

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

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

CLARKSON LAW FIRM, P.C.
Ryan J. Clarkson (SBN 257074)
rclarkson@clarksonlawfirm.com
Yana Hart (SBN 306499)
yhart@clarksonlawfirm.com
Zach Chrzan (SBN 329159)
zchrzan@clarksonlawfirm.com
22525 Pacific Coast Highway
Malibu, CA 90265
Tel: (213) 788-4050
Fax: (213) 788-4070

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MOCHA GUNARATNA and RENEE
CAMENFORTE, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

DR. DENNIS GROSS SKINCARE,
LLC, a New York Limited Liability
Company,

Defendant.

Case No. 2:20-cv-02311-MWF-GJS

SECOND AMENDED COMPLAINT

1. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE § 1750, *et. seq.*
2. VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW, BUSINESS AND PROFESSIONS CODE § 17500, *et. seq.*
3. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW, BUSINESS AND PROFESSIONS CODE § 17200, *et. seq.*
4. BREACH OF EXPRESS WARRANTY
5. BREACH OF IMPLIED WARRANTY
6. VIOLATION OF MMWA, 15 USC SECTION 2301, *et seq.*, WRITTEN WARRANTY
7. VIOLATION OF MMWA 15 USC SECTION 2301, *et seq.*, IMPLIED WARRANTY OF MERCHANTABILITY
8. RESTITUTION BASED ON QUASI-CONTRACT/UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

1 Plaintiffs Mocha Gunaratna and Renee Camenforte (“Plaintiffs”), individually
2 and on behalf of all others similarly situated, by and through their attorneys, bring
3 this class action against Defendant Dr. Dennis Gross Skincare, LLC (“Defendant”)
4 and allege as follows:

5 **SUMMARY OF THE ACTION**

6 1. Defendant sells a line of fake collagen cosmetic products that do not
7 contain any collagen whatsoever.

8 2. This is a class action lawsuit brought on behalf of all purchasers of the
9 Dr. Dennis Gross C + Collagen product line, including C + Collagen Deep Cream,
10 C + Collagen Serum, C + Collagen Mist, C + Collagen Eye Cream, and C +
11 Collagen Biocellulose Brightening Treatment Mask (collectively, the “Products”),
12 sold online and at retail outlets throughout California. True and accurate
13 representations of some of the Products’ front labels are depicted below.

14 CLARKSON LAW FIRM, P.C.
15 22525 Pacific Coast Highway
16 Malibu, CA 90265



CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

1 Plaintiffs lost money in the form of the price premium they paid for Products which
2 falsely claim to contain collagen.

3 11. Defendant and its agents prepared, approved, and disseminated the
4 Products' labeling and advertising statewide. Defendant designed the Products'
5 labels to entice consumers who sought to purchase products containing collagen. If
6 Plaintiffs had known that the Products did not contain collagen, they would not have
7 purchased the Products, let alone paid a "premium" for such a valued benefit.

8 12. Defendant Dr. Dennis Gross Skincare, LLC is a limited liability
9 company headquartered in New York. Dr. Dennis Gross Skincare, LLC maintains
10 its principal business office at 444 Madison Ave. Suite 500, New York, NY 10022.
11 Dr. Dennis Gross Skincare, LLC, directly and through its agents, has substantial
12 contacts with and receives substantial benefits and income from and through the
13 State of California. Dr. Dennis Gross Skincare, LLC is an owner, manufacturer,
14 and/or distributor of the Dennis Gross C + Collagen product line, and is a company
15 that created and/or authorized the false, misleading, and deceptive labeling and
16 packaging for the Products.

17 13. Defendant, upon becoming involved with the manufacture, advertising,
18 and sale of the Products, knew or should have known that the claims about the
19 Products and, in particular, the claims suggesting and/or outright stating that the
20 Products contain collagen are false, deceptive, and misleading. Defendant
21 affirmatively misrepresented the contents and benefits of the Products in order to
22 convince the public and the Products' users to purchase and use the Products,
23 resulting in profits of millions of dollars or more to Defendant, all to the damage
24 and detriment of the consuming public.

25 **JURISDICTION AND VENUE**

26 14. This Court has subject matter jurisdiction of this action pursuant to 28
27 U.S.C. Section 1332 and the Class Action Fairness Act of 2005 because: (i) there
28 are 100 or more class members, (ii) there is an aggregate amount in controversy

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

1 exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal
2 diversity because at least one plaintiff and defendant are citizens of different states.
3 This Court has supplemental jurisdiction over any state law claims pursuant to 28
4 U.S.C. Section 1367.

5 15. Pursuant to 28 U.S.C. Section 1391, this Court is the proper venue for
6 this action because a substantial part of the events, omissions, and acts giving rise to
7 the claims herein occurred in this District. Plaintiffs are citizens of California, reside
8 in this District, and purchased the Products within this District. Moreover,
9 Defendant receives substantial compensation from sales in this District, and
10 Defendant made numerous misrepresentations which had a substantial effect in this
11 District, including, but not limited to, label, packaging, and Internet advertisements,
12 among other advertising.

13 16. Defendant is subject to personal jurisdiction in California based upon
14 sufficient minimum contacts which exist between Defendant and California.
15 Defendant is authorized to do and doing business in California.

16 **FACTUAL ALLEGATIONS**

17 17. Collagen is the single most abundant protein found in the cartilage,
18 bone, and tissues of animals, fish, and humans. It is a major insoluble fibrous
19 protein in the extracellular matrix and connective tissue. It is found in tendons and
20 ligaments, as well as the cornea, cartilage, bones, gut, blood vessels and
21 intervertebral discs. Collagen is not found in plants.

22 18. Collagen has been linked to youthful skin, hair, and nails. As a result,
23 sales of collagen anti-aging products in the United States are booming as consumers
24 look to improve their skin, hair, and nails. In fact, the United States collagen market
25 is expected to double in size over the next decade with much of that growth coming
26 from cosmetics.

27 19. Honest collagen cosmetic manufacturers sell products that actually
28 contain collagen, while honest amino acid cosmetic manufacturers are careful not to

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

1 deceptively label their products as containing collagen. The latter otherwise label
2 and advertise their products as containing peptides or “boosters.” Truth in
3 advertising and labeling of collagen cosmetics is critical to ensuring fair competition
4 and a properly functioning marketplace.

5 20. Defendant uniformly and consistently labels and advertises the Products
6 as containing “C + Collagen” – meaning they contain Vitamin C and Collagen.
7 While the Products do in fact contain Vitamin C, the Products contain zero collagen.

8 21. Defendant lists purported “Collagen Amino Acids” as an ingredient in
9 the Products. However, amino acids are just the building blocks of proteins in the
10 human body, of which collagen is but one example. Amino acids are as different
11 from collagen as auto parts are from an automobile.

12 22. Defendant’s false labeling and advertising leads consumers to believe
13 they are purchasing a product which contains collagen.

14 23. Defendant has made, and continues to make these false, deceptive,
15 misleading, unfair, fraudulent, and unlawful claims and promises to consumers
16 about the presence of collagen in the Products.

17 24. Plaintiffs and the Class purchased the Products in reliance upon the
18 challenged “Collagen” label and advertising claims.

19 25. Plaintiffs and the Class would not have purchased the Products had they
20 known the Products did not contain collagen.

21 26. Defendant’s conduct threatens California consumers by disseminating
22 deceptive and misleading advertising of the Products. Defendant’s conduct also
23 threatens other companies, large and small, who “play by the rules.” Defendant’s
24 conduct stifles competition, has a negative impact on the marketplace, and reduces
25 consumer choice.

26 27. Upon information and belief, Plaintiffs allege that during the course of
27 the deception Defendant has sold thousands of units of the Products based upon the
28 false and deceptive labels.

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

1 33. Common questions of fact and law predominate over questions which
2 may affect individual class members, including the following:

3 a. Whether Defendant’s conduct constitutes an unfair method of
4 competition or unfair or deceptive act or practice in violation of California Civil
5 Code Section 1750, *et seq.*;

6 b. Whether Defendant used deceptive representations in connection
7 with the sale of the Products in violation of California Civil Code Section 1750, *et*
8 *seq.*;

9 c. Whether Defendant represented the Products have characteristics
10 that they do not have in violation of California Civil Code Section 1750, *et seq.*;

11 d. Whether Defendant advertised the Products with the intent not to
12 sell them as advertised in violation of California Civil Code Section 1750, *et seq.*;

13 e. Whether Defendant’s advertising is untrue or misleading within
14 the meaning of Business and Professions Code Section 17500, *et seq.*;

15 f. Whether Defendant knew or by the exercise of reasonable care
16 should have known its advertising was and is untrue or misleading in violation of
17 Business and Professions Code Section 17500, *et seq.*;

18 g. Whether Defendant made false and misleading representations in
19 its advertising and labeling of the Products in violation of Business and Professions
20 Code Section 17500, *et seq.*;

21 h. Whether Defendant’s conduct is an unfair business act or practice
22 within the meaning of Business and Professions Code Section 17200, *et seq.*;

23 i. Whether Defendant’s conduct is a fraudulent business act or
24 practice within the meaning of Business and Professions Code Section 17200, *et*
25 *seq.*;

26 j. Whether Defendant’s conduct is an unlawful business act or
27 practice within the meaning of Business and Professions Code Section 17200, *et*
28 *seq.*;

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

1 k. Whether Defendant’s conduct constitutes a breach of express
2 warranty;

3 l. Whether Defendant’s conduct constitutes a breach of implied
4 warranty;

5 m. Whether Defendant’s conduct constitutes a violation of the
6 Magnuson-Moss Warranty Act written warranty provision within the meaning of
7 15 USC Section 2301, *et seq.*;

8 n. Whether Defendant’s conduct constitutes a violation of the
9 Magnuson-Moss Warranty Act implied warranty of merchantability provision
10 within the meaning of 15 USC Section 2301, *et seq.*;

11 o. Whether Defendant was unjustly enriched by its deceptive
12 conduct;

13 p. Whether Plaintiffs and the Class paid more money or a premium
14 amount for the Products than they actually received; and

15 q. How much more money or premium amount Plaintiffs and the
16 Class paid for the Products than they actually received.

17 34. Plaintiffs’ claims are typical of the claims of the Class, and Plaintiffs
18 will fairly and adequately represent and protect the interests of the Class. Plaintiffs
19 have retained competent and experienced counsel in class action and other complex
20 litigation.

21 35. Plaintiffs and the Class have suffered injury in fact and have lost money
22 as a result of Defendant’s false representations and material omissions. Plaintiffs
23 and the Class purchased the Products under the false belief that the Products
24 contained collagen. Plaintiffs and the Class relied upon Defendant’s labeling,
25 packaging, and advertising claims and would not have purchased the Products if
26 they had known that the Products did not contain collagen.

27 36. A class action is superior to other available methods for fair and
28 efficient adjudication of this controversy. The expense and burden of individual

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

1 litigation would make it impracticable or impossible for the Class to prosecute their
2 claims individually.

3 37. The trial and litigation of Plaintiffs' claims are manageable. Individual
4 litigation of the legal and factual issues raised by Defendant's conduct would
5 increase delay and expense to all parties and the court system. The class action
6 device presents far fewer management difficulties and provides the benefits of a
7 single, uniform adjudication, economics of scale, and comprehensive supervision by
8 a single court.

9 38. Defendant has acted on grounds generally applicable to the entire Class,
10 thereby making final injunctive relief and/or corresponding declaratory relief
11 appropriate with respect to the Class as a whole. The prosecution of separate actions
12 by individual Class members would create the risk of inconsistent or varying
13 adjudications with respect to individual Class members that would establish
14 incompatible standards of conduct for Defendant.

15 39. Absent a class action, Defendant will likely retain the benefits of its
16 wrongdoing. Because of the small size of the individual Class members' claims,
17 few, if any, Class members could afford to seek legal redress for the wrongs
18 complained of herein. Absent a representative action, the Class will continue to
19 suffer losses and Defendant will be allowed to continue these violations of law and
20 to retain the proceeds of its ill-gotten gains.

21 40. On May 23, 2019 written notice was sent to Defendant via certified U.S.
22 mail and on July 27, 2020 written notice was sent to Defendant via electronic mail
23 pursuant to Civil Code Section 1750, *et seq.*, which set forth the claims of the Class
24 concerning the Products' false, misleading, deceptive, unlawful, unfair, and
25 fraudulent claims.

26 41. Defendant is aware of Plaintiffs' and the Class's claims. Previously
27 named defendants Dennis Gross Cosmetology, LLC ("Cosmetology") and Dennis
28 Gross Dermatology, LLC ("Dermatology") acknowledged that Defendant is the

1 proper defendant in this matter. On reply to their motion to dismiss pursuant to
2 Rule 12(b)(1) and (b)(2), Defendants stated the complaint should be amended to
3 name Defendant, as Defendant is the “proper party Defendant who actually owns
4 and sells the product Plaintiffs complain of.” (Dkt. 20). Additionally, Dermatology
5 and Defendant share the same principal business office in New York.

6 **COUNT ONE**

7 **Violation of California Consumers Legal Remedies Act,**

8 **California Civil Code 1750, *et seq.***

9 ***(brought on behalf of the Class)***

10 42. Plaintiffs repeat and reallege the allegations of the previous paragraphs,
11 and incorporates the same as if set forth herein at length.

12 43. Plaintiffs bring this cause of action pursuant to Civil Code Section 1750,
13 *et seq.*, the Consumers Legal Remedies Act (“CLRA”), on her own behalf and on
14 behalf of all other persons similarly situated. Plaintiffs seek to represent a Class
15 consisting of “All persons who purchased the Products in the State of California, for
16 personal use and not for resale during the time period of four years prior to the filing
17 of the complaint through the date of court order approving or granting class
18 certification.” Excluded from the Class are Defendant’s officers, directors, and
19 employees, and any individual who received remunerations from Defendant in
20 connection with that individual’s use or endorsement of the Products.

21 44. The Class consists of thousands of persons, the joinder of whom is
22 impracticable.

23 45. There are questions of law and fact common to the Class, which
24 questions are substantially similar and predominate over questions affecting the
25 individual Class members, as set forth hereinabove.

26 46. The CLRA prohibits certain “unfair methods of competition and unfair
27 or deceptive acts or practices” in connection with the sale of goods.
28

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

1 47. The policies, acts, and practices described herein were intended to result
2 in the sale of the Products to the consuming public, and violated and continue to
3 violate the CLRA by (1) using deceptive representations in connection with the
4 Products; and (2) advertising, labeling, and packaging the Products with intent not
5 to sell them as advertised.

6 48. Defendant fraudulently deceived Plaintiffs and the Class by
7 misrepresenting the Products as having characteristics which they do not have, e.g.,
8 labeling and advertising the Products as containing collagen. In doing so, Defendant
9 misrepresented and concealed material facts from Plaintiffs and the Class. Said
10 misrepresentations and concealment were done with the intention of deceiving
11 Plaintiffs and the Class and depriving them of their legal rights and money.

12 49. Defendant fraudulently deceived Plaintiffs and the Class by labeling and
13 advertising the Products with intent not to sell them as advertised. Specifically,
14 Defendant labeled and misrepresented the Products as containing collagen. In doing
15 so, Defendant misrepresented and concealed material facts from Plaintiffs and the
16 Class. Said misrepresentations and concealment were done with the intention of
17 deceiving Plaintiffs and the Class and depriving them of their legal rights and
18 money.

19 50. Defendant knew or should have known, through the exercise of
20 reasonable care, that the Products' labeling and advertising were misleading.

21 51. Defendant's actions as described herein were done with conscious
22 disregard of Plaintiffs' rights, and Defendant was wanton and malicious in its
23 concealment of the same.

24 52. Defendant's labeling and advertising of the Products were material
25 factors in Plaintiffs' and the Class's decisions to purchase the Products. Based on
26 Defendant's labeling and advertising of the Products, Plaintiffs and the Class
27 reasonably believed that they were purchasing Products that contained collagen.
28

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

1 Had they known the truth of the matter, that the Products did not actually contain
2 collagen, Plaintiffs and the Class would not have purchased the Products.

3 53. Plaintiffs and the Class have suffered injury in fact and have lost money
4 as a result of Defendant’s unfair, unlawful, and fraudulent conduct. Specifically,
5 Plaintiffs paid for Products that she believed contained collagen. In reality, the
6 Products did not contain collagen. Plaintiffs and the Class would not have purchased
7 the Products had they known the claims were false.

8 54. Defendant’s false and misleading labeling and advertising should be
9 enjoined due to its false, misleading and/or deceptive nature.

10 55. By letter dated May 23, 2019 and July 27, 2020, Plaintiffs advised
11 Defendant of its false and misleading claims pursuant to California Civil Code
12 Section 1782(a).

13 56. Pursuant to Section 1780(a) of the Act, Plaintiffs seek injunctive relief
14 in the form of an order enjoining the above-described wrongful acts and practices of
15 Defendant, including, but not limited to, an order enjoining Defendant from
16 continuing to make the label and advertising claims challenged herein.

17 57. Plaintiffs shall be irreparably harmed if such an order is not granted.
18 Plaintiffs also seeks restitutionary relief.

19 **COUNT TWO**

20 **Violation of California False Advertising Law,**
21 **Business & Professions Code 17500, et seq.**
22 ***(brought on behalf of the Class)***

23 58. Plaintiffs repeat and reallege the allegations set forth in the preceding
24 paragraphs, and incorporates the same as if set forth herein at length.

25 59. Plaintiffs bring this cause of action pursuant to Business and Professions
26 Code Section 17500, et seq., on their own behalf and on behalf of all other persons
27 similarly situated. Plaintiffs seek to represent a Class consisting of “All persons who
28 purchased the Products in the State of California, for personal use and not for resale

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

1 during the time period of four years through the date of court order approving or
2 granting class certification.” Excluded from the Class are Defendant’s officers,
3 directors, and employees, and any individual who received remuneration from
4 Defendant in connection with that individual’s use or endorsement of the Products.

5 60. California’s False Advertising Law, California Business and Profession
6 Code Section 17500, *et seq.*, makes it “unlawful for any person to make or
7 disseminate or cause to be made or disseminated before the public in this state, in
8 any advertising device or in any other manner or means whatever, including over
9 the Internet, any statement, concerning personal property or services, professional or
10 otherwise, or performance or disposition thereof, which is untrue or misleading and
11 which is known, or which by the exercise of reasonable care should be known, to be
12 untrue or misleading.”

13 61. Defendant knowingly spread misleading claims regarding the Products
14 as a means to mislead the public about the actual ingredients in the Products.

15 62. Defendant controlled the labeling, packaging, production, and
16 advertising of the Products. Defendant knew or should have known, through the
17 exercise of reasonable care, that its representations and omissions about the
18 ingredients of the Products were untrue, deceptive, and misleading.

19 63. Defendant’s actions of advertising and displaying misleading claims and
20 falsely labeling the Products “C + Collagen” in prominent type face on each Product
21 label are likely to deceive consumers into believing the Products contain collagen.

22 64. Defendant’s actions in violation of Section 17500 were false and
23 misleading such that the general public is and was likely to be deceived.

24 65. Pursuant to Business & Professions Code Section 17535, Plaintiffs and
25 the Class seek an order of this Court enjoining Defendant from continuing to
26 engage, use, or employ its practice of falsely advertising that the Products contain
27 collagen. Likewise, Plaintiffs and the Class seek an order requiring Defendant to
28 disclose such misrepresentations, and additionally request an order awarding

1 Plaintiffs and the Class restitution of the money wrongfully acquired by Defendant
2 in amount to be determined by trial.

3 66. Plaintiffs and the Class have suffered injury in fact and have lost money
4 as a result of Defendant’s false representations. Plaintiffs and the Class purchased
5 the Products in reliance upon the claims by Defendant that the Products contained
6 collagen. Plaintiffs would not have purchased the Products if she had known that the
7 claims and advertising as described herein were false.

8 **COUNT THREE**

9 **Violation of California Unfair Competition Law,**
10 **Business & Professions Code Section 17200, *et seq.***
11 ***(brought on behalf of the Class)***

12 67. Plaintiffs repeat and reallege the allegations set forth above, and
13 incorporate the same as if set forth herein at length.

14 68. Plaintiffs bring this cause of action pursuant to Business and Professions
15 Code Section 17200, *et seq.*, on their own behalf and on behalf of all other persons
16 similarly situated. Plaintiffs seek to represent a Class consisting of “All persons who
17 purchased the Products in the State of California, for personal use and not for resale
18 during the time period of four years prior to the filing of the complaint through the
19 date of court order approving or granting class certification.” Excluded from the
20 Class are Defendant’s officers, directors, and employees, and any individual who
21 received remuneration from Defendant in connection with that individual’s use or
22 endorsement of the Products.

23 69. In its labeling and advertising of the Products, Defendant misleads
24 consumers into believing the Products contain collagen.

25 70. Defendant’s advertising claims and omissions about the Products are
26 false, deceptive, misleading, and unreasonable.

27 71. The UCL prohibits “any unlawful, unfair... or fraudulent business act or
28 practice.” Cal. Bus & Prof. Code § 17200.

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

1 **A. “Unfair” Prong**

2 72. Under California’s Unfair Competition Law, Cal. Bus. & Prof. Code §
3 17200, *et. seq.*, a challenged activity is “unfair” when “any injury it causes
4 outweighs any benefits provided to consumers and the injury is one that the
5 consumers themselves could not reasonably avoid.” *Camacho v. Auto Club of*
6 *Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

7 73. Defendant’s action of advertising and labeling the Products as
8 containing collagen is false.

9 74. Defendant’s action of false advertising of its Products’ status causes
10 injuries to consumers, who do not receive what they were promised.

11 75. Defendant’s false and deceptive claims that the Products contain
12 collagen stifles competition in the marketplace.

13 76. Consumers cannot avoid any of the injuries caused by Defendant’s false
14 and misleading advertising of the Products.

15 77. Some courts conduct a balancing test to decide if a challenged activity
16 amounts to unfair conduct under California Business and Professions Code Section
17 17200. In doing so, the courts “weigh the utility of the Defendant’s conduct against
18 the gravity of the harm alleged to the victim.” *Davis v. HSBC Bank Nevada, N.A.*,
19 691 F. 3d 1152, 1169 (9th Cir. 2012).

20 78. Here, Defendant’s conduct of advertising its Products as containing
21 collagen when they do not results in financial harm to consumers. Thus, the utility
22 of Defendant’s conduct is vastly outweighed by the gravity of its harm.

23 79. Some courts hold that the “unfairness must be tethered to some
24 legislative declared policy or proof of some actual or threatened impact on
25 competition.” *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir.
26 2007).

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

1 members of the public. *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 553
2 (1992).

3 88. Defendant’s conduct of advertising false claims about the presence of
4 collagen in the Products is likely to deceive members of the public.

5 89. Defendant’s advertising and labeling of the Products as containing
6 collagen is false, deceptive, misleading, and unreasonable and constitutes fraudulent
7 conduct.

8 90. Defendant knew or should have known of its fraudulent conduct.

9 91. As alleged in the preceding paragraphs, the material misrepresentations
10 by Defendant detailed above constitute a fraudulent business practice in violation of
11 California Business & Professions Code Section 17200.

12 92. There were reasonably available alternatives to further Defendant’s
13 legitimate business interests, other than the conduct described herein. Defendant
14 could have marketed the Products without making any false statements about the
15 presence of collagen in the Products.

16 93. All of the conduct alleged herein occurs and continues to occur in
17 Defendant’s business. Defendant’s wrongful conduct is part of a pattern or
18 generalized course of conduct repeated on thousands of occasions daily.

19 94. Pursuant to Business & Professions Code Section 17203, Plaintiffs and
20 the Class seek an order of this Court enjoining Defendant from continuing to
21 engage, use, or employ its practice of false and deceptive advertising of the
22 Products. Likewise, Plaintiffs and the Class seek an order requiring Defendant to
23 disclose such misrepresentations, and additionally request an order awarding
24 Plaintiffs restitution of the money wrongfully acquired by Defendant in an amount
25 to be determined at trial.

26 95. Plaintiffs and the Class have suffered injury in fact and have lost money
27 as a result of Defendant’s fraudulent conduct. Plaintiffs and the Class paid an
28

1 unwarranted premium for the Products. Plaintiffs and the Class would not have
2 purchased the Products if they had known that the Products did not contain collagen.

3 **C. “Unlawful” Prong**

4 96. California Business and Professions Code Section 17200, *et seq.*,
5 identifies violations of other laws as “unlawful practices that the unfair competition
6 law makes independently actionable.” *Velazquez v. GMAC Mortg. Corp.*, 605 F.
7 Supp. 2d 1049, 1068 (C.D. Cal. 2008).

8 97. Defendant’s advertising of the Products, as alleged in the preceding
9 paragraphs, violates California Civil Code Section 1750, *et seq.*, California Business
10 and Professions Code Section 17500, *et seq.*

11 98. Defendant’s packaging, labeling, and advertising of the Products as
12 containing collagen are false, deceptive, misleading, and unreasonable, and
13 constitute unlawful conduct.

14 99. Defendant knew or should have known of its unlawful conduct.

15 100. As alleged in the preceding paragraphs, the misrepresentations by
16 Defendant detailed above constitute an unlawful business practice within the
17 meaning of California Business and Professions Code Section 17200.

18 101. There were reasonably available alternatives to further Defendant’s
19 legitimate business interests other than the conduct described herein. Defendant
20 could have truthfully labeled and advertised the Products.

21 102. All of the conduct alleged herein occurred and continues to occur in
22 Defendant’s business. Defendant’s wrongful conduct is part of a pattern or
23 generalized course of conduct repeated on thousands of occasions daily.

24 103. Pursuant to Business and Professions Code Section 17203, Plaintiffs and
25 the Class seek an order of this Court enjoining Defendant from continuing to
26 engage, use, or employ its practice of false and deceptive advertising of the
27 Products. Likewise, Plaintiffs and the Class seek an order requiring Defendant to
28 disclose such misrepresentations, and additionally request an order awarding

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

1 Plaintiffs restitution of the money wrongfully acquired by Defendant in an amount
2 to be determined at trial.

3 104. Plaintiffs and the Class have suffered injury in fact and have lost money
4 as a result of Defendant’s unlawful conduct. Plaintiffs and the Class paid an
5 unwarranted premium for the Products. Plaintiffs and the Class would not have
6 purchased the Products if they had known that Defendant deceived consumers into
7 believing the Products contained collagen.

8 **COUNT FOUR**

9 **Breach of Express Warranty**

10 *(brought on behalf of the Class)*

11 105. Plaintiffs repeat and reallege the allegations of the previous paragraphs
12 and incorporate the same as if set forth herein at length.

13 106. Defendant expressly warrants that the Products contain collagen, as set
14 forth above. Defendant’s claims constitute an affirmation of fact, promise, and/or
15 description of the goods that became part of the basis of the bargain and created an
16 express warranty that the goods would conform to the stated promise. Plaintiffs
17 placed importance on Defendant’s claims.

18 107. All conditions precedent to Defendant’s liability under this contract
19 have been performed by Plaintiffs and the Class.

20 108. Defendant breached the terms of the contract, including the express
21 warranties, with Plaintiffs and the Class by not providing Products that conform to
22 the advertising and label claims.

23 109. As a result of Defendant’s breach of contract, Plaintiffs and the Class
24 have been damaged in the amount to be determined at trial.

25 ///

26 ///

27 ///

28 ///

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

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

COUNT FIVE

Breach of Implied Warranty
(brought on behalf of the Class)

110. Plaintiffs repeat and reallege the allegations set forth above, and incorporates the same as if set forth herein at length.

111. Unless excluded or modified, a warranty that a good shall be merchantable is implied in a contract for their sale, if the seller is a merchant with respect to goods of that kind.

112. Defendant is a merchant with respect to the Products, as it manufactures, distributes, and sells the Products nationwide.

113. In order to be merchantable, goods must conform to the promises or affirmations of fact made on the container or labeling.

114. Defendant breached the implied warranty of merchantability to Plaintiffs and the Class in that the labels of the Products promised and affirmed that the Products contain collagen. Contrary to the promise and affirmation of fact, the Products do not contain collagen.

115. As a result of Defendant’s conduct, Plaintiffs and the Class did not receive merchantable goods as impliedly warranted by Defendant.

116. Defendant did not exclude or modify the Products’ implied warranty of merchantability.

117. As a proximate result of Defendant’s breach of its implied warranty, Plaintiffs and members of the Class incurred damages. Plaintiffs and members of the Class were damaged as a result of Defendant’s failure to comply with its obligations under the implied warranty, since Plaintiffs and members of the Class paid for Products that did not have the promised quality and nature, did not receive the collagen that they bargained for, paid a premium for the Products when they could have instead purchased other less expensive alternative products, and lost the opportunity to purchase other, true collagen products.

1 118. Plaintiffs and the Class are therefore entitled to recover all available
2 remedies for said breach.

3 **COUNT SIX**

4 **Magnuson Moss Warranty Act (“MMWA”), 15 U.S.C. §§ 2301, *et seq.***

5 **Violation of Written Warranty**

6 ***(brought on behalf of the Class)***

7 119. Plaintiffs repeat and reallege the allegations set forth above, and
8 incorporate the same as if set forth herein at length.

9 120. The MMWA, 15 U.S.C. §§ 2301, *et seq.*, creates a private cause of
10 action for breach of “written warranty” as defined by that Act. 15 U.S.C. § 2301(6)
11 and § 23 10(d)(l).

12 121. The Products are “consumer products” as defined in 15 U.S.C. §
13 2301(1), as they constitute tangible personal property which is distributed in
14 commerce and which is normally used for personal, family, or household purposes.

15 122. Plaintiffs and Class members are “consumers” as defined in 15 U.S.C. §
16 2301(3), since they are buyers of the Products for purposes other than resale.

17 123. Defendant is an entity engaged in the business of making the Products
18 available, either directly or indirectly, to consumers such as Plaintiffs and the Class.
19 As such, Defendant is a “supplier” as defined in 15 U.S.C. § 2301(4).

20 124. Through its labeling, Defendant gave and offered a written warranty to
21 consumers relating to the nature and quality of the ingredients in the Products. As a
22 result, Defendant is a “warrantor” within the meaning of 15 U.S.C. § 2301(5).

23 125. Defendant provided a “written warranty” within the meaning of 15
24 U.S.C. § 2301(6) for the Products by prominently affirming and promising in
25 writing on the labeling of the Products that they contain collagen. This affirmation
26 of fact regarding the nature and quality of the Products constituted, and was
27 intended to convey to purchasers, a written promise that the Products contain
28 collagen as labeled. As such, this written promise and affirmation was part of the

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

1 basis of Plaintiffs’ and Class members’ bargains with Defendant in purchasing the
2 Products.

3 126. Defendant breached the written warranty to Plaintiffs and the Class by
4 failing to provide and supply Products that contain collagen. Since the Products do
5 not have the requisite qualities and character promised by Defendant’s written
6 warranty, the Products did not comply with Defendant’s obligations under the
7 written warranty to supply “Collagen” labeled Products to Plaintiffs and the Class.

8 127. Plaintiffs provided Defendant notice of, and a reasonable opportunity to
9 cure, the defects in the Products and remedy the harm to Plaintiffs and the Class.
10 Defendant failed to take corrective action.

11 128. Plaintiffs and Class members were injured by Defendant’s failure to
12 comply with its obligations under the written warranty, since Plaintiffs and Class
13 members paid for Products that did not have the promised qualities and nature, did
14 not receive Products that contained collagen. They accordingly paid a premium for
15 the Products when they could have instead purchased other less expensive
16 alternatives, and lost the opportunity to purchase other products that truly contain
17 collagen.

18 129. Plaintiffs and the Class therefore seek and are entitled to recover
19 “damages and other legal and equitable relief” and “costs and expenses (including
20 attorneys’ fees based upon actual time expended)” as provided in 15 U.S.C. §
21 2310(d).

22 **COUNT SEVEN**

23 **Magnuson Moss Warranty Act (“MMWA”), 15 U.S.C. §§ 2301, et seq.**
24 **Violation of Implied Warranty of Merchantability Under State Law**
25 ***(brought on behalf of the Class)***

26 130. Plaintiffs repeat and reallege the allegations set forth above, and
27 incorporate the same as if set forth herein at length.

28 131. The MMWA creates a federal cause of action for breach of an implied

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

1 warranty of merchantability. 15 U.S.C. § 2310(d)(1). Unlike a “written warranty,”
2 the term “implied warranty” under the MMWA is defined by reference to state law.
3 15 U.S.C. § 2301(7) (“The term ‘implied warranty’ means an implied warranty
4 arising under State law (as modified by sections 2308 and 2304(a) of this title) in
5 connection with the sale by a supplier of a consumer product.”) Thus, the MMWA
6 creates a federal cause of action for breach of an implied warranty of
7 merchantability arising under state law.

8 132. The elements of the breach of implied warranty of merchantability claim
9 are met as described fully in Plaintiffs’ Fifth Cause of Action, ¶¶ 108-116. *Supra*.

10 133. Additionally, the remaining requirements of the MMWA are met.

11 134. The Products each are a “consumer product” as defined in 15 U.S.C. §
12 2301(1), as they constitute tangible personal property which is distributed in
13 commerce and which is normally used for personal, family, or household purposes.

14 135. Plaintiffs and the members of the Class are “consumers” as defined in
15 15 U.S.C. § 2301(3), since they are buyers of the Products for purposes other than
16 resale.

17 136. Defendant is an entity engaged in the business of making the Products
18 available, either directly or indirectly, to consumers such as Plaintiffs and the Class.
19 As such, Defendant is a “supplier” as defined in 15 U.S.C. § 2301(4).

20 137. Defendant knew of, and caused, the Products to state “Collagen” on
21 their labels. This statement created an implied warranty of merchantability under
22 state law in connection with the sales of the Products to Plaintiffs and the Class. As
23 such, Defendant was obligated under an implied warranty of merchantability, and,
24 accordingly, Defendant is a “warrantor” as that term is defined at 15 U.S.C. §
25 2301(5).

26 138. Defendant was provided notice and a reasonable opportunity to cure the
27 defects in the Products and remedy the harm to Plaintiffs and the Class, but failed to
28 do so, as set forth above.

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

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

139. Plaintiffs and the Class therefore seek and are entitled to recover “damages and other legal and equitable relief” and “costs and expenses (including attorneys’ fees based upon actual time as provided in 15 U.S.C. § 2310(d) and as available under state law.

COUNT EIGHT

Restitution Based on Quasi-Contract/Unjust Enrichment
(brought on behalf of the Class)

140. Plaintiffs repeat and reallege the allegations set forth above, and incorporate the same as if set forth herein at length.

141. Defendant’s conduct in enticing Plaintiffs and the Class to purchase the Products through the use of falsely and misleading labeling the Products “Collagen” as described herein is unlawful because the “Collagen” statements contained on the Products’ labels are untrue. Defendant took monies from Plaintiffs and the Class for Products that did not contain collagen. Defendant has been unjustly enriched at the expense of Plaintiffs and the Class as result of its unlawful conduct alleged herein, thereby creating a quasi-contractual obligation on Defendant to restore these ill-gotten gains to Plaintiffs and the Class.

142. As a direct and proximate result of Defendant’s unjust enrichment, Plaintiffs and the Class are entitled to restitution in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, pray for judgment and relief on all Causes of Action as follows:

- A. An order enjoining Defendant’s unlawful behavior to ensure statutory compliance as set forth herein;
- B. Restitutionary, actual, statutory, compensatory, and punitive damages; and
- C. Reasonable attorneys’ fees and costs.

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

JURY TRIAL DEMANDED

Plaintiffs demand a jury trial on all triable issues.

DATED: December 16, 2021

CLARKSON LAW FIRM, P.C.

/s/ Zach Chrzan
Ryan J. Clarkson, Esq.
Yana Hart, Esq.
Zach Chrzan, Esq.

Attorneys for Plaintiffs

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265