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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

RAEVIN DOTSON, individually, and
 on behalf of other members of the
 general public similarly situated

Plaintiff,

v.

SMASHBOX BEAUTY
 COSMETICS, INC.

Defendant.

CASE NO.: []

NOTICE OF REMOVAL

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1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE**
2 **CENTRAL DISTRICT OF CALIFORNIA:**

3 Please take notice that Defendant Smashbox Beauty Cosmetics, Inc.
4 (“Smashbox”) by and through their undersigned attorneys, hereby remove the above-
5 captioned civil action, and all claims and causes of action therein, from the Superior
6 Court of the State of California, County of Los Angeles, to the United States District
7 Court for the Central District of California, pursuant to 28 U.S.C. §§ 1332(d), 1441,
8 1446 and 1453.¹ This Court has original jurisdiction over the action pursuant to the
9 Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d), for the reasons
10 stated below.

11 **PROCEDURAL HISTORY**

12 1. On March 1, 2021, Plaintiff Raevin Dotson (“Plaintiff”) filed this action
13 in the Superior Court for the State of California, County of Los Angeles, Case No.
14 21STCV08235 (the “Complaint” or “Compl.”). Smashbox was served on April 19,
15 2021, and has timely filed this Notice of Removal within 30 days of receipt, through
16 service or otherwise, of a copy of the initial pleading in accordance with 28 U.S.C.
17 § 1446(b). *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-
18 48 (1999) (“[A] named defendant’s time to remove is triggered by . . . [formal service
19 under state law.]”).

20 2. A copy of the Complaint and all process, pleadings, and orders served on
21 Smashbox in the action to date are attached hereto as **Exhibits A-I**.

22 **BACKGROUND**

23 3. This action arises from Plaintiff’s alleged purchase of Smashbox’s
24 “Studio Skin 24 Hour Hydra Foundation” and “Photo Finish Minimize Pores.” (Ex.
25 A, Compl. ¶¶ 9-10.) For purposes of this notice only, Smashbox understands that
26 Plaintiff is referring to Studio Skin 24 Hour Hydra Foundation and Photo Finish

27 ¹ Defendant does not waive and expressly preserve all rights, claims, and defenses,
28 including without limitation all defenses relating to jurisdiction, improper party, and
capacity to be sued. Unless otherwise noted, all emphasis herein is added and citations,
quotations and internal alterations herein are omitted.

1 Minimizes Pores Primer (collectively, the “Products”). Plaintiff alleges that Smashbox
2 labeled and advertised the Products as “oil-free,” and contends the Products contain
3 oils. (Ex. A, Compl. ¶¶ 12, 26-34.) Plaintiff alleges that as a result, Smashbox’s
4 advertising is false and misleading. (*Id.* ¶¶ 23.)

5 4. Plaintiff alleges that she is “drawn to oil-free labeling” and that
6 Smashbox’s “oil free” statements “impaired Plaintiff’s ability to choose type and
7 quality of products she chose to buy.” (*Id.* ¶¶ 16, 23)

8 5. Plaintiff seeks to represent a nationwide class of “[a]ll persons within the
9 United States who purchased the Products within four years prior to the filing of this
10 Complaint through the date of class certification.” (*Id.* ¶ 45.) Plaintiff also seeks to
11 represent a “subclass” of “[a]ll persons within California who purchased the Products
12 within four years prior to the filing of this Complaint through the date of class
13 certification.” (*Id.* ¶ 46)

14 6. Plaintiff asserts the following causes of action (1) Violation of Unfair
15 Competition Law (Cal. Business & Professions Code §§ 17500 et seq.); (2) Violation
16 of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 et seq.); (3)
17 Common Law Fraud; and (4) Unjust Enrichment.

18 **JURISDICTION AND BASIS FOR REMOVAL**

19 7. This action is removable pursuant to 28 U.S.C. § 1441(a) because this is
20 an action over which this Court has original jurisdiction.

21 8. The Court possesses original jurisdiction over this action under CAFA,
22 28 U.S.C. § 1332(d). As such, removal is appropriate under 28 U.S.C. §§ 1453 and
23 1446, as this action: (1) involves a plaintiff class of 100 or more members; (2) at least
24 one putative class member is a citizen of a state different from Smashbox; and (3) the
25 amount in controversy exceeds \$5,000,000 in the aggregate, exclusive of interests and
26 costs. *See* 28 U.S.C. § 1332(d)(2) and (6); *see also Dart Cherokee Basin Operating*
27 *Co., LLC v. Owens*, 574 U.S. 81, 89 (2014) (explaining that “CAFA’s provisions
28 should be read broadly”). These conditions are satisfied here.

1 2010 WL 11507995, at *4 (C.D. Cal. Mar. 31, 2010) (finding that minimal diversity
2 existed under CAFA at the time of removal when two members of the putative class
3 were not citizens of either Texas or California when the defendant was a California
4 corporation with its principal place of business in Texas).

5 14. Smashbox is, and at all relevant times has been, a California corporation
6 with its headquarters located in Culver City, California. Accordingly, Smashbox is a
7 citizen of California for diversity purposes. (Ex. J, Tomandl Decl. ¶ 4.)

8 15. Plaintiff is seeking to represent a nationwide class which will “include
9 thousands, if not millions of members.” (Ex. A, Compl. ¶¶ 45, 48.) On the face of the
10 Complaint, there are numerous putative class members who are not citizens of
11 California.

12 16. Furthermore, the Products have been sold to thousands of consumers in
13 states other than California during the class period. (Ex. J, Tomandl Decl. ¶¶ 6-8.)

14 17. Therefore, there are thousands of putative class members who are not
15 citizens of California. (*Id.* ¶ 8.) Because there are members of the class that are not
16 citizens of California, and Smashbox is a citizen of California, minimal diversity exists
17 between Smashbox and the putative class under CAFA. *See* 28 U.S.C. §1332(d)(2)(A).

18 **The Amount in Controversy Exceeds \$5,000,000**

19 18. The amount in controversy in this action satisfies CAFA’s \$5,000,000
20 jurisdictional threshold. Under CAFA, the claims of the individual class members are
21 aggregated to determine if the amount in controversy exceeds the required “sum or
22 value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. §1332(d)(2). “The
23 amount in controversy is simply an estimate of the total amount in dispute, not a
24 prospective assessment of defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*, 627
25 F.3d 395, 400 (9th Cir. 2010). To determine the amount in controversy, courts first
26 look to the complaint, and “the sum claimed by the plaintiff controls if the class is
27 apparently made in good faith.” *Id.* at 399. “To meet CAFA’s amount-in-controversy
28 requirement, a defendant needs to plausibly show that it is reasonably possible that the

1 potential liability exceeds \$5 million.” *Greene v. Harley-Davidson, Inc.*, 965 F.3d 767,
2 772 (9th Cir. 2020). “The amount in controversy is the amount *at stake* in the
3 underlying litigation.” *Id.* (quoting *Gonzales v. CarMax Auto Superstores, LLC*, 840
4 F.3d 644, 648 (9th Cir. 2016)). “Amount at stake does not mean likely or probable
5 liability; rather, it refers to *possible liability*.” *Id.*

6 19. Plaintiff, in her prayer for relief, requests “full restitution of all funds
7 acquired from Plaintiff and Class Members from the sale of mislabeled Class Products
8 during the relevant class period.” (Ex. A, Compl. ¶ 95(d).) Therefore, for the purposes
9 of evaluating the amount in controversy, but without conceding that Plaintiff is entitled
10 to any relief, Smashbox’s potential liability is plausibly the value of sales of the
11 Products during the class period.

12 20. Smashbox made nationwide sales of at least \$13 million of the Products,
13 between March 1, 2017, and March 1, 2021, encompassing the four-year class periods
14 alleged by Plaintiff. (Ex. J, Tomandl Decl. ¶ 6; Ex. A., Compl. ¶¶ 45-46.) Less than
15 \$2 million of the \$13 million in sales of the Products occurred in California. (Ex. J,
16 Tomandl Decl. ¶ 6.) Thus, in the aggregate, Smashbox’s possible liability as to
17 restitution or compensatory damages far exceeds \$5 million. (Ex. A., Compl.
18 ¶¶ 95(d).)

19 21. Accordingly, Plaintiff’s claims for actual damages alone (without regard
20 to Plaintiff’s claims for other relief) far exceed \$5,000,000 for purposes of establishing
21 CAFA’s amount-in-controversy requirement.

22 **No Exception to CAFA applies**

23 22. Although CAFA contains several exceptions, which, where applicable,
24 may prevent the Court from exercising jurisdiction under CAFA, these exceptions do
25 not impose additional jurisdictional requirements. *See Serrano v. 180 Connect, Inc.*,
26 478 F.3d 1018, 1023 (9th Cir. 2007) (“[T]he provisions set forth in §§1332(d)(3) and
27 (4) are not part of the prima facie case for establishing minimal diversity jurisdiction
28 under CAFA, but, instead, are exceptions to jurisdiction.”). Rather, it is Plaintiff’s

Exhibit A

COPY

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 01 2021

Terri R. Carter, Executive Officer/Clerk
By: Rita Nazarian, Deputy

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Attorneys for Plaintiff and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

RAEVIN DOTSON, individually,
and on behalf of other members of
the general public similarly situated,

Plaintiff,

vs.

SMASHBOX BEAUTY
COSMETICS, INC.,

Defendant.

Case No **21STCV08235**

CLASS ACTION COMPLAINT

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*) and
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*)
- (3) Common Law Fraud
- (4) Unjust Enrichment

Jury Trial Demanded

BY FAX

1 Plaintiff RAEVIN DOTSON (“Plaintiff”), individually and on behalf of all
2 other members of the public similarly situated, allege as follows:

3
4 **PRELIMINARY STATEMENTS**

5 1. This is an action for damages, injunctive relief, and any other available
6 legal or equitable remedies, for violations of Unfair Competition Law (Cal. Business
7 & Professions Code §§ 17500 *et seq.*, Unfair Competition Law (Cal. Business &
8 Professions Code §§ 17200 *et seq.*, common law fraud, and unjust enrichment,
9 resulting from the illegal actions of Defendant, in intentionally labeling its skincare
10 products with false and misleading claims that they are oil-free, when Defendant’s
11 products contain numerous oils. Plaintiff alleges as follows upon personal
12 knowledge as to herself and her own acts and experiences, and, as to all other
13 matters, upon information and belief, including investigation conducted by her
14 attorneys.
15
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19 **JURISDICTION AND VENUE**

20 2. This class action is brought pursuant to California Code of Civil
21 Procedure § 382. All causes of action in the instant complaint arise under California
22 statutes and common law.
23

24 3. This court has personal jurisdiction over Defendant, because Defendant
25 does business within the State of California and County of Los Angeles.
26
27

1 10. During the Class Period Plaintiff purchased one of each of the Products.

2 11. Plaintiff's most recent purchase was during or about November, 2020.

3 12. All of the Products contain oils, but Defendants intentionally advertise
4 and label the Products as oil-free.

5
6 13. When purchasing Defendant's products Plaintiff made her purchasing
7 decision because of the labeling on the products which read "oil-free".

8
9 14. The following are pictures of Defendant's products Plaintiff purchased
10 showing the oil-free labels:



1 15. At the time of Plaintiff's purchases she did not purchase similar
2 products which did not contain oil-free labeling and generally avoids purchasing
3 cosmetics and skincare products which do not contain oil-free labeling, because the
4 presence of oils in her cosmetic and skincare products is a material concern to
5 Plaintiff.
6

7 16. Plaintiff is drawn to oil-free labeling for multiple reasons, including but
8 not limited to the following: Plaintiff does not like the way oil feels on her skin,
9 Plaintiff is concerned that oils in her cosmetics and skincare products will cause her
10 to develop blackheads and other forms of acne, Plaintiff does not like the "shiny"
11 appearance of her face when she uses oil base cosmetics and skincare products,
12 Plaintiff does not like the residue often left by oils, Plaintiff does not like when oil
13 based cosmetics and skincare products become slick when interacting with
14 perspiration, and Plaintiff uses oil-free labeling to help determine which products
15 she should use in conjunction with other products so as to minimize any feeling of
16 greasiness, oiliness, or other unpleasant feelings associated with using multiple
17 cosmetic and skincare products at the same time.
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22 17. All of Plaintiff's reasons for being drawn oil-free labeling are based on
23 the same common fact that oil-free products do not contain oils.
24

25 18. When Plaintiff purchases oil-free products she interprets the statement
26 "oil-free" to mean the products she is purchasing are free of oils and will not contain
27

1 any ingredients that have all of the following qualities: liquid at room temperature,
2 more viscous but less dense than water, do not mix with water, and slick or slippery
3 to the touch.

4
5 19. In other words, Plaintiff, like any reasonable consumer, understands
6 oils to be substances that look, feel, and interact with water the way common oils,
7 such as olive oil, vitamin e oil, or castor oil, do, and Plaintiff expected that when she
8 bought oil-free products they would not contain any substances that can be
9 characterized as oils based on the way they look, feel, and interact with water.
10

11 20. On multiple occasions using either of the Products she purchased,
12 Plaintiff has experienced dissatisfaction with the Products due to the Products
13 feelings oily and greasy, causing breakouts, leaving an unpleasant residue on her
14 skin, causing eye irritation when mixed with sweat, and interacting with other
15 skincare products she used at the same time in a way that made her skin feel oily and
16 greasy.
17

18
19 21. Plaintiff would not have purchased Defendant's products and would
20 have instead purchased accurately labeled oil-free products from Defendant's
21 competitors, if she had known Defendant's products contained oils.
22

23 22. Persons, like Plaintiff herein, have an interest in purchasing products
24 that do not contain false and misleading claims with regards to the inclusion of
25 ingredients in those products.
26
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1 23. By making false and misleading claims about the ingredients contained
2 in their products Defendant impaired Plaintiff's ability to choose the type and quality
3 of products she chose to buy.

4
5 24. Therefore, Plaintiff has been deprived of her legally-protected interest
6 to obtain true and accurate information about his consumer products as required by
7 law.

8
9 25. As a result Plaintiff has been misled into purchasing products she would
10 not have otherwise purchased.

11 26. Oil is a term that describes a material that is both hydrophobic and
12 lipophilic. Oil can also be classified by the polarity of the material. Oils can be
13 wholly non-polar such as hydrocarbons, or polar such as fatty acids. Oil comprises
14 the following chemical functional groups:¹
15

- 16
17 a. hydrocarbons (alkanes, alkenes)—such as squalane commonly sold
18 as squalane oil;
19 b. triglycerides—such as glycerol tristearate also known as stearin;
20 c. esters—such as ester oil;
21 d. fatty acids—such as palmitic acid;
22 e. certain silicones—such as alkyl dimethicone
23 f. fatty alcohols-sterols like cholesterol
24
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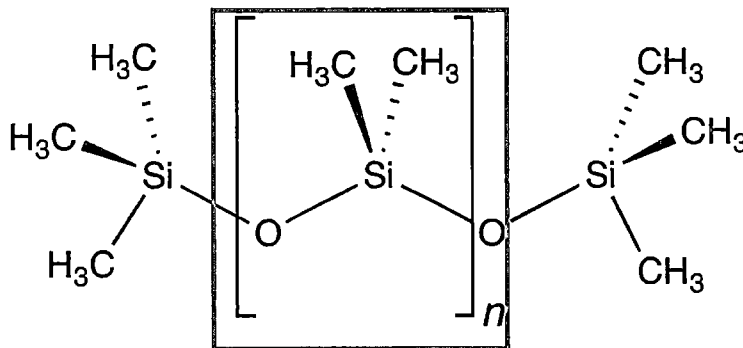
26 ¹ Tony O'Lenick, Polar vs. Nonpolar oils, 2008.

27 <https://www.cosmeticsandtoiletries.com/research/chemistry/17390254.html>

1 27. All of the above functional groups can be generally characterized by
2 the same physical properties commonly observed in oils by laypersons including
3 being less dense than water, being more viscous than water, not mixing with water,
4 and feeling slick or slippery to the touch.

6 28. All of the following ingredients have been named in this Complaint
7 precisely because they look like oils, feel like oils, interact with water like oils, and
8 match the above chemical definition of oil; and therefore are substances that a
9 reasonable consumer would not expect to be in products labeled as oil-free.
10

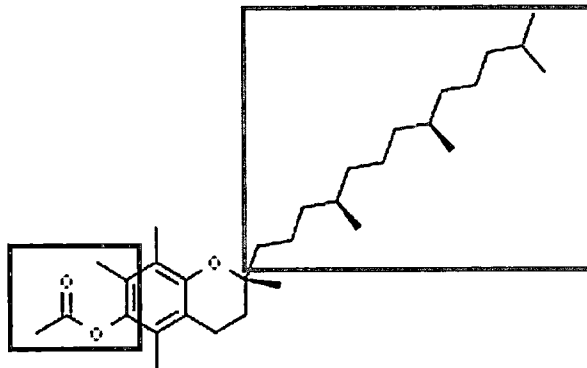
11 29. The following is a structural diagram of dimethicone:



19 -silicone(siloxane)

20 30. Dimethicone is defined as a polysiloxane. As shown in the diagram in
21 paragraph 29 above, dimethicone contains the silicone (siloxane) functional group.
22 It would be defined as a polar oil. The compound has a density of 0.965 g/mL,
23 compared to water's 1g/mL.
24

25 31. The following is a structural diagram of tocopherol acetate:
26
27
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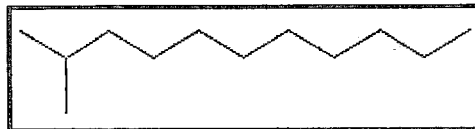


8 -alkane

9 -ester

10 32. Tocopherol acetate is defined as an ester and is more commonly called
 11 vitamin E acetate. As shown in the diagram in paragraph 31 above, tocopherol
 12 acetate contains the alkane and ester functional groups. It would be defined as a polar
 13 oil. The compound has a density of 0.96 g/mL, compared to water's 1g/mL.

16 33. The following is a structural diagram of isododecane:



20 -alkane

21 34. Isododecane is defined as a hydrocarbon. As shown in the diagram in
 22 paragraph 33 above, isododecane contains the alkane functional group. It would be
 23 defined as a non-polar oil. The compound has a density of 0.750 g/mL, compared to
 24 water's 1g/mL.

1 35. Plaintiff purchased Defendant's products because Defendant's
2 packaging claims that their products are oil-free.

3 36. Plaintiff would not have been able to understand that the Products
4 contained oils without an advanced understanding of chemistry.
5

6 37. Furthermore, due to Defendant's intentional, deceitful practice of
7 falsely labeling the Products as oil-free, Plaintiff could not have known that the
8 Products contained oils.
9

10 38. Plaintiff was unaware that the Products contained oils when she
11 purchased them.
12

13 39. Plaintiff and the Class were deceived into paying money for products
14 they did not want because the Products were labeled as oil free.

15 40. Worse than the lost money, Plaintiff, the Class, and Sub-Class were
16 deprived of their protected interest to choose the type and quality of products they
17 use on their bodies.
18

19 41. Defendant, and not Plaintiff, the Class, or Sub-Class, knew or should
20 have known that the Products' express labeling stating "Oil-Free" was false,
21 deceptive, and misleading, and that Plaintiff, the Class, and Sub-Class members
22 would not be able to tell the Products' contained oils unless Defendant expressly
23 told them.
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1 46. Plaintiff also brings this action on behalf of himself and all others
2
3 similarly situated, as a member of the proposed sub-class (the “Sub-Class”), defined
4 as follows:

5 All persons within California who purchased the Products
6 within four years prior to the filing of this Complaint
7 through to the date of class certification.

8 47. Defendants, their employees and agents are excluded from the Class
9 and Sub-Class. Plaintiff does not know the number of members in the Class and Sub-
10 Class, but believes the members number in the thousands, if not more. Thus, this
11 matter should be certified as a Class Action to assist in the expeditious litigation of
12 the matter.
13

14 48. The Class and Sub-Class are so numerous that the individual joinder of
15 all of their members is impractical. While the exact number and identities of their
16 members are unknown to Plaintiff at this time and can only be ascertained through
17 appropriate discovery, Plaintiff is informed and believes and thereon alleges that the
18 Class and Sub-Class include thousands, if not millions of members. Plaintiff alleges
19 that the class members may be ascertained by the records maintained by Defendant.
20
21

22 49. This suit is properly maintainable as a class action because the Class
23 and Sub-Class are so numerous that joinder of their members is impractical and the
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1 disposition of their claims in the Class Action will provide substantial benefits both
2 to the parties and the Court.

3 50. There are questions of law and fact common to the Class affecting the
4 parties to be represented. The questions of law and fact common to the Class
5 predominate over questions which may affect individual class members and include,
6 but are not necessarily limited to, the following:
7

- 8 a. Whether the Defendant intentionally, negligently, or recklessly
9 disseminated false and misleading information by including the
10 statement “oil-free” on the front of the Products’ packaging;
- 11 b. Whether the Class and Sub-Class members were informed of the
12 oils contained in the Products;
- 13 c. Whether the Products contain oils;
- 14 d. Whether Defendant’s conduct was unfair and deceptive;
- 15 e. Whether Defendant unjustly enriched itself as a result of the
16 unlawful conduct alleged above;
- 17 f. Whether the statement “oil-free” is misleading or false;
- 18 g. Whether there should be a tolling of the statute of limitations;
19 and
20
- 21 h. Whether the Class and Sub-Class are entitled to restitution, actual
22 damages, punitive damages, and attorney fees and costs.
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1 51. As a resident of the United States and the State of California who
2 purchased the Products, Plaintiff is asserting claims that are typical of the Class and
3 Sub-Class.

4 52. Plaintiff has no interests adverse or antagonistic to the interests of the
5 other members of the Class and Sub-Class.

6 53. Plaintiff will fairly and adequately protect the interests of the members
7 of the Class and Sub-Class. Plaintiff has retained attorneys experienced in the
8 prosecution of class actions.

9 54. A class action is superior to other available methods of fair and efficient
10 adjudication of this controversy, since individual litigation of the claims of all Class
11 and Sub-Class members is impracticable. Even if every Class and Sub-Class member
12 could afford individual litigation, the court system could not. It would be unduly
13 burdensome to the courts in which individual litigation of numerous issues would
14 proceed. Individualized litigation would also present the potential for varying,
15 inconsistent or contradictory judgments and would magnify the delay and expense
16 to all parties, and to the court system, resulting from multiple trials of the same
17 complex factual issues. By contrast, the conduct of this action as a class action
18 presents fewer management difficulties, conserves the resources of the parties and
19 of the court system and protects the rights of each class member. Class treatment
20 will also permit the adjudication of relatively small claims by many class members
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1 who could not otherwise afford to seek legal redress for the wrongs complained of
2 herein.

3 55. The prosecution of separate actions by individual members of the Class
4 and Sub-Class would create a risk of adjudications with respect to them that would,
5 as a practical matter, be dispositive of the interests of the other class members not
6 parties to such adjudications or that would substantially impair or impede the ability
7 of such non-party class members to protect their interests.
8

9
10 56. Plaintiff's claims and injuries are identical to the claims and injuries of
11 all class and sub-class members, because all claims and injuries of all class and sub-
12 class members are based on the same false labeling, and same legal theory. All
13 allegations arise from the identical, false, affirmative written statements made by
14 Defendants when they claimed the Products were oil-free, when in reality the
15 Products contained oils.
16

17
18 57. Defendants have acted or refused to act in respect generally applicable
19 to the Class and Sub-Class thereby making appropriate final and injunctive relief
20 with regard to the members of the Class and Sub-Class as a whole.
21

22 58. The size and definition of the Class and Sub-Class can be identified
23 through records held by retailers carrying and reselling the Products, and by
24 Defendant's own records.
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FIRST CAUSE OF ACTION
Violation of the California False Advertising Act
(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)

1
2
3 52. Plaintiff incorporates by reference each allegation set forth above.

4 53. Pursuant to California Business and Professions Code section 17500,
5 *et seq.*, it is unlawful to engage in advertising “which is untrue or misleading, and
6 which is known, or which by the exercise of reasonable care should be known, to
7 be untrue or misleading...or...to so make or disseminate or cause to be so made or
8 disseminated any such statement as part of a plan or scheme with the intent not to
9 sell that personal property or those services, professional or otherwise, so
10 advertised at the price stated therein, or as so advertised.”

11 54. California Business and Professions Code section 17500, *et seq.*’s
12 prohibition against false advertising extends to the use of false or misleading
13 written statements.

14 55. Defendant misled consumers by making misrepresentations and
15 untrue statements about the Class Products, namely, Defendant sold the Products
16 advertised to be oil-free fully knowing the Products contained oils, and made false
17 representations to Plaintiff and other putative class members in order to solicit
18 these transactions.

19 56. Specifically, Defendant wrote on the packages of these Products that
20 they were oil-free.

21 57. Defendant knew that their representations and omissions were untrue
22 and misleading, and deliberately made the aforementioned representations and
23 omissions in order to deceive reasonable consumers like Plaintiff and other Class
24 Members.

25 58. As a direct and proximate result of Defendant’s misleading and false
26 advertising, Plaintiff and the other Class Members have suffered injury in fact and
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1 have lost money or property. Plaintiff reasonably relied upon Defendant's
2 representations regarding the Products, namely that they were oil-free. In
3 reasonable reliance on Defendant's false advertisements, Plaintiff and other Class
4 Members purchased the Products. In turn Plaintiff and other Class Members ended
5 up with skincare products that turned out to actually be different than advertised,
6 and therefore Plaintiff and other Class Members have suffered injury in fact.

7 59. Plaintiff alleges that these false and misleading written representations
8 made by Defendant constitute a "scheme with the intent not to sell that personal
9 property or those services, professional or otherwise, so advertised at the price
10 stated therein, or as so advertised."

11 60. Defendant advertised to Plaintiff and other putative class members,
12 through written representations and omissions made by Defendant and its
13 employees, that the Class Products would be oil-free.

14 61. Defendant knew that the Class Products did in fact contain oils.

15 62. Thus, Defendant knowingly sold Class Products to Plaintiff and other
16 putative class members that contained oils contrary to the Products packaging.

17 63. The misleading and false advertising described herein presents a
18 continuing threat to Plaintiff and the Class Members in that Defendant persists and
19 continues to engage in these practices, and will not cease doing so unless and until
20 forced to do so by this Court. Defendant's conduct will continue to cause
21 irreparable injury to consumers unless enjoined or restrained. Plaintiff is entitled
22 to preliminary and permanent injunctive relief ordering Defendant to cease their
23 false advertising, as well as disgorgement and restitution to Plaintiff and all Class
24 Members Defendant's revenues associated with their false advertising, or such
25 portion of those revenues as the Court may find equitable.

SECOND CAUSE OF ACTION
Violation of Unfair Business Practices Act
(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)

64. Plaintiff incorporates by reference each allegation set forth above.

65. Actions for relief under the unfair competition law may be based on any business act or practice that is within the broad definition of the UCL. Such violations of the UCL occur as a result of unlawful, unfair or fraudulent business acts and practices. A plaintiff is required to provide evidence of a causal connection between a defendant's business practices and the alleged harm--that is, evidence that the defendant's conduct caused or was likely to cause substantial injury. It is insufficient for a plaintiff to show merely that the defendant's conduct created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of unfair competition covers any single act of misconduct, as well as ongoing misconduct.

UNFAIR

66. California Business & Professions Code § 17200 prohibits any "unfair ... business act or practice." Defendant's acts, omissions, misrepresentations, and practices as alleged herein also constitute "unfair" business acts and practices within the meaning of the UCL in that its conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein. Plaintiff reserves the right to allege further conduct which constitutes other unfair business acts or practices. Such conduct is ongoing and continues to this date.

67. In order to satisfy the "unfair" prong of the UCL, a consumer must

1 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing
2 benefits to consumers or competition; and, (3) is not one that consumers themselves
3 could reasonably have avoided.

4 68. Here, Defendant's conduct has caused and continues to cause
5 substantial injury to Plaintiff and members of the Class. Plaintiff and members of
6 the Class have suffered injury in fact due to Defendant's decision to sell them
7 fraudulently labeled products (Class Products). Thus, Defendant's conduct has
8 caused substantial injury to Plaintiff and the members of the Sub-Class.

9 69. Moreover, Defendant's conduct as alleged herein solely benefits
10 Defendant while providing no benefit of any kind to any consumer. Such deception
11 utilized by Defendant convinced Plaintiff and members of the Class that the Class
12 Products were oil-free, in order to induce them to spend money on said Class
13 Products. In fact, knowing that Class Products, by their objective terms contained
14 oils, unfairly profited from their sale, in that Defendant knew that the expected
15 benefit that Plaintiff would receive from this feature is nonexistent, when this is
16 typically never the case in situations involving ingredients said to be excluded from
17 a product. Thus, the injury suffered by Plaintiff and the members of the Sub-Class
18 is not outweighed by any countervailing benefits to consumers.

19 70. Finally, the injury suffered by Plaintiff and members of the Class and
20 Sub-Class is not an injury that these consumers could reasonably have avoided.
21 After Defendant, falsely represented that Class Products would be oil-free, the
22 Plaintiff, Class members, and Sub-Class Members suffered injury in fact due to
23 Defendant's sale of Class Products to them. Defendant failed to take reasonable
24 steps to inform Plaintiff and class members that the Class Products contained oils,
25 including intentionally mislabeling the Products by labeling them as oil-free. As
26 such, Defendant took advantage of Defendant's position of perceived power in
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1 order to deceive Plaintiff and the Class members to purchase products containing
2 oils. Therefore, the injury suffered by Plaintiff and members of the Class is not an
3 injury which these consumers could reasonably have avoided.

4 71. Thus, Defendant's conduct has violated the "unfair" prong of
5 California Business & Professions Code § 17200.

6 **FRAUDULENT**

7 72. California Business & Professions Code § 17200 prohibits any
8 "fraudulent ... business act or practice." In order to prevail under the "fraudulent"
9 prong of the UCL, a consumer must allege that the fraudulent business practice
10 was likely to deceive members of the public.

11 73. The test for "fraud" as contemplated by California Business and
12 Professions Code § 17200 is whether the public is likely to be deceived. Unlike
13 common law fraud, a § 17200 violation can be established even if no one was
14 actually deceived, relied upon the fraudulent practice, or sustained any damage.

15 74. Here, not only were Plaintiff and the Class members likely to be
16 deceived, but these consumers were actually deceived by Defendant. Such
17 deception is evidenced by the fact that Plaintiff agreed to purchase Class Products
18 under the basic assumption that they were oil-free even though the Products
19 contained oils. Plaintiff's reliance upon Defendant's deceptive statements is
20 reasonable due to the unequal bargaining powers of Defendant and Plaintiff. For
21 the same reason, it is likely that Defendant's fraudulent business practice would
22 deceive other members of the public.

23 75. As explained above, Defendant deceived Plaintiff and other Class
24 Members by representing the Class Products as oil-free when the Products
25 contained oils.

26 76. Thus, Defendant's conduct has violated the "fraudulent" prong of
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1 California Business & Professions Code § 17200.

2 **UNLAWFUL**

3 77. California Business and Professions Code Section 17200, et seq.
4 prohibits “any unlawful...business act or practice.”

5 78. As explained above, Defendant deceived Plaintiff and other Class
6 Members by representing the Class Products as oil-free, when the Products
7 contained oils.

8 79. Defendant used false advertising, marketing, and misrepresentations
9 to induce Plaintiff and Class Members to purchase the Class Products, in violation
10 of California Business and Professions Code Section 17500, et seq. Had Defendant
11 not falsely advertised, marketed or misrepresented the Class Products, Plaintiff and
12 Class Members would not have purchased the Class Products. Defendant’s conduct
13 therefore caused and continues to cause economic harm to Plaintiff and Class
14 Members.

15 80. These representations by Defendant are therefore an “unlawful”
16 business practice or act under Business and Professions Code Section 17200 *et seq.*

17 81. Defendant has thus engaged in unlawful, unfair, and fraudulent
18 business acts entitling Plaintiff and Class Members to judgment and equitable relief
19 against Defendant, as set forth in the Prayer for Relief. Additionally, pursuant to
20 Business and Professions Code section 17203, Plaintiff and Class Members seek
21 an order requiring Defendant to immediately cease such acts of unlawful, unfair,
22 and fraudulent business practices and requiring Defendant to correct its actions.

23 **THRID CAUSE OF ACTION**
24 **COMMON LAW FRAUD**

25 82. Plaintiff incorporates all of the allegations and statements made
26 above as if fully reiterated herein.

27 83. Through its false statements on the Products’ packaging that the
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1 Products are oil-free, Defendant made false statements of material fact.

2 84. At the time Defendant made its statements that the Products were
3 oil-free to Plaintiff, it knew, or reasonably should have known, that the
4 statements described above were false.

5 85. At the time Defendant made the statement to Plaintiff, it intended to
6 induce Plaintiff to purchase the Products.

7 86. Plaintiff relied upon the truth of the statements described above and
8 purchased the Products, only to find that the Products contain oils.

9 87. As a result of their reasonable reliance upon Defendant's false
10 statements of material fact as set forth above, Plaintiff and other members of the
11 Class and Sub-Class have suffered concrete and particularized injuries, harm and
12 damages which include, but are not limited to, the loss of money spent on
13 products they did not want to buy, and stress, aggravation, frustration,
14 inconvenience, emotional distress, mental anguish, and similar categories of
15 damages.

16 **FOURTH CAUSE OF ACTION**
17 **UNJUST ENRICHMENT**

18 88. Plaintiff incorporates all of the allegations and statements made
19 above as if fully reiterated herein.

20 89. Plaintiff conferred monetary benefits to Defendant by purchasing the
21 Products.

22 90. Defendant has been unjustly enriched by retaining the revenues
23 derived from Plaintiff's purchase of the Products based on the false statement that
24 the Products are oil-free.

25 91. Defendant's retention of the revenue it received from Plaintiff, the
26 Class, and the Sub-Class is unjust and inequitable because Defendant's false
27 statements caused injuries to Plaintiff, the Class, and the Sub-Class, because they

1 would not have purchased the Products if they knew the Products contained oils.

2 92. Defendant's unjust retention of the benefits conferred on it by
3 Plaintiff, the Class, and the Sub-Class entitles the Plaintiff, the Class, and the
4 Sub-Class to restitution of the money they paid to Defendant for the Products.

5 **MISCELLANEOUS**

6 93. Plaintiff and Class Members allege that they have fully complied with
7 all contractual and other legal obligations and fully complied with all conditions
8 precedent to bringing this action or all such obligations or conditions are excused.

9 **REQUEST FOR JURY TRIAL**

10 94. Plaintiff requests a trial by jury as to all claims so triable.

11 **PRAYER FOR RELIEF**

12 95. Plaintiff, on behalf of herself and the Class, requests the following
13 relief:

- 14 (a) An order certifying the Class and appointing Plaintiff as
15 Representative of the Class and Sub-class;
- 16 (a) An order certifying the undersigned counsel as Class and Sub-
17 Class Counsel;
- 18 (b) An order requiring Defendant, at its own cost, to notify all Class
19 Members of the unlawful and deceptive conduct herein;
- 20 (c) An order requiring Defendant to engage in corrective
21 advertising regarding the conduct discussed above;
- 22 (d) Actual damages suffered by Plaintiff and Class Members as
23 applicable or full restitution of all funds acquired from Plaintiff
24 and Class Members from the sale of mislabeled Class Products
25 during the relevant class period;
- 26 (e) Punitive damages, as allowable, in an amount determined by the
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Court or jury;

- (f) Any and all statutory enhanced damages;
- (g) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- (h) Pre- and post-judgment interest; and
- (i) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

Dated: March 1, 2021

Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN , PC

By:  _____

TODD M. FRIEDMAN, ESQ.

Attorney for Plaintiff

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' Oil-Free' Smashbox Beauty Cosmetics Skincare Products Contain Oil](#)
