering*, or be  
16 otherwise so constructed or filled, wholly or partially, as to facilitate the perpetration of  
17 deception or fraud.” (California Business & Professions Code § 12606(a); emphasis  
18 added.) The CFPLA provides further: “No container shall be made, formed, or filled as  
19 to be misleading. A container that does not allow the consumer to fully view its  
20 contents shall be considered to be filled as to be misleading if it contains nonfunctional  
21 slack fill.” (California Business & Professions Code § 12606(b).) Section 12606(b)  
22 defines “nonfunctional slack fill,” which would include false bottoms, false sidewalls,  
23 and false lids or covering, as “the empty space in a package that is filled to substantially  
24 less than its capacity for reasons other than any one or more of [among other things] the  
25 following:

- 26 (1) Protection of the contents of the package.  
27 (2) The requirements of machines used for enclosing the contents of the package.  
28 (3) Unavoidable product settling during shipping and handling.

1 (4) The need to utilize a larger than required package or container to provide adequate  
2 space for the legible presentation of mandatory and necessary labeling information....

3 (5) The fact that the product consists of a commodity that is packaged in a decorative or  
4 representational container where the container is part of the presentation of the product  
5 and has value that is both significant in proportion to the value of the product and  
6 independent of its function to hold the product. ....

7 (6) An inability to increase the level of fill or to further reduce the size of the  
8 package....

9 (7) The product container bears a reasonable relationship to the actual amount of  
10 product contained inside, and the dimensions of the actual product container, the  
11 product, or the amount of product therein is visible to the consumer at the point of sale,  
12 or where obvious secondary use packaging is involved.

13 (8) The dimensions of the product or immediate product container are visible through  
14 the exterior packaging....

15 (9) The presence of any headspace within an immediate product container necessary to  
16 facilitate the mixing, adding, shaking, or dispensing of liquids or powders by  
17 consumers prior to use.

18 (10) The exterior packaging contains a product delivery or dosing device if the device is  
19 visible....

20 (11) The exterior packaging or immediate product container is a kit that consists of a  
21 system, or multiple components....

22 (12) The exterior packaging of the product is routinely displayed using tester units or  
23 demonstrations to consumers in retail stores....

24 (13) The exterior packaging consists of single or multiunit presentation boxes of  
25 holiday or gift packages if the purchaser can adequately determine the quantity and  
26 sizes of the immediate product container at the point of sale.

27 (14) The exterior packaging is for a combination of one purchased product, together  
28 with a free sample or gift, wherein the exterior packaging is necessarily larger than it



1 would otherwise be due to the inclusion of the sample or gift, if the presence of both  
2 products and the quantity of each product are clearly and conspicuously disclosed on  
3 the exterior packaging.

4 (15) The exterior packaging or immediate product container encloses computer  
5 hardware or software designed to serve a particular computer function....” (California  
6 Business & Professions Code § 12606(b)(1)-(15).)

7 15. None of the above safe-harbor provisions applies to the Peter Thomas Roth  
8 Rose Stem Cell Bio-Repair Precious Cream product or Defendant’s other products.  
9 Defendant intentionally incorporates false bottoms and false tops in its packaging of the  
10 Peter Thomas Roth Rose Stem Cell Bio-Repair Precious Cream product and its other  
11 products in order to mislead consumers, including Plaintiff and Members of the Class.

12 **Defendant’s Product Packaging Contains False Bottoms and False Tops**

13 16. Defendant’s Peter Thomas Roth Rose Stem Cell Bio-Repair Precious  
14 Cream and its other products are sold in non-transparent containers. The containers  
15 have false bottoms and false tops, such that the actual volume of product was a small  
16 fraction of the exterior volume of the container.







1 17. Judging from the sizes of the container, a reasonable consumer would  
2 expect them to be substantially filled with product. Consumers are misled into believing  
3 that they are purchasing substantially more product than they receive.

4 18. There is no functional reason for including false bottoms and false tops in  
5 the product packaging.

6 19. Plaintiff is informed and believes, and upon such information and belief  
7 alleges, that consumers have relied upon, and are continuing to rely upon, the size of  
8 the product packaging containers as the basis for making purchasing decisions.  
9 Consumers believe that the Peter Thomas Roth product packaging containers are  
10 substantially full because they cannot see the actual contents within the nontransparent  
11 container.

12 20. Plaintiff is informed and believes, and upon such information and belief  
13 alleges, that Defendant is selling and will continue to sell the products using these  
14 blatantly deceptive and misleading packaging with false tops and false bottoms.

15 21. Defendant's packaging and advertising violate the CFPLA, as set forth  
16 above.

17 **Plaintiff Relied on Defendant's Misleading and Deceptive Conduct and Was**  
18 **Injured as a Result**

19 22. The types of misrepresentations made, as described herein, were  
20 considered by Plaintiff and Class Members (as would be considered by a reasonable  
21 consumer) when deciding to purchase the product. Reasonable consumers, including  
22 Plaintiff and Class Members, attached importance to whether Defendant's products  
23 were misbranded, i.e., not legally salable, or capable of legal possession, and/or contain  
24 false bottoms and/or false tops.

25 23. Plaintiff and the Class Members did not know, and had no reason to know,  
26 that the product packaging contained false bottoms and false tops.

27 24. Defendant's product packaging was a material factor in Plaintiff's and the  
28 Class Members' decisions to purchase the products. Based on Defendant's product

1 packaging, Plaintiff and the Class Members believed that they were getting more  
2 product than was actually being sold. Had Plaintiff known Defendant's packaging  
3 included false bottoms and false tops, he would not have bought the Peter Thomas Roth  
4 Rose Stem Cell Bio-Repair Precious Cream product.

5 25. Plaintiff and the Class Members paid the full price of the Peter Thomas  
6 Roth Rose Stem Cell Bio-Repair Precious Cream product and other products marketed  
7 by Defendant and received less Peter Thomas Roth product than they expected due to  
8 the false bottoms and false tops in the packaging of the Peter Thomas Roth products.

9 26. There is no practical reason for the false bottoms and false tops used to  
10 package the Peter Thomas Roth products other than to mislead consumers as to the  
11 actual volume of the Peter Thomas Roth products being purchased by consumers.

12 27. As a result of Defendant's misrepresentations, Plaintiff and thousands of  
13 others throughout California purchased the Products. Plaintiff and the Class (defined  
14 below) have been damaged by Defendant's deceptive and unfair conduct.

15 **CLASS ACTION ALLEGATIONS**

16 28. Plaintiff brings this action as a class action pursuant to Rule 23 of the  
17 Federal Rules of Civil Procedure on behalf of himself and the following class  
18 (collectively, the "Class" or "Classes"), defined as:

19 **All California residents who made retail purchases of Peter Thomas Roth**  
20 **products packaged in containers with a false bottom, false sidewalls, false lid**  
21 **or covering, as defined by California Business & Professions Code § 12606,**  
22 **during the applicable limitations period up to and including final judgment**  
23 **in this action.**

24 29. The proposed Class excludes current and former officers and directors of  
25 Defendant, Members of the immediate families of the officers and directors of  
26 Defendant, Defendant's legal representatives, heirs, successors, assigns, and any entity  
27 in which it has or has had a controlling interest, and the judicial officer to whom this  
28 lawsuit is assigned.

1 30. Plaintiff reserves the right to revise the Class definition based on facts  
2 learned in the course of litigating this matter.

3 31. The Peter Thomas Roth Rose Stem Cell Bio-Repair Precious Cream  
4 products and other products sold by Defendant suffer from virtually the same  
5 misleading product bottling, labeling and false bottoms/false tops.

6 32. Numerosity: This action has been brought and may properly be maintained  
7 as a class action against Defendant under Rules 23(b)(1)(B) and 23(b)(3) of the Federal  
8 Rules of Civil Procedure. While the exact number and identities of other Class  
9 Members are unknown to Plaintiff at this time, Plaintiff is informed and believes that  
10 there are hundreds of thousands of Members in the Class. Based on sales of the Peter  
11 Thomas Roth products it is estimated that the Class is composed of more than 10,000  
12 persons. Furthermore, even if subclasses need to be created for these consumers, it is  
13 estimated that each subclass would have thousands of Members. The Members of the  
14 Class are so numerous that joinder of all Members is impracticable and the disposition  
15 of their claims in a class action rather than in individual actions will benefit the parties  
16 and the courts.

17 33. Typicality: Plaintiff's claims are typical of the claims of the Members of  
18 the Class as all Members of the Class are similarly affected by Defendant's wrongful  
19 conduct, as detailed herein.

20 34. Adequacy: Plaintiff will fairly and adequately protect the interests of the  
21 Members of the Class in that he has no interests antagonistic to those of the other  
22 Members of the Class. Plaintiff has retained experienced and competent counsel.

23 35. Superiority: A class action is superior to other available methods for the  
24 fair and efficient adjudication of this controversy. Since the damages sustained by  
25 individual Class Members may be relatively small, the expense and burden of  
26 individual litigation makes it impracticable for the Members of the Class to individually  
27 seek redress for the wrongful conduct alleged herein. Furthermore, the adjudication of  
28 this controversy through a class action will avoid the potentially inconsistent and

1 conflicting adjudications of the claims asserted herein. There will be no difficulty in the  
2 management of this action as a class action. If Class treatment of these claims were not  
3 available, Defendant would likely unfairly receive thousands of dollars or more in  
4 improper revenue.

5 36. Common Questions Predominate: Common questions of law and fact exist  
6 as to all Members of the Class and predominate over any questions solely affecting  
7 individual Members of the Class. Among the common questions of law and fact  
8 applicable to the Class are:

9 i. Whether Defendant labeled, packaged, marketed, advertised and/or  
10 sold Peter Thomas Roth products to Plaintiff, and those similarly situated, using  
11 false, misleading and/or deceptive packaging and labeling;

12 ii. Whether Defendant's actions constitute violations of the CFPLA,  
13 California Business & Professions Code § 12601 *et seq.*;

14 iii. Whether Defendant omitted and/or misrepresented material facts in  
15 connection with the labeling, packaging, marketing, advertising and/or sale of its  
16 Peter Thomas Roth products;

17 iv. Whether Defendant's labeling, packaging, marketing, advertising  
18 and/or selling of Peter Thomas Roth products constituted an unfair, unlawful or  
19 fraudulent practice;

20 v. Whether Defendant's packaging of the Peter Thomas Roth products  
21 contained false bottoms and/or false tops;

22 vi. Whether, and to what extent, injunctive relief should be imposed on  
23 Defendant to prevent such conduct in the future;

24 vii. Whether the Members of the Class have sustained damages as a  
25 result of Defendant's wrongful conduct;

26 viii. The appropriate measure of damages and/or other relief; and

27 ix. Whether Defendant should be enjoined from continuing its unlawful  
28 practices.

1 37. The class is readily definable, and prosecution of this action as a Class  
2 action will reduce the possibility of repetitious litigation. Plaintiff knows of no  
3 difficulty which will be encountered in the management of this litigation which would  
4 preclude his maintenance of this matter as a Class action.

5 38. The prerequisites to maintaining a class action for injunctive relief or  
6 equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to  
7 act on grounds generally applicable to the Class, thereby making appropriate final  
8 injunctive or equitable relief with respect to the Class as a whole.

9 39. The prerequisites to maintaining a class action for injunctive relief or  
10 equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common  
11 to the Class predominate over any questions affecting only individual Members; and a  
12 class action is superior to other available methods for fairly and efficiently adjudicating  
13 the controversy.

14 40. The prosecution of separate actions by Members of the Class would create  
15 a risk of establishing inconsistent rulings and/or incompatible standards of conduct for  
16 Defendant. Additionally, individual actions may be dispositive of the interest of all  
17 Members of the Class, although certain Class Members are not parties to such actions.

18 41. Defendant's conduct is generally applicable to the Class as a whole and  
19 Plaintiff seeks, inter alia, equitable remedies with respect to the Class as a whole. As  
20 such, Defendant's systematic policies and practices make declaratory relief with respect  
21 to the Class as a whole appropriate.

22 **CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**

24 **VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT,**

25 **Cal. Civ. Code § 1750, et seq.**

26 42. Plaintiff realleges and incorporates herein by reference the allegations  
27 contained in all preceding paragraphs, and further alleges as follows:

28 ///



1 43. Plaintiff brings this claim individually and on behalf of the Class for  
2 Defendant's violations of California's Consumer Legal Remedies Act ("CLRA"), Cal.  
3 Civ. Code 1761(d).

4 44. Plaintiff and the Class Members are consumers who purchased Peter  
5 Thomas Roth products for personal, family or household purposes. Plaintiff and the  
6 Class Members are "consumers" as that term is defined by the CLRA in Cal. Civ. Code  
7 § 1761(d). Plaintiff and the Class Members are not sophisticated experts with  
8 independent knowledge of corporate branding, labeling and packaging practices.

9 45. The Peter Thomas Roth products that Plaintiff and other Class Members  
10 purchased from Defendant were "goods" within the meaning of Cal. Civ. Code §  
11 1761(a).

12 46. Defendant's actions, representations, and conduct have violated, and  
13 continue to violate the CLRA, because they extend to transactions that intended to  
14 result, or which have resulted in, the sale of goods to consumers.

15 47. Defendant violated California law because the Peter Thomas Roth  
16 products are packaged in containers made, formed or filled as to be misleading and  
17 which contain false bottoms and/or false tops, and because they are intentionally  
18 packaged to prevent the consumer from being able to fully see their contents.

19 48. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5),  
20 prohibits "Misrepresenting that goods or services have sponsorship, approval,  
21 characteristics, ingredients, uses, benefits, or quantities which they do not have or that a  
22 person has a sponsorship, approval, status, affiliation, or connection which he or she  
23 does not have." By engaging in the conduct set forth herein, Defendant violated and  
24 continues to violate Section 1770(a)(5) of the CLRA, because Defendant's conduct  
25 constitutes unfair methods of competition and unfair or fraudulent acts or practices, in  
26 that it misrepresents that the Peter Thomas Roth products have quantities they do not  
27 have.

28 //

1 49. Cal. Civ. Code § 1770(a)(9) further prohibits “[a]dvertising goods or  
2 services with intent not to sell them as advertised.” By engaging in the conduct set forth  
3 herein, Defendant violated and continues to violate Section 1770(a)(9), because  
4 Defendant’s conduct constitutes unfair methods of competition and unfair or fraudulent  
5 acts or practices, in that it advertises goods as containing more product than they in fact  
6 contain.

7 50. Plaintiff and the Class Members are not sophisticated experts about  
8 corporate branding, labeling and packaging practices. Plaintiff and the Class acted  
9 reasonably when they purchased the Peter Thomas Roth products based on their belief  
10 that Defendant’s representations were true and lawful.

11 51. Plaintiff and the Class suffered injuries caused by Defendant because (a)  
12 they would not have purchased the Peter Thomas Roth products on the same terms  
13 absent Defendant’s illegal and misleading conduct as set forth herein; (b) they  
14 purchased the Peter Thomas Roth products due to Defendant’s misrepresentations and  
15 deceptive packaging in containers made, formed or filled as to be misleading and  
16 containing false bottoms and/or false tops; and (c) the Peter Thomas Roth products did  
17 not have the quantities as promised.

18 52. On or about June 26, 2017, prior to filing this action, Plaintiff sent a CLRA  
19 notice letter to Defendant which complies with California Civil Code 1782(a). Plaintiff  
20 sent Peter Thomas Roth Labs, LLC, individually and on behalf of the proposed Class, a  
21 letter via Certified Mail, advising Defendant that it is in violation of the CLRA and  
22 demanding that it cease and desist from such violations and make full restitution by  
23 refunding the monies received therefrom. A true and correct copy of the letter is  
24 attached hereto as Exhibit 1.

25 53. Wherefore, Plaintiff seeks injunctive relief for these violations of the  
26 CLRA.

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28 ///

1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW,**  
3 **California Business & Professions Code § 17200, et seq.**

4 54. Plaintiff realleges and incorporates herein by reference the allegations  
5 contained in all preceding paragraphs, and further alleges as follows:

6 55. Plaintiff brings this claim individually and on behalf of the Members of the  
7 Class for Defendant’s violations of California’s Unfair Competition Law, Cal. Bus. &  
8 Prof. Code §§ 17200, et seq.

9 56. The UCL provides, in pertinent part: “Unfair competition shall mean and  
10 include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue  
11 or misleading advertising...”

12 57. Defendant violated California law because the Peter Thomas Roth  
13 products are packaged in containers made, formed or filled as to be misleading and that  
14 contain false bottoms and/or false tops and because they are intentionally packaged to  
15 prevent the consumer from being able to fully see their contents.

16 **A. “Unlawful” Prong**

17 58. Defendant’s business practices, described herein, violated the “unlawful”  
18 prong of the UCL by violating the CFPLA, California Business & Professions Code §  
19 12601 *et seq.*

20 59. Specifically, Defendant violated section 12606 of the Business and  
21 Professions Code, in that Defendant packaged its Peter Thomas Roth products in non-  
22 conforming type containers. Said non-conforming packages contained extra space by  
23 volume in the interior of the container. The extra space provided no benefit to the  
24 contents of the packaging and misled consumers. In addition, Defendant packaged its  
25 Peter Thomas Roth products in containers made, formed, or filled as to be misleading to  
26 a potential customer as to the actual size and filling of the package with Defendant’s  
27 Peter Thomas Roth products.

28 ///

1 **B. “Unfair” Prong**

2 60. Defendant’s business practices, described herein, violated the “unfair”  
3 prong of the UCL in that its conduct is substantially injurious to consumers, offends  
4 public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of  
5 the conduct outweighs any alleged benefits. Defendant’s advertising is of no benefit to  
6 consumers.

7 **C. “Fraudulent” Prong**

8 61. Defendant violated the “fraudulent” prong of the UCL by misleading  
9 Plaintiff and the Class to believe that the Peter Thomas Roth products contained more  
10 content than they actually contain and that such packaging and labeling practices were  
11 lawful, true and not intended to deceive or mislead consumers.

12 62. Plaintiff and the Class Members are not sophisticated experts about the  
13 corporate branding, labeling, and packaging practices of the Peter Thomas Roth  
14 products. Plaintiff and the Class acted reasonably when they purchased the Peter  
15 Thomas Roth products based on their belief that Defendant’s representations were true  
16 and lawful.

17 63. Plaintiff and the Class lost money or property as a result of Defendant’s  
18 UCL violations because (a) they would not have purchased the Peter Thomas Roth  
19 products on the same terms absent Defendant’s illegal conduct as set forth herein, or if  
20 the true facts were known concerning Defendant’s representations; (b) they paid a price  
21 for the Peter Thomas Roth products due to Defendant’s misrepresentations; and (c) the  
22 Peter Thomas Roth products did not have the quantities as represented.

23 64. The conduct of Defendant as set forth above demonstrates the necessity for  
24 granting injunctive relief restraining such and similar acts of unfair competition  
25 pursuant to California Business and Professions Code. Unless enjoined and restrained  
26 by order of the court, Defendant will retain the ability to, and may engage in, said acts  
27 of unfair competition, and misleading advertising. As a result, Plaintiff and the Class  
28 are entitled to injunctive and monetary relief.

**THIRD CAUSE OF ACTION**

**VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW,  
California Business & Professions Code § 17500, et seq.**

65. Plaintiff realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

66. Plaintiff brings this claim individually and on behalf of the Members of the Class for Defendant’s violations of California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500, et seq.

67. Under the FAL, the State of California makes it “unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state . . . . in any advertising device . . . or in any other manner or means whatever, including over the Internet, any statement, concerning . . . personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

68. Defendant engaged in a scheme of offering misbranded Peter Thomas Roth products for sale to Plaintiff and the Class Members by way of packaging the Peter Thomas Roth products in containers made, formed or filled as to be misleading and which contain false bottoms and/or false tops. Such practice misrepresented the content and quantity of the misbranded Peter Thomas Roth products. Defendant’s advertisements were made in California and come within the definition of advertising as contained in Bus. & Prof Code §§ 17500, et seq. in that the product packaging was intended as inducements to purchase Defendant’s Peter Thomas Roth products. Defendant knew its conduct was unauthorized, inaccurate, and misleading.

69. Defendant violated California law because the Peter Thomas Roth products are packaged in containers made, formed or filled as to be misleading and which contain false bottoms and/or false tops and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.



1 70. Defendant violated Section 17500, et seq. by misleading Plaintiff and the  
2 Class to believe that the Peter Thomas Roth product packaging contains more Peter  
3 Thomas Roth product than it in fact contains, as described herein.

4 71. Defendant knew or should have known, through the exercise of reasonable  
5 care that the Peter Thomas Roth products were and continue to be misbranded, and that  
6 its representations about the quantities of the Peter Thomas Roth products were untrue  
7 and misleading.

8 72. Plaintiff and the Class Members lost money or property as a result of  
9 Defendant's FAL violations because (a) they would not have purchased the Peter  
10 Thomas Roth products on the same terms absent Defendant's illegal conduct as set  
11 forth herein, or if the true facts were known concerning Defendant's representations;  
12 (b) they paid a price for the Peter Thomas Roth products due to Defendant's  
13 misrepresentations; and (c) the Peter Thomas Roth products did not have the benefits,  
14 or quantities as promised, and as a result the class is entitled to monetary and injunctive  
15 relief.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for relief and judgment against Defendant as  
18 follows:

19 (A) For an Order certifying the Class pursuant to Federal Rule of Civil  
20 Procedure 23, appointing Plaintiff as class representatives, and designating  
21 Plaintiff's counsel as counsel for the Class;

22 (B) For an Order declaring that Defendant's conduct violated the CLRA,  
23 Cal. Civ. Code § 1750, et seq., and awarding (i) injunctive relief, (ii) costs of  
24 suit, and (iii) reasonable attorneys' fees;

25 (C) For an Order declaring that Defendant's conduct violated California's  
26 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq., and  
27 California's False Advertising Law, Cal. Bus. & Prof. Code § 17500, et seq., and  
28 awarding (i) injunctive relief, (ii) actual damages, (iii) prejudgment and post

1 judgment interest; (iv) exemplary and/or punitive damages pursuant to Cal. Civ.  
2 Code § 3294, (v) costs of suit, and (iv) reasonable attorneys' fees pursuant to,  
3 inter alia, Cal. Code of Civ. Proc § 1021.5;

4 (D) For compensatory damages in amounts to be determined by the Court  
5 and/or jury;

6 (E) For prejudgment interest on all amounts awarded;

7 (F) For an order of restitution and all other forms of equitable monetary  
8 relief, as pleaded;

9 (G) For injunctive relief as pleaded or as the Court may deem proper;

10 (H) For an Order awarding Plaintiff and the Class their reasonable  
11 attorneys' fees and expenses and costs of suit as pleaded; and

12 (I) For such other and further relief as the Court deems just and proper.

13  
14 Date: August 14, 2017

Respectfully submitted,

15 PACIFIC TRIAL ATTORNEYS  
16 A Professional Corporation

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18 By: /s/Scott J. Ferrell  
19 Scott J. Ferrell  
20 Attorneys for Plaintiff  
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**DEMAND FOR TRIAL BY JURY**

Plaintiff, individually and on behalf of all others similarly situated, hereby demand a jury trial on all claims so triable.

Date: August 14, 2017

Respectfully submitted,

PACIFIC TRIAL ATTORNEYS  
A Professional Corporation

By: /s/Scott J. Ferrell  
Scott J. Ferrell  
Attorneys for Plaintiff

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