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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SARA M. BARKER, individually and on behalf of all others similarly situated,

Plaintiff,

v.

THRIVE CAUSEMETICS, INC., a Delaware corporation; and KARISSA BODNAR, an individual,

Defendants.

Case No. 2:18-cv-01470

NOTICE OF REMOVAL

TO: The Honorable Judges of the United States District Court for the Western District of Washington at Seattle

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendants Thrive Causemetics, Inc. and Karissa Bodnar (“Defendants”) remove to this Court the above-styled class action, pending as Case No. 18-2-21685-1 SEA in the Superior Court for King County (the “Action”). As grounds for removal, Defendants state as follows:

BACKGROUND

1. On August 30, 2018, Plaintiff Sara M. Barker (“Plaintiff”) filed a Class Action Complaint for Damages and Injunctive Relief (the “Complaint”) against the Defendants in King County Superior Court. A true and correct copy of the Complaint is attached hereto.

2. In general, Plaintiff alleges that Defendants promote their cosmetics products by stating that they will donate a cosmetic product to a woman in need for each product purchased.

1 See Complaint at ¶¶ 5.5-5.6. Plaintiff alleges that Defendants do not make the donations that
2 they claimed they would make.¹ *Id.* at ¶ 5.8. Plaintiff seeks to hold Defendant Karissa Bodnar
3 (“Ms. Bodnar”) directly liable for the alleged misconduct of Defendant Thrive Causemetics, Inc.
4 (“Thrive”). *See generally* Complaint.

5 3. Plaintiff alleges causes of action for violation of the Washington Consumer
6 Protection Act (the “CPA”), RCW 19.86 *et seq.*, relating to the Defendants’ allegedly unfair
7 practices and allegedly deceptive acts. Complaint at ¶¶ 6.1-7.5. Plaintiff seeks compensatory,
8 exemplary and treble damages, as well as an injunction, attorneys’ fees, costs, expenses and
9 interest as allowed by law. *Id.* at Prayer for Relief.

10 4. Upon information and belief, Plaintiff is a resident and citizen of the state of
11 Washington. *Id.* at ¶ 3.1.

12 5. Thrive is a corporation incorporated in the state of Delaware with its principle
13 place of business in the state of California. *See* Declaration of Ned Menninger (“Menninger
14 Decl.”) at ¶ 2, Exs. A and B. Thrive does not have an office or any place of business in the state
15 of Washington. *Id.* at ¶ 2.

16 6. Ms. Bodnar is the Chief Executive Officer and owner of Thrive, and she is a
17 resident and citizen of the state of California. Declaration of Karissa Bodnar (“Bodnar Decl.”)
18 at ¶ 2.

19 **PROCEDURAL REQUIREMENTS**

20 7. Defendants’ counsel received the Complaint and summonses for each of the
21 Defendants on Friday, September 7, 2018, via email. Declaration of Erin M. Wilson (“Wilson
22 Decl.”) at ¶ 2, Ex. A. Defendants’ counsel accepted service of process for the Defendants on
23 Monday, September 10, 2018. *Id.* at ¶ 3. This Notice of Removal is timely in that it is being
24 filed within thirty (30) days of Defendants’ receipt of service of process of the summonses and
25 the Complaint on September 7, 2018. *See* 28 U.S.C. § 1446(b).

26 8. Defendants have not filed any pleadings in the Action, other than a Notice of

27 ¹ Defendants adamantly deny Plaintiff’s allegations in their entirety.

1 Appearance.

2 9. Plaintiff's alleged claims have arisen in Snohomish County, Washington.
3 Menninger Decl. at ¶ 5. Accordingly, venue is proper in the Western District of Washington at
4 Seattle. *See* Local Civil Rule 3(e).

5 CAFA DIVERSITY JURISDICTION

6 10. Congress passed the Class Action Fairness Act ("CAFA") "primarily to curb
7 perceived abuses of the class action device." *United Steel, Paper & Forestry, Rubber, Mfg.,*
8 *Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO, CLC v. Shell Oil Co.*, 602 F.3d
9 1087, 1090 (9th Cir. 2010). "To achieve its purposes, CAFA provides expanded original diversity
10 jurisdiction...." *Id.* at 1090-91. Under CAFA, there is no presumption against removal. *Dart*
11 *Cherokee Basin Operating Co., LLC v. Owens*, --- U.S. ---, 135 S.Ct. 547, 554, 190 L.Ed.2d 495
12 (2014).

13 11. Pursuant to CAFA, district courts "shall have original jurisdiction of any civil
14 action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of
15 interests and costs, and is a class action in which ... any member of a class of plaintiffs is a citizen
16 of a State different from any defendant" 28 U.S.C. § 1332(d)(2)(A). For purposes of
17 determining whether the amount in controversy requirement is met, "claims of the individual
18 class members shall be aggregated to determine whether the matter in controversy exceeds the
19 sum or value of \$5,000,000, exclusive of interests and costs." 28 U.S.C. § 1332(d)(6).

20 12. Although Defendants deny that Plaintiff will ever be able to satisfy the standards
21 for class certification, the Action satisfies CAFA's jurisdictional requirements. To begin, the
22 Action satisfies the minimum diversity required by CAFA. This is a class action in which at least
23 one member of the class is a citizen of a state different from at least one of the Defendants, the
24 number of putative class members exceeds 100, and the amount in controversy exceeds
25 \$5,000,000. 28 U.S.C. § 1332(d)(2), (d)(5)(B); *Fritsch v. Swift Transportation Co. of Arizona,*
26 *LLC*, 899 F.3d 785, 788 (9th Cir. 2018).

27 13. The Action satisfies CAFA's class action requirement. A lawsuit is a class action

1 if it is filed “under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule
2 of judicial procedure authorizing an action to be brought by 1 or more representative persons as
3 a class action.” 28 U.S.C. § 1332(d)(1)(B). The instant Action is brought under Rule 23 of the
4 Washington State Rules of Civil Procedure, which is a direct analogue to Rule 23 of the Federal
5 Rules of Civil Procedure. Complaint at ¶¶ 4.1-4.7. Plaintiff also seeks to act in a representative
6 capacity on behalf of a class. *Id.* at Prayer for Relief (B) (seeking to “Appoint Plaintiff as
7 representative of the Class.”).

8 14. Additionally, minimal diversity is satisfied. CAFA’s diversity requirement is
9 satisfied so long as any member of a putative class is a citizen of a state different from any
10 defendant. Here, Plaintiff alleges that she is a citizen of Washington. *Id.* ¶ 3.1. By contrast,
11 Thrive is a citizen of California and Delaware and Ms. Bodnar is a citizen of California.
12 Accordingly, at least one member of the proposed class is a citizen of a state different than
13 Defendant Thrive and Defendant Ms. Bodnar.

14 15. The proposed class exceeds 100 members. The Complaint includes a definition
15 of the putative class as follows:

16 All citizens of the State of Washington who, between August 30, 2014 and the
17 date of final disposition of this action (the “Class Period”), purchased one or more
products from Thrive Causemetics, Inc.

18 Complaint at ¶ 4.1. Plaintiff alleges hundreds of Washington citizens have purchased products
19 from Thrive during the Class Period. *Id.* at ¶ 4.2; *see also* Menninger Decl. at ¶ 3 (confirming
20 that greater than 100 individuals with Washington shipping and billing addresses purchased a
21 Thrive product since the beginning of the alleged class period on August 30, 2014).

22 16. The amount in controversy is satisfied. “The amount in controversy is simply an
23 estimate of the total amount in dispute, not a prospective assessment of defendant’s liability” or
24 a concession of liability. *Lewis v. Verizon Communications, Inc.*, 627 F.3d 395, 400 (9th Cir.
25 2010). Without conceding that Defendants are liable to Plaintiff or any putative class member
26 for any amount whatsoever, in light of the allegations in the Complaint, CAFA’s amount in
27 controversy requirement is satisfied because the aggregate claims of the putative class members

1 exceed \$5,000,000. 28 U.S.C. § 1332(d)(6). Although Plaintiff’s Complaint does not allege a
2 total aggregate sum or value for all claims asserted by Plaintiff on behalf of herself and all
3 putative class members, Defendants’ belief that the matter in controversy exceeds the sum or
4 value of \$5,000,000 is based on the following:

5 a. Between August 30, 2014 (the date that begins Plaintiff’s alleged Class
6 Period), and September 24, 2018, Thrive sold \$2,751,383.86 in products to residents with
7 shipping addresses in Washington and \$2,761,909.63 in products to residents with billing
8 addresses in Washington. These figures do not include the amount of any sale that was later
9 returned by the customer. Menninger Decl. at ¶ 4.

10 b. Plaintiff alleges that she purchased Thrive products through Thrive’s
11 website in 2017. Complaint at ¶ 3.1. She purchased \$49.64 worth of Thrive products. Menninger
12 Decl. at ¶ 5. Plaintiff contends that she would not have purchased Thrive products had she known
13 that Thrive allegedly did not make the donations it claimed to have made.² Complaint at ¶ 5.8.

14 c. Plaintiff also contends that Defendants’ alleged violations of the CPA
15 caused Plaintiff and all other similarly situated members of the putative class damages that should
16 be trebled, along with costs of suit and attorneys’ fees. Complaint at Prayer for Relief. The CPA
17 permits a treble damages award of up to \$25,000 to Plaintiff, as well as all represented class
18 members, who suffer actual damages. *See Smith v. Behr Process Corp.*, 113 Wn. App. 306, 345-
19 46, 54 P.3d 665 (2002); RCW 19.86.090.

20 d. While Defendants vehemently deny that they violated the CPA, and they
21 specifically deny the claims made by Plaintiff will satisfy the requirements of Rule 23 or that the
22 Plaintiff or any putative class member is entitled to recover monetary or statutory damages in
23 any amount, based on Plaintiff’s allegation that she would not have purchased the Thrive products
24 she purchased and that she and the class members are entitled to compensatory and treble
25 damages, Defendants have a good faith basis to believe that the amount in controversy exceeds
26

27 ² The evidence in this case will show that Plaintiff’s allegations are completely false and that
Defendants donated as much product as they sold to women in need.

1 CAFA’s \$5,000,000 requirement. *See* Menninger Decl. at ¶ 4; *Fritsch*, 899 F.3d at 793; *Korn v.*
2 *Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (“Where a statutory
3 maximum is specified, courts may consider the maximum statutory penalty available in
4 determining whether the jurisdictional amount in controversy is met.”). When the amount that
5 Thrive sold to individuals with either shipping or billing addresses in Washington is trebled, the
6 amount in controversy exceeds the minimum amount in controversy of \$5,000,000 required by
7 CAFA. (\$2,751,383.86 in sales to Washington shipping addresses x 3 = **\$8,254,151.58**;
8 \$2,761,909.63 in sales to Washington billing addresses x 3 = **\$8,285,728.89**). Additionally, the
9 Court may consider Plaintiff’s attorneys’ fees, including anticipated future attorneys’ fees, in the
10 amount in controversy. *Fritsch*, 899 F.3d at 793-94 (the amount in controversy includes
11 “attorneys’ fees awarded under fee-shifting statutes or contract”, including future attorneys’
12 fees.).

13 **NO CAFA EXCEPTIONS APPLY**

14 Although Defendants deny that it is their burden to show that CAFA’s exceptions to
15 jurisdiction apply, none do.

16 The “home-state” exceptions set forth in 28 U.S.C. § 1332(d)(4)(A) & (B) do not apply.
17 Section 1332(d)(4)(A) applies where two-thirds of the members of the proposed class share
18 citizenship with at least one defendant (a) “from whom significant relief is sought,” (b) “whose
19 alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class,”
20 and (c) “*who is a citizen of the State in which the action was originally filed.*” (emphasis added).
21 Here, neither of the Defendants are citizens of Washington, and therefore CAFA’s exception set
22 forth in Section 1332(d)(4)(A) does not apply. Menninger Decl. at ¶ 2 and Exs. A and B; Bodnar
23 Decl. at ¶ 2.

24 Section 1332(d)(4)(B) applies where two-thirds of the members of the proposed class and
25 all of the “primary defendants” are citizens of the forum state. 28 U.S.C. § 1332(d)(4)(B). Again,
26 neither of the Defendants in this case are citizens of Washington, and therefore Section
27

1 1332(d)(4)(B) likewise does not apply. Menninger Decl. at ¶ 2 and Exs. A and B; Bodnar Decl.
2 at ¶ 2.

3 Therefore, Defendants give notice that the Action has been removed from King County
4 Superior Court to this Court.

5 DATED: October 5, 2018

6 LANE POWELL PC

7
8 By s/ John S. Devlin
9 John S. Devlin III, WSBA No. 23988

10 By s/ Erin M. Wilson
Erin M. Wilson, WSBA No. 42454

11 By s/ Taylor Washburn
12 Taylor Washburn, WSBA No. 51524

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21 *Attorneys for Defendants*

CERTIFICATE OF SERVICE

I certify that, on the date indicated below, I caused the foregoing document to be presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to all attorneys and parties of record.

In addition, I certify that I mailed the foregoing document via United States Postal Service to the following people:

Elizabeth A. Hanley, WSBA # 38233
Reed Longyear Malnati & Ahrens, PLLC
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Email: eric@terrellmarshall.com
Attorneys for Plaintiff

I affirm under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my personal knowledge.

SIGNED October 5, 2018, at Seattle, Washington.

s/ Peter Elton
Peter Elton
Legal Assistant

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Sara M. Barker
(b) County of Residence of First Listed Plaintiff Snohomish County, WA
(c) Attorneys (Firm Name, Address, and Telephone Number)
Elizabeth A. Hanley, 801 Second Ave, Ste 1415, Seattle, WA 98104, 206-624-6271; Toby J. Marshall and Eric R. Nusser, 936 N 34th St, Ste 300, Seattle, WA 98103, 206-816-6603

DEFENDANTS
Thrive Causemetics, Inc. and Karissa Bodnar
County of Residence of First Listed Defendant California
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
John S. Devlin, III, Erin M. Wilson, and Taylor Washburn, Lane Powell PC, 1420 Fifth Ave, Ste 4200, PO Box 91302, Seattle, WA 98101-0402, 206-223-7000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332
Brief description of cause:
Class Action Complaint for Violation of the Washington Consumer Protection Act

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 10/05/2018 SIGNATURE OF ATTORNEY OF RECORD s/ John S. Devlin

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

FILED

18 AUG 30 AM 11:45

KING COUNTY
SUPERIOR COURT CLERK
E-FILED

CASE NUMBER: 18-2-21685-1 SEA

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

SARA M. BARKER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

THRIVE CAUSEMETICS, INC., a Delaware
corporation; and KARISSA BODNAR, an
individual,

Defendants.

No.

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF**

Plaintiff Sara M. Barker, by her undersigned attorneys, for this class action complaint against Defendant Thrive Causemetics, Inc. and Defendant Ms. Karissa Bodnar alleges as follows:

I. INTRODUCTION

1.1 Nature of Action: This is a class action for declaratory judgment, equitable relief, and money damages brought by Plaintiff against Defendant Thrive Causemetics, Inc. and Defendant Karissa Bodnar (collectively “Defendants”). It is instituted to address unfair and deceptive acts and practices that are injurious to the public interest and that have injured Plaintiff and the proposed class members in violation of Washington’s Consumer Protection Act, RCW 19.86, *et seq.*

II. JURISDICTION AND VENUE

1
2 **2.1** Jurisdiction. Defendants are all within the jurisdiction of this Court. Defendant
3 Thrive Causemetics, Inc. (“Thrive”) is a citizen of Washington, as it is registered to do business
4 in Washington, conducts business in Washington, and maintains its principal place of business
5 and headquarters in Washington. Defendant Karissa Bodnar (“Bodnar”) conducts business in
6 Washington and is a resident and citizen of Washington. Defendants have obtained the benefits
7 of the laws of Washington as well as Washington’s commercial markets.

8 **2.2** Venue. Venue is proper in King County because Defendants operate and transact
9 business in King County. Thrive’s principal place of business and headquarters are in King
10 County, and Bodnar resides in King County.

11 **2.3** Governing Law. The claims asserted on behalf of the Plaintiff and Class members
12 are brought solely under Washington state law causes of action and are governed exclusively by
13 Washington law.

14 **2.4** Lack of CAFA Jurisdiction. Federal jurisdiction is inappropriate under the Class
15 Action Fairness Act, 28 U.S.C. § 1332(d)(4)(A), because more than two-thirds of the members of
16 the proposed plaintiff class in the aggregate are citizens of Washington; significant relief is sought
17 from Defendants by members of the plaintiff class; the alleged conduct of Defendants forms a
18 significant basis for the claims asserted by the proposed plaintiff class; Defendants are citizens of
19 Washington; the principal injuries resulting from the alleged conduct or any related conduct of
20 each Defendant were incurred in Washington; and during the three-year period preceding the
21 filing of this action, no other class action has been filed asserting same or similar factual
22 allegations against any of the Defendants on behalf of the same or other persons. Alternatively,
23 federal jurisdiction is inappropriate under the Class Action Fairness Act, 28 U.S.C.
24
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1 § 1332(d)(4)(B), because two-thirds or more of the members of all proposed plaintiff classes in
2 the aggregate and the primary Defendants are citizens of the state of Washington.

3 **III. PARTIES**

4 **3.1** Plaintiff Sara Barker. Plaintiff Sara Barker is a citizen of Washington State. She
5 purchased a product from Thrive in 2017 through the company's website. The product was
6 delivered to her at her residence in Washington.

7 **3.2** Defendant Thrive Causemetics, Inc. Thrive is a Delaware corporation with its
8 headquarters and principle place of business in Seattle, Washington. Thrive is a citizen of
9 Washington state. It is registered to do and does conduct business throughout the state of
10 Washington, including throughout King County. Upon information and belief, Thrive has sold
11 numerous products throughout the state of Washington, including to Plaintiff and Class members.
12

13 **3.3** Defendant Karissa Bodnar. Defendant Bodnar has at all relevant times been CEO
14 and owner of Thrive Causemetics, Inc. and is engaged in running the company's business,
15 managing the company's finances, determining the company's marketing strategy and any
16 advertising involving the company and its products, maintaining the company's records, and
17 exercising control over all aspects of the company. Defendant Bodnar is a citizen and resident of
18 Washington.
19

20 **IV. CLASS ACTION ALLEGATIONS**

21 **4.1** Class Definition. Pursuant to CR 23, Plaintiff brings this case as a class action
22 against Defendants on behalf of a Class defined as follows:

23 All citizens of the State of Washington who, between August 30, 2014 and the date
24 of the final disposition of this action (the "Class Period"), purchased one or more
25 products from Thrive Causemetics, Inc.

26 Excluded from the class are Defendants' owners, officers, legal representatives, assignees, and

1 successors. Also excluded are the judge to whom this case is assigned and any member of the
2 judge's immediate family.

3 **4.2** Numerosity. On information and belief, hundreds of Washington citizens have
4 purchased products from Thrive. The members of the class are so numerous that joinder of all
5 members is impracticable. The disposition of the claims of the Class in a single action will provide
6 substantial benefits to all parties and the Court.

7 **4.3** Commonality. There are numerous questions of law and fact common to Plaintiff
8 and members of the Class. Defendants have engaged in a common course of unfair and deceptive
9 conduct, and Plaintiff and Class members have suffered harm as a result of that conduct. These
10 common questions include, but are not limited to:
11

- 12 a. Whether Defendants have engaged in a common course of representing to
13 consumers that for every product purchased, Thrive donates one product to a
14 woman in need;
- 15 b. Whether Thrive has engaged in a common course of failing to donate one product
16 to a woman in need for every product purchased;
- 17 c. Whether a reasonable consumer would find Defendants' common courses of
18 conduct to be of material importance;
- 19 d. Whether Defendants' common courses of conduct have the tendency or capacity
20 to mislead persons of ordinary caution;
- 21 e. Whether Defendants' common courses of conduct are unfair within the meaning
22 of RCW 19.86.020;
- 23 f. Whether Defendants' common courses of conduct are deceptive within the
24 meaning of RCW 19.86.020;
- 25
26

- 1 g. Whether Defendants acted in trade or commerce when they advertised and sold
2 products to consumers under the false pretense that for every product purchased,
3 one is donated to a woman in need;
- 4 h. Whether Defendants' unfair and deceptive acts or practices were injurious to the
5 public interest because they injured other persons, had the capacity to injure other
6 persons, or have the capacity to injure other persons;
- 7 i. Whether Defendants' unfair and deceptive acts or practices caused Plaintiff and
8 members of the Class to be injured in their business or property;
- 9 j. Whether Defendant Bodnar participated in or knowingly approved of conduct by
10 Thrive that violates the Washington Consumer Protection Act;
- 11 k. Whether injunctive relief is appropriate to remedy Defendants' unfair and
12 deceptive acts or practices; and
- 13 l. The nature and extent of the injury to Plaintiff and Class members and the damages
14 that should be awarded to compensate for such injury.

15 **4.4** Typicality. Plaintiff's claims are typical of the claims of the Class. Plaintiff's
16 claims, like the claims of the Class, arise out of the same common courses of unfair and deceptive
17 conduct by Defendants and are based on the same legal and remedial theories.

18 **4.5** Adequacy. Plaintiff will fairly and adequately protect the interests of the Class.
19 Plaintiff has retained competent and capable attorneys who have significant experience in
20 complex class action litigation, including consumer law. Plaintiff and her counsel are committed
21 to prosecuting this action vigorously on behalf of the Class, and Plaintiff's counsel have the
22 financial resources to do so. Neither Plaintiff nor her counsel have interests that are contrary to or
23 that conflict with those of the Class. There are no unusual difficulties likely to be encountered in
24
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26

1 the management of this litigation as a Class action.

2 **4.6** Predominance. Defendants have engaged in common courses of both unfair and
3 deceptive acts and practices toward Plaintiff and members of the Class. The common issues
4 arising from this conduct that affect Plaintiff and the members of the Class predominate over any
5 individual issues. Adjudication of these common issues in a single action has important and
6 desirable advantages of judicial economy

7 **4.7** Superiority. Plaintiff and Class members have suffered and will continue to suffer
8 harm and damages as a result of Defendants' unlawful and wrongful conduct. Absent a class
9 action, most Class members likely would find the cost of litigating their claims prohibitive. Class
10 treatment is superior to multiple individual suits or piecemeal litigation because it conserves
11 judicial resources, promotes consistency and efficiency of adjudication, provides a forum for
12 small claimants, and deters illegal activities. There will be no significant difficulty in the
13 management of this case as a class action. The Class members are readily identifiable from
14 Defendants' records.
15

16 **V. SUMMARY OF FACTUAL ALLEGATIONS**

17 **5.1** Plaintiff realleges and incorporates by reference each and every allegation set forth
18 in the preceding paragraphs.

19 **5.2** Defendant Thrive is a for-profit corporation engaged in the sale of luxury
20 cosmetics. Thrive CEO and Founder Karissa Bodnar named the company Thrive "Causemetics"
21 because of the charitable purpose behind the company.
22

23 **5.3** The stated mission on Thrive's website is "Beauty with a Purpose. For every
24 product purchased, one is donated to help a woman thrive."
25

26 **5.4** The majority of Thrive's business is conducted online with consumers in the

1 United States purchasing Thrive products directly from Thrive’s website.

2 **5.5** In magazine articles or television appearance detailed on Thrive’s website, Thrive
3 is marketed specifically as having a charitable mission and donating one product to a woman in
4 need for every product purchased.

5 **5.6** Defendant Thrive CEO and Founder Karissa Bodnar is routinely quoted in
6 magazines and on television touting Thrive’s mission and express commitment to donating one
7 product to a woman in need for every product purchased, as the following examples show.

8
9 I wanted a one-for-one model like Toms shoes that we call Beauty with a Purpose
10 (I even trademarked the phrase!); for every beauty product sold, one would be
11 donated to a woman with cancer. It’s really hard to get any new business off the
12 ground, but it’s even more difficult when your model is to give some products away
13 for free. I dealt with the issue by taking a giant leap of faith. I gave away products
14 up front – specifically to women’s cancer groups, celebrities, and makeup artists. I
knew that if I had created something truly effective, women would tell their friends.
I hoped that the combination of effective products, positive word of mouth, and a
feel-good mission would create the foundation for a successful company.
Thankfully, I was right, and Thrive Causemetics was profitable our very first year.¹

15 ***

16 When you buy one of our products, you are actually donating that exact same
17 product to a woman who is going through cancer treatment.²

18 ***

19 Our donation model is different from Toms. We are giving away the exact same
20 product [that’s sold]. That really connects with the consumer and the woman who
21 is receiving the product feels like she[] is being taken care of and is supported. The
transformation in a woman’s self-esteem can be incredible.³

22
23 ¹ Women’s Health, “I Started a Cosmetics Company to Honor My Friend Who Died of Cancer,” By Karissa Bodnar
as told to Kaitlin Menza, September 23, 2015, <https://thrivecausemetics.com/pages/womens-health> (last visited on
February 15, 2018).

24 ² Karissa Bodnar NBC television interview in February 2016, “Teen Cancer Survivor Gets a Surprise Makeover,”
<http://www.elpasoproud.com/news/local/el-paso-news/teen-cancer-survivor-get-a-surprise-makeover/366802254>
(last visited on February 15, 2018).

25 ³ WWD February 10, 2016 Interview with Thrive CEO and Founder Karissa Bodnar for New York Fashion Week,
26 “Thrive Causemetics to Hold Beauty Runway Show During NYFW,” [https://thrivecausemetics.com/pages/wwd-
thrive-causemetics-to-hold-beauty-runway-show-during-nyfw](https://thrivecausemetics.com/pages/wwd-thrive-causemetics-to-hold-beauty-runway-show-during-nyfw) (last visited February 15, 2018).

1
2 **5.7** Plaintiff purchased a Thrive product through Thrive’s website in December 2017.

3
4 **5.8** Had Plaintiff known the truth about Thrive—that is, that the company fails to
5 donate one product to a woman in need for every product purchased—she would not have
6 purchased the Thrive product.

7 **5.9** After Plaintiff purchased makeup online through the company’s website, Thrive
8 sent her several messages expressly reinforcing its commitment to donating to a woman in need
9 one product for each product purchased. The first message stated:

10 Thank you for placing an order with us and supporting our giving mission! Beauty
11 with a Purpose – For every product you purchase, we donate one to a woman in
12 need.

13 **5.10** Next, Thrive sent Plaintiff an email purchase confirmation, again stating the
14 charitable result of her purchase:

15 We’re preparing your order now and will let you know when it’s on the way. Your
16 exact order will be matched and donated to a woman in need.

17 – Team Thrive

18 **5.11** Thrive then sent a third message to Plaintiff when the product shipped, reinforcing
19 Plaintiff’s belief that she had made a charitable contribution by purchasing a Thrive product:

20 Keep an eye out for your order from Thrive Causemetics! Thank you for supporting
21 our giving mission. Your purchase will directly help a woman in need.

22 – Team Thrive

23 **5.12** Upon information and belief, Thrive’s mission is false: Thrive does not donate one
24 product for every product purchased.

25 **5.13** In communicating with consumers, Thrive repeatedly omits information that a
26 person of ordinary caution would find material—namely, that the company fails to donate to a

1 woman in need one product for every product purchased.

2 **5.14** Thrive incorporates into the price point of its products a cost for charitable
3 donations.

4 **5.15** On information and belief, consumers are willing to pay more for charity-linked
5 products like those sold by Thrive than they would for identical products that are not linked to
6 charity.

7 **VI. FIRST CAUSE OF ACTION**
8 **(Violations of the Washington Consumer Protection Act—Unfair Practices)**

9 **6.1** Plaintiff realleges and incorporates by reference each and every allegation set forth
10 in the preceding paragraphs.

11 **6.2** Defendants' common courses of unfair conduct in violation of RCW 19.86.020
12 have caused and are likely to continue causing substantial injury to consumers that is not
13 reasonably avoidable by the consumers nor outweighed by countervailing benefits to consumers
14 or competition.

15 **6.3** Defendants' common courses of unfair conduct occur in trade or commerce and
16 impact the public interest because Defendants are in the business of selling consumer products
17 throughout the state of Washington. Hundreds of Washingtonians have been affected by
18 Defendants' unfair practices.

19 **6.4** Defendants' common courses of unfair conduct injured the business or property of
20 Plaintiff and the Class members.

21 **6.5** Defendants' common courses of unfair conduct caused injury to Plaintiff and the
22 Class members.
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**VII. SECOND CAUSE OF ACTION
(Violations of the Washington Consumer Protection Act—Deceptive Practices)**

1
2 **7.1** Plaintiff realleges and incorporates by reference each and every allegation set forth
3 in the preceding paragraphs.

4 **7.2** Defendants' common courses of conduct have had the capacity to deceive a
5 substantial portion of the public.

6 **7.3** Defendants' common courses of deceptive conduct occur in trade or commerce
7 and impact the public interest because Defendants are in the business of selling consumer products
8 throughout the state of Washington. Hundreds of Washingtonians are affected by Defendants'
9 unfair practices.

10 **7.4** Defendants' common courses of deceptive conduct injured the business or property
11 of Plaintiff and the Class members.

12 **7.5** Defendants' common courses of deceptive conduct caused the injury to Plaintiff
13 and the Class members.

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16 **VIII. PRAYER FOR RELIEF**

17 Plaintiff, on her own behalf and on behalf of Class members, prays this Court enter
18 judgment against Defendants as follows:

- 19 **A.** Certify the proposed Class;
20 **B.** Appoint Plaintiff as representative of the Class;
21 **C.** Enter judgment against Defendants and in favor of Plaintiff and Class members
22 on all causes of action alleged herein;
23 **D.** Declare that the actions complained of herein violate Washington law;
24 **E.** Award Plaintiff and Class members compensatory, exemplary, and treble damages,
25 in amounts to be proven at trial;
26

1 **F.** Issue a permanent injunction under RCW 19.86.090 enjoining and restraining
2 Defendants and their representatives, successors, assigns, officers, agents, servants, employees,
3 and all other person acting or claiming to act for, on behalf of, or in active concert or participation
4 with Defendants, from continuing or engaging in the unlawful conduct alleged in this Complaint;

5 **G.** Award Plaintiff and Class members attorneys’ fees, costs, and expenses, as allowed
6 by law;

7 **H.** Award Plaintiff and Class members pre-judgment and post-judgment interest to
8 the extent allowed by law; and

9 **I.** Grant Plaintiff and Class Members such other and additional relief as is just and
10 proper under applicable law.
11

12
13 DATED August 30, 2018.

14
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16 AHRENS, PLLC

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Thrive Causemetics' Charitable Donation Promises are False](#)
