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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

JANICE COOPER, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

CURALLUX, LLC, a Florida limited liability
company,

Defendant.

Case No. 4:20-cv-02455-PJH

[CLASS ACTION]

FIRST AMENDED COMPLAINT

1. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE § 1750, et. seq.
2. VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW, BUSINESS & PROFESSIONS CODE § 17500, et. seq.
3. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW, BUSINESS & PROFESSIONS CODE § 17200, et. seq.
4. BREACH OF EXPRESS WARRANTY.
5. UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

Plaintiff Janice Cooper (“Ms. Cooper” or “Plaintiff”), individually and on behalf of all other similarly situated purchasers (the “Class”) of the CapillusUltra, CapillusPlus, Capillus X+, and CapillusPro laser caps (the “Product(s)”), brings this class action against Curallux, LLC, (“Curallux” or “Defendant”) alleges as follows:

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1 **SUMMARY OF THE ACTION**

2 1. In order to gain an unfair advantage in the hair regrowth industry, Defendant
3 misrepresents its Products as being “without side effects” and “physician recommended.” These
4 claims are false, misleading, and deceptive. Defendant’s Products cause several side effects,
5 including, but not limited to, temporary hair shedding, scalp pruritus, itchy scalp, dry scalp,
6 dandruff, headaches, light headedness, dizziness, nausea, and stimulation of existing cancer cells,
7 none of which are disclosed to consumers. Further, the Products are not recommended by
8 physicians without a financial interest in the Products.



21 2. Defendant manufactures, markets, and sells the Products, which are known as laser
22 caps, to males and females experiencing hair loss. These laser caps provide low level light treatment
23 to the scalp, which Defendant claims stimulates and energizes the cells within the hair follicles,
24 thus producing hair growth.

25 3. By making false, deceptive, and misleading representations about the Products,
26 Defendant is in violation of California’s consumer protection statutes, namely, California
27 Consumers Legal Remedies Act (“CLRA”), Civil Code section 1750, *et seq.*; California False
28 Advertising Law (“FAL”), Business and Professions Code section 17500, *et seq.*; and California

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1 Unfair Competition Law (“UCL”), Business and Professions Code section 17200, *et seq.*, and the
2 common law.

3 **JURISDICTION AND VENUE**

4 4. This Court has subject matter jurisdiction over this action pursuant to the Class
5 Action Fairness Act, 28 U.S.C. Section 1332(d)(2)(A) because: (i) there are 100 or more class
6 members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of
7 interest and costs, and (iii) there is minimal diversity because at least one Plaintiff and Defendant
8 are citizens of different states. This Court has supplemental jurisdiction over any state law claims
9 pursuant to 28 U.S.C. Section 1367.

10 5. Pursuant to 28 U.S.C. Section 1391, this Court is the proper venue for this action
11 because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred
12 in this District: Plaintiff is a citizen of California who resides in this District; Defendant made the
13 false, misleading, and deceptive advertising statements in this District; and Plaintiff purchased and
14 used the Product within this District. Moreover, Defendant receives substantial compensation from
15 sales and user engagement in this District, and Defendant made numerous misrepresentations,
16 which had a substantial effect in this District through its television commercials, the Products’
17 packaging and label, and its website.

18 6. Defendant is subject to personal jurisdiction in California based upon sufficient
19 minimum contacts which exist between Defendant and California. Defendant is authorized to do
20 and is doing business in California.

21 **PARTIES**

22 7. Ms. Cooper is an individual residing in Moraga, California. Plaintiff purchased the
23 Capillus82 (now known as the “CapillusUltra”) Product in California in March of 2018.
24 Specifically, Ms. Cooper purchased the Capillus82 Product online from Costco for approximately
25 \$700. In making her purchase decision, Ms. Cooper reasonably believed and relied upon
26 advertising and marketing of the Products as being “without side effects” and “physician
27 recommended.” While using the Product, Ms. Cooper developed several side effects, including
28 itchy scalp, dry scalp, dandruff, headaches, and dizziness. She would not have purchased the

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1 Product had she known the Product could cause these side effects and was not physician
2 recommended. If Ms. Cooper could rely on the truth of these statements, she might purchase the
3 Product in the future.

4 8. Curallux, LLC is headquartered in Florida. Curallux maintains its principal place of
5 business at 1715 NW 82nd Avenue, Miami, Florida 33126. Curallux offers the Products for sale at
6 stores and retailers as well as through the internet, throughout the nation, including the State of
7 California. Curallux, directly and through its agents, has substantial contacts with and receives
8 substantial benefits and income from and through the State of California. Curallux is the owner and
9 distributor of the Products and is the company that created and/or authorized the false, misleading,
10 and deceptive advertisements for the Products.

11 9. In committing the wrongful acts alleged herein, Defendant planned and participated
12 in and furthered a common scheme by means of false, misleading, deceptive, and fraudulent
13 representations to induce members of the public to purchase the Products. Defendant participated
14 in the making of such representations in that it disseminated or caused to be disseminated said
15 misrepresentations.

16 10. Defendant, upon becoming involved with the manufacture, distribution, advertising,
17 labeling, marketing, and sale of the Products, knew or should have known that the claims about the
18 Products, particularly the claims suggesting and outright stating that the Products are “without side
19 effects” and “physician recommended,” are false, misleading, and deceptive. Defendant
20 affirmatively misrepresented the nature and characteristics of the Products in order to convince the
21 public to purchase and consume the Products, resulting in, upon information and belief, profits of
22 millions of dollars or more to Defendant, all to the detriment of the consuming public.

FACTS AND DEFENDANT’S COURSE OF CONDUCT

Hair Loss

25 11. Every human hair contains three distinct parts: the shaft, root, and follicle. The hair
26 shaft is the strand of hair that is visible above the skin. The hair root is the section of the hair that
27 lies beneath the skin. The hair follicle is the skin that holds the hair root.¹

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¹ See CAPILLUS, capillus.com/how-does-hair-loss-occur (last visited January 23, 2020).

1 12. There are three stages of hair growth: the anagen phase, catagen phase, and telogen
2 phase. During the anagen phase, the hair shaft is actively growing within the hair follicle. The
3 anagen phase normally lasts between 2 and 8 years. The catagen phase is a transitional stage when
4 the hair stops growing. The catagen phase usually lasts less than a month. Finally, during the
5 telogen phase, the hair follicle is inactive until a new hair shaft emerges and pushes out the old one.
6 The telogen phase is usually between 2 and 4 months long.²

7 13. There are several different factors that can lead to hair loss, including genetics,
8 thyroid imbalance, taking certain prescription medications, stress, and physical trauma.³

9 **The Products**

10 14. Defendant sells four similar laser cap products: the CapillusUltra, CapillusPlus,
11 Capillus X+, and CapillusPro. The only differences between the Products are their relative strengths
12 and prices.

13 15. Defendant claims that using the Products is “kind of like sending your hair to the
14 gym. It’s a bio-stimulatory therapy, in that it stimulates the hair cells to both stay in the growth
15 phase longer, reenter the growth phase sooner, and stay out of the non-growth phase for as long as
16 possible.”⁴

17 16. Defendant currently sells the CapillusUltra, its least expensive Product, for \$999 on
18 its website. *See* figure 1, *infra*.

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28 ² *Id.*

³ *Id.*

⁴ *See* CAPILLUS, capillus.com/capillus-laser-caps (last visited January 23, 2020).

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Figure 1. (below): Screenshot taken from Defendant’s website.⁵



17. The CapillusPlus sells for \$1,999 on Defendant’s website. See figure 2, *infra*.

Figure 2. (below): Screenshot taken from Defendant’s website.⁶



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⁵ *Id.*
⁶ *Id.*

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1 18. The Capillus X+ sells for \$2,899 on Defendant’s website. *See* figure 3, *infra*.

2 **Figure 3.** (below): Screenshot taken from Defendant’s website.⁷



12
13 19. The CapillusPro, sells for \$2,999 on Defendant’s website. *See* figure 4, *infra*.

14 **Figure 4.** (below): Screenshot taken from Defendant’s website.⁸



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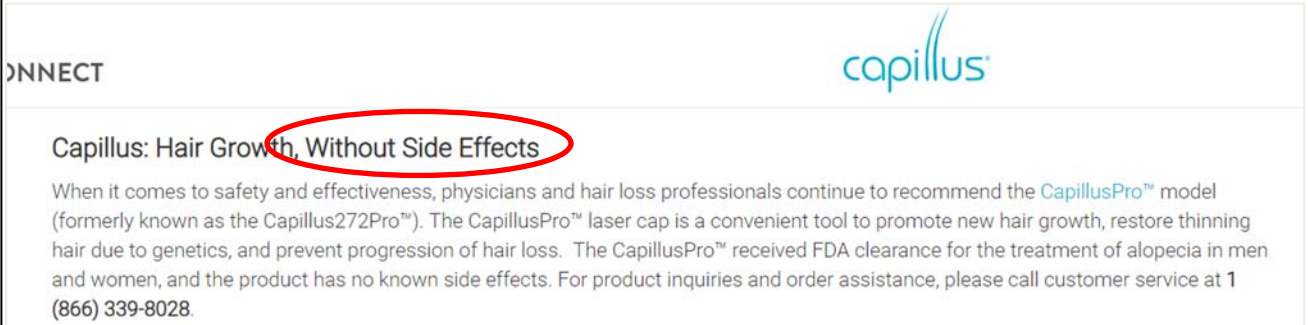
28 ⁷ *See* Capillus, capillus.com/capillus-x-plus (last visited January 23, 2020).

⁸ *See* Capillus, capillus.com/capillus-laser-caps (last visited January 23, 2020).

Defendant’s Products Have Known Side Effects

20. Defendant falsely advertises that its Products offer hair growth “without side effects.” These advertising claims appear in television commercials, on the Products’ packaging and label, and on Defendant’s website. *See* figure 8, *infra*.

Figure 9. (below): Screenshot taken from Defendant’s website.⁹



21. Defendant claims that consumers can use all of the Products “without side effects.”

22. Scientific studies¹⁰ and experts in the field hair restoration confirm there are several side effects associated with use of low level laser therapy for hair loss, including, but not limited to: temporary hair shedding, scalp pruritus, itchy scalp, dry scalp, dandruff, headaches, light headedness, dizziness, nausea, and stimulation of existing cancer cells.

23. While using the Product, Plaintiff experienced itchy scalp, dry scalp, dandruff, headaches, and dizziness.

24. The claim “without side effects” is material to reasonable consumers.

25. Plaintiff and the class relied on Defendant’s claims that the Products are “without side effects” when purchasing the Products.

26. Defendant’s claim that the Products can be used “without side effects” is false, deceptive, and misleading to reasonable consumers.

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⁹ *See* CAPILLUS, capillus.com/are-there-side-effects-to-laser-hair-therapy (last visited January 23, 2020).

¹⁰ *See*, Suchonwanit, Chalermroj, Khukhet, *Low-level laser therapy for the treatment of androgenetic alopecia in Thai men and women: a 24-week, randomized, double-blind, sham device-controlled trial*, Lasers in Medical Science (December 2018) <https://doi.org/10.1007/s10103-018-02699-9> (last visited January 23, 2020).

Defendant’s “Physician Recommended” Claim Is Misleading

27. Defendant falsely, deceptively, and misleadingly advertises that its Products are “physician recommended” and that “Capillus is the preferred laser therapy brand of leading hair restoration surgeons.” These advertising claims appear in television commercials, on the Products’ packaging and label, and on Defendant’s website. See figures 6 and 7, *infra*.

Figure 6. (below): Screenshot taken from Defendant’s website.¹¹

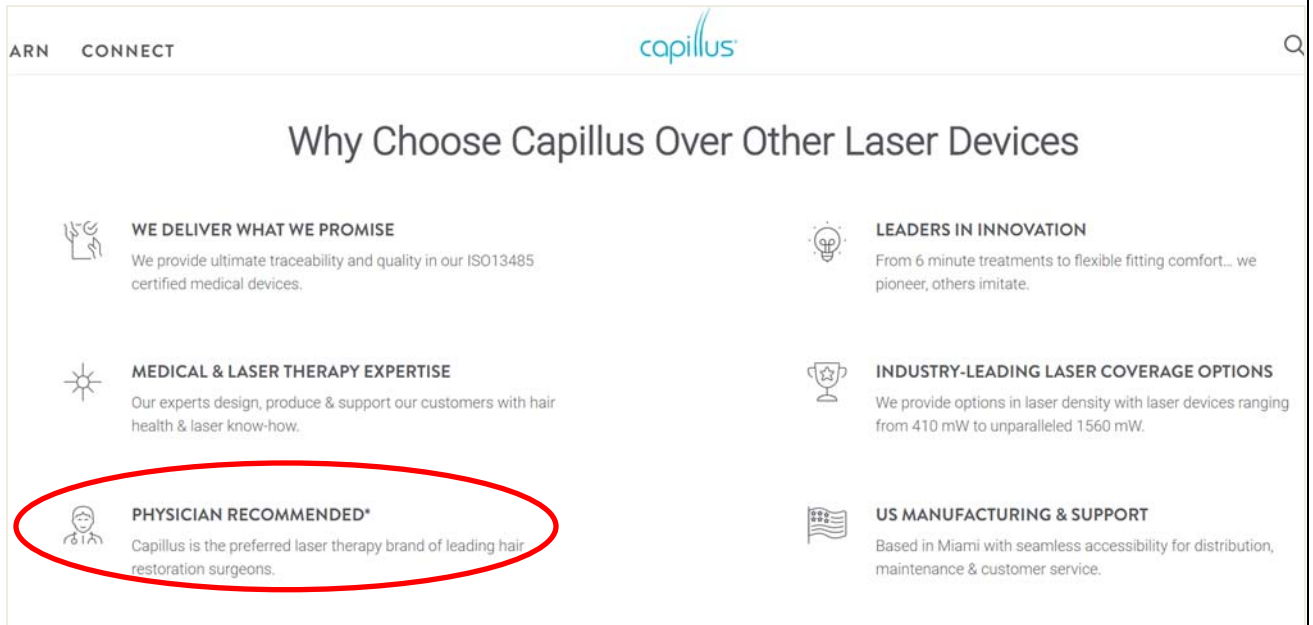
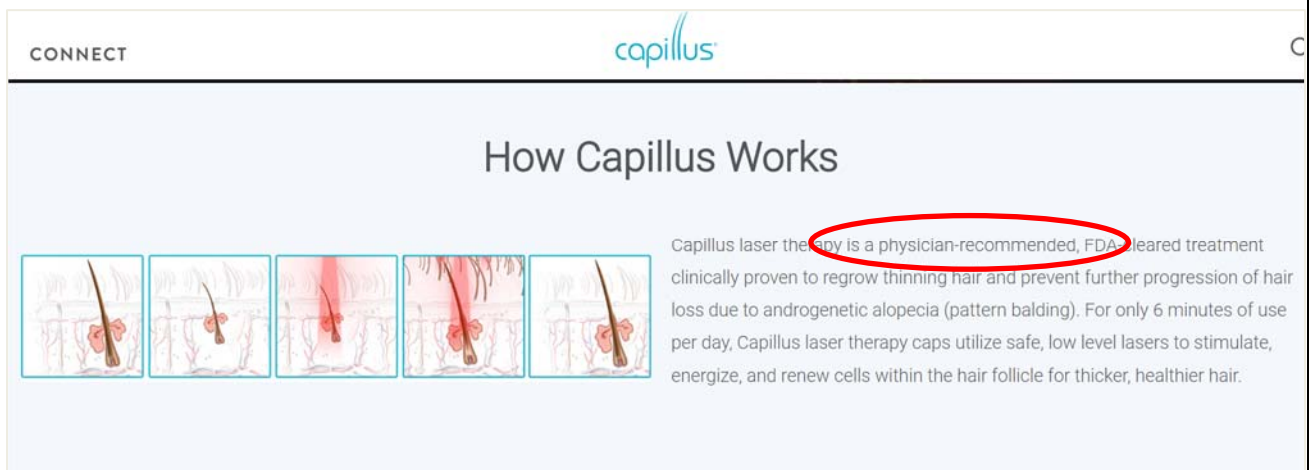


Figure 7. (below): Screenshot taken from Defendant’s website.¹²



¹¹ See CAPILLUS, capillus.com/capillus-laser-caps (last visited January 23, 2020).

¹² *Id.*

1 28. To validate the “physician recommended” claims, Defendant relies on eight
2 physicians to recommend the Products on its television commercials, the Products’ packaging and
3 label, and its website. For example, *see* figure 7, *infra*.

4 **Figure 8.** (below): Screenshot taken from Defendant’s website.¹³



14 29. All of the physicians that recommend the Products sell the laser caps and are a part
15 of the Capillus network. These physicians have a financial incentive to make the purported
16 recommendations.

17 30. Reasonable consumers interpret “physician recommended” to mean that physicians
18 without a financial incentive recommend the Product.

19 31. The phrase “physician recommended” is material to reasonable consumers.

20 32. Plaintiff and reasonable consumers perceived Defendant to be credible and relied on
21 Defendant’s representation that the Products are physician recommended.

22 33. As it turns out, Defendant is capitalizing on reasonable consumers’ interpretation of
23 the phrase “physician recommended” and using this phrase to line its own pockets.

24 34. Defendant’s claims that all of its Products are “physician recommended” are false,
25 deceptive, and misleading to reasonable consumers.

26 35. The Products are marketed and sold at retail stores throughout California and the
27 United States as well as on Defendant’s website (www.capillus.com).

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¹³ *Id.*

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1 36. When purchasing the Product, Plaintiff reasonably relied on Defendant’s claims that
2 the Products were “without side effects” and “physician recommended.” Had Plaintiff known these
3 statements were false, she would not have purchased the Product.

4 37. Defendant’s advertising and marketing claims lead reasonable consumers to
5 reasonably believe that the Products are actually “without side effects” and “physician
6 recommended.”

7 38. Upon information and belief, during the course of its false, misleading, and deceptive
8 advertising campaign, Defendant has sold thousands of units or more of the Products based upon
9 Defendant’s false claims. Plaintiff and the Class have suffered injury in fact and have lost money
10 as a result of Defendant’s false representations.

11 39. Defendant’s conduct not only threatens consumers, but stifles competition from
12 businesses large and small who play by the rules. If Defendant’s conduct were permitted to continue
13 unchecked, Defendant would obtain an unfair competitive advantage over competitors who follow
14 the law.

15 40. Plaintiff seeks injunctive relief against Defendant for false and misleading
16 advertising in violation of Business and Professions Code Section 17200, et seq., Business and
17 Professions Code Section 17500, et seq., and Civil Code Section 1750, et seq. Defendant made
18 and continues to make these false and misleading statements in its advertising of the Products.
19 Compliance with remedial statutes like those underlying this lawsuit will benefit Plaintiff, the
20 putative class, consumers, and the general public. Compliance is the primary litigation objective of
21 this lawsuit.

22 41. The false and misleading advertising of the Products violates the California
23 Consumers Legal Remedies Act, particularly California Civil Code Sections 1770(a)(2),
24 1770(a)(5), 1770(a)(7), and 1770(a)(9). As such, Defendant has committed per se violations of
25 Business and Professions Code Section 17200, et seq., and Business and Professions Code Section
26 17500.

27 42. On November 21, 2019, the putative class provided Defendant with notice of these
28 violations via certified U.S. mail pursuant to Civil Code Section 1750, *et seq.*

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1 **CLASS ACTION ALLEGATIONS**

2 43. Plaintiff brings this action on her own behalf and on behalf of all other persons
3 similarly situated. The Class which Plaintiff seeks to represent comprises: “All persons who
4 purchased the Products in the United States or, alternatively, in California, for personal
5 consumption and not for resale during the time period of four years prior to the filing of the
6 complaint through the present.”

7 44. Said definition may be further defined or amended by additional pleadings,
8 evidentiary hearings, a class certification hearing, and orders of this Court.

9 45. The Class is comprised of tens of thousands of consumers throughout the United
10 States and/or State of California. The Class is so numerous that joinder of all members is
11 impracticable and the disposition of their claims in a class action will benefit the parties and the
12 Court.

13 46. There is a well-defined community of interest in the questions of law and fact
14 involved affecting the parties to be represented in that the Class was exposed to the same common
15 and uniform false and misleading advertising. The questions of law and fact common to the Class
16 predominate over questions which may affect individual Class members. Common questions of
17 law and fact include, but are not limited to, the following:

- 18 a. Whether Defendant’s conduct is an unlawful business act or practice within the
19 meaning of Business and Professions Code section 17200, *et seq.*;
- 20 b. Whether Defendant’s conduct is a fraudulent business act or practice within the
21 meaning of Business and Professions Code section 17200, *et seq.*;
- 22 c. Whether Defendant’s conduct is an unfair business act or practice within the meaning
23 of Business and Professions Code section 17200, *et seq.*;
- 24 d. Whether Defendant’s advertising is untrue or misleading within the meaning of
25 Business and Professions Code section 17500, *et seq.*;
- 26 e. Whether Defendant made false and misleading representations in its advertising of
27 the Products;
- 28

1 f. Whether Defendant knew or should have known that the representations were false;
2 and,

3 g. Whether Defendant represented that the Products have characteristics, benefits, uses,
4 or quantities which they do not have.

5 47. Plaintiff's claims are typical of the claims of the proposed Class, as the
6 representations and omissions made by Defendant are uniform and consistent and are contained in
7 advertisements that were seen and relied on by Plaintiff and members of the class.

8 48. Plaintiff will fairly and adequately represent and protect the interests of the proposed
9 Class. Plaintiff has retained competent and experienced counsel in class action and other complex
10 litigation.

11 49. Plaintiff and the Class have suffered injury in fact and lost money as a result of
12 Defendant's false, deceptive, and misleading representations.

13 50. Plaintiff would not have purchased the Product but for the representations by
14 Defendant about the Products.

15 51. The Class is identifiable and readily ascertainable. Notice can be provided to such
16 purchasers using techniques and a form of notice similar to those customarily used in class actions,
17 and by internet publication, radio, newspapers, and magazines.

18 52. A class action is superior to other available methods for fair and efficient adjudication
19 of this controversy. The expense and burden of individual litigation would make it impracticable
20 or impossible for proposed members of the Class to prosecute their claims individually.

21 53. The trial and the litigation of Plaintiff's claims are manageable.

22 54. Defendant has acted on grounds generally applicable to the entire Class, thereby
23 making final injunctive relief and/or corresponding declaratory relief appropriate with respect to
24 the Class as a whole. The prosecution of separate actions by individual Class members would create
25 the risk of inconsistent or varying adjudications with respect to individual member of the Class that
26 would establish incompatible standards of conduct for Defendant.

27 55. Absent a class action, Defendant will likely retain the benefits of its wrongdoing.
28 Because of the small size of the individual Class members' claims, few, if any, Class members

1 could afford to seek legal redress for the wrongs complained of herein. Absent a representative
2 action, the Class members will continue to suffer losses and Defendant will be allowed to continue
3 these violations of law and to retain the proceeds of its ill-gotten gains.

4 **FIRST CAUSE OF ACTION:**

5 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

6 **BUSINESS & PROFESSIONS CODE § 17200, et seq.**

7 56. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs
8 and incorporates the same as if set forth herein at length.

9 57. This cause of action is brought pursuant to Business and Professions Code Section
10 17200, *et seq.*, on behalf of Plaintiff and a Class consisting of all persons residing in the United
11 States and/or State of California who purchased the Products for personal use and not for resale
12 during the time period of four years prior to the filing of the complaint through the present.

13 **A. “Unfair” Prong**

14 58. Under California’s Unfair Competition Law, Cal. Bus. & Prof. Code Section 17200,
15 *et seq.*, a challenged activity is “unfair” when any injury it causes outweighs any benefits provided
16 to consumers and the injury is one that the consumers themselves could not reasonably avoid.
17 *Camacho v. Auto Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

18 59. Defendant’s false and deceptive advertising as alleged herein does not confer any
19 benefit to consumers.

20 60. Defendant’s false and deceptive advertising as alleged herein causes injuries to
21 consumers, who experience side effects and do not receive a product consistent with their
22 reasonable expectations.

23 61. Defendant’s false and deceptive advertising as alleged herein causes injuries to
24 consumers, who end up overpaying for the Products that are not as advertised.

25 62. Consumers cannot avoid any of the injuries caused by Defendant’s false and
26 deceptive advertising.

27 63. The injuries cause by Defendant’s false and deceptive advertising outweigh any
28 benefits.

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1 89. Defendant’s claims about the Products lead reasonable consumers to believe that the
2 Products are in fact “without side effects” and “physician recommended.”

3 90. Defendant knew or should have known that its advertising claims set forth herein are
4 false and misleading to reasonable consumers.

5 91. Plaintiff would not have purchased the Product but for the representations by
6 Defendant that the Products are “without side effects” and “physician recommended.”

7 92. Plaintiff and the Class have suffered injury in fact and lost money as a result of and
8 in reasonable and detrimental reliance upon Defendant’s false representations.

9 93. As alleged in the preceding paragraphs, the misrepresentations by Defendant of the
10 material facts detailed above constitutes an unfair, unlawful, and fraudulent business practice
11 within the meaning of California Business and Professions Code Section 17500.

12 94. In addition, Defendant’s use of various forms of advertising media to advertise, call
13 attention to, or give publicity to the sale of goods or merchandise which are not as represented in
14 any manner constitutes unfair competition, unfair, deceptive, untrue or misleading advertising, and
15 an unlawful business practice within the meaning of Business and Professions Code sections 17200
16 and 17531, which advertisements have deceived and are likely to deceive the consuming public, in
17 violation of Business and Professions Code Section 17500.

18 95. Pursuant to Business and Professions Code Sections 17203 and 17535, Plaintiff and
19 the members of the Class seek a court order enjoining Defendant from continuing to deceptively
20 advertise the Products as set forth herein.

21 **THIRD CAUSE OF ACTION:**

22 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT,**

23 **CALIFORNIA CIVIL CODE § 1750, et seq.**

24 96. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs
25 and incorporates the same as if set forth herein at length.

26 97. This cause of action is brought pursuant to Civil Code Section 1750, et seq., the
27 Consumers Legal Remedies Act (“CLRA”), on behalf of Plaintiff and a Class consisting of all
28 persons residing in the United States and/or State of California who purchased the Products for

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1 personal consumption and not for resale during the time period of four years prior to the filing of
2 the complaint through the present.

3 98. The Class consists of thousands of persons, the joinder of whom is impracticable.

4 99. There are questions of law and fact common to the class, which questions are
5 substantially similar and predominate over questions affecting the individual members, as set forth,
6 supra.

7 100. Defendant's misrepresentations described herein were intended to increase sales to
8 the consuming public, and violated and continue to violate the CLRA by (1) misrepresenting the
9 approval or certification of goods, (2) representing that the Products have characteristics and
10 benefits which they do not have, (3) representing that goods are of a particular standard when they
11 are of another, and (4) advertising goods with the intent not to sell them as advertised.

12 101. In advertising the Products as set forth herein, Defendant intentionally
13 misrepresented and concealed material facts from Plaintiff and the Class, specifically by claiming
14 the Products are "without side effects" and "physician recommended." Said misrepresentations and
15 concealment were done with the intention of deceiving Plaintiff and the Class, and depriving them
16 of their legal rights and money.

17 102. Defendant's claims about the Products led and continues to lead consumers like
18 Plaintiff to reasonably believe that the Products are "without side effects" and "physician
19 recommended."

20 103. Defendant knew or should have known that the Products are not "without side
21 effects" and "physician recommended."

22 104. Plaintiff and the Class have suffered injury in fact as a result of and in reliance upon
23 Defendant's false representations.

24 105. Plaintiff would not have purchased the Product but for the misrepresentations by
25 Defendant about the Products set forth herein.

26 106. Pursuant to Section 1780(a) of the CLRA, Plaintiff seeks injunctive relief in the form
27 of an order enjoining the above-described wrongful acts and practices of Defendant, including, but
28 not limited to, an order enjoining Defendant from continuing to make the representations set forth

1 above that the Products are “without side effects” and “physician recommended.” At a minimum,
2 Defendant must immediately cease its false, deceptive, and misleading representations on its
3 television commercials, the Products’ packaging and label, and its website.

4 107. Plaintiff shall suffer irreparable harm if such an order is not granted.

5 108. By letter dated November 21, 2019, Plaintiff advised Defendant of its false and
6 misleading claims pursuant to California Civil Code Section 1782(a).

7 **FOURTH CAUSE OF ACTION:**

8 **BREACH OF EXPRESS WARRANTY**

9 109. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs
10 and incorporates the same as if set forth herein at length.

11 110. Defendant expressly warranted in its television commercials, the Products’
12 packaging and label, and its website that that the Products are “without side effects” and “physician
13 recommended.” Defendant’s claims constitute an affirmation of fact, promise, and/or description
14 of the goods, the Products, that became part of the basis of the bargain and created an express
15 warranty that the Products would conform to the stated promise. Plaintiff placed importance on
16 Defendant’s claims.

17 111. All conditions precedent to Defendant’s liability under this contract have been
18 performed by Plaintiff and the Class.

19 112. Defendant breached the terms of this contract, including the express warranties, with
20 Plaintiff and the Class by not providing Products that conform to the advertisement.

21 113. Defendant’s express warranty that the Products are “without side effects” was
22 breached because there are well-established side effects associated with the use of the Products.

23 114. Defendant’s express warranty that the Products provided are “physician
24 recommended” was breached because all of the physicians that recommend the Product have a
25 financial interest in the Products.

26 115. Defendant therefore breached the terms of its express warranties with Plaintiff and
27 the Class by not providing Products that conform to the advertising claims set forth herein.
28

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1 116. As a result of Defendant’s breach of express warranty, Plaintiff and the Class have
2 been damaged in the amount to be determined at trial.

3 **FIFTH CAUSE OF ACTION:**

4 **UNJUST ENRICHMENT**

5 117. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs
6 and incorporates the same as if set forth herein at length.

7 118. By means of Defendant’s wrongful conduct alleged herein, Defendant knowingly
8 sold the Products to Plaintiff and members of the Class in a manner that was unfair, unconscionable,
9 and oppressive.

10 119. Defendant knowingly received and retained wrongful benefits and funds from
11 Plaintiff and members of the Class. In so doing, Defendant acted with conscious disregard for the
12 rights of Plaintiff and members of the Class.

13 120. As a result of Defendant’s wrongful conduct as alleged herein, Defendant has been
14 unjustly enriched at the expense of, and to the detriment of, Plaintiff and members of the Class.

15 121. Defendant’s unjust enrichment is traceable to, and resulted directly and proximately
16 from, the conduct alleged herein.

17 122. Under the common law doctrine of unjust enrichment, it is inequitable for Defendant
18 to be permitted to retain the benefits it received, without justification, from selling the Products to
19 Plaintiff and members of the Class in an unfair, unconscionable, and oppressive manner.
20 Defendant’s retention of such funds under such circumstances making it inequitable to do so
21 constitutes unjust enrichment.

22 123. The financial benefits derived by Defendant rightfully belong to Plaintiff and
23 members of the Class. Defendant should be compelled to return in a common fund for the benefit
24 of Plaintiff and members of the Class all wrongful or inequitable proceeds received by Defendant.

25 124. Plaintiff and members of the Class have no adequate remedy at law.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays
28 for judgment and relief on all Causes of Action as follows:

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- A. An order enjoining Defendant from advertising the Products are “without side effects” and “physician recommended;”
- B. Damages against Defendant in an amount to be determined at trial, together with pre- and post-judgment interest at the maximum rate allowable by law on any amounts awarded;
- C. Restitution and/or disgorgement in an amount to be determined at trial;
- D. Punitive damages;
- E. Reasonable attorneys’ fees;
- F. Costs of this suit; and
- G. Such other and further relief as the Court may deem necessary or appropriate.

JURY TRIAL DEMANDED

Plaintiff demands a jury trial on all triable issues.

DATED: June 22, 2020

CLARKSON LAW FIRM, P.C.

/s/ Shireen M. Clarkson

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Attorneys for Plaintiff