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Attorneys for Plaintiffs

**THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

CARYN GORZO, KASEY POE, ANNA
DOHNKE, LIEN SCHERR, JOLENE LEWIS
VOLPE (FORMERLY BARBARA LEWIS),
BOBBIE JOE HULING, CYNTHIA
WHETSELL, MARTHA MERLE, TERESA
GATTUSO, ELISSA WAGNER, and DIXIE
WILLIAMS, individually and on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

RODAN & FIELDS, LLC,

Defendant.

Case No. CGC-18-565628

**SECOND AMENDED CLASS ACTION
COMPLAINT**

(JURY TRIAL DEMANDED)

1 **SECOND AMENDED CLASS ACTION COMPLAINT**

2 Plaintiffs CARYN GORZO, KASEY POE, ANNA DOHNKE, LIEN SCHERR, JOLENE
3 LEWIS VOLPE (formerly BARBARA LEWIS), BOBBIE JOE HULING, CYNTHIA WHETSELL,
4 MARTHA MERLE, TERESA GATTUSO, ELISSA WAGNER, and DIXIE WILLIAMS
5 (“Plaintiffs”) bring this action on behalf of themselves and all others similarly situated against Rodan
6 & Fields, LLC (“Rodan & Fields” or “Defendant”). Plaintiffs’ allegations against Defendant are
7 based upon investigation carried out by Plaintiffs’ counsel, except for allegations pertaining to each
8 Plaintiff, which are based upon each Plaintiff’s personal knowledge.

9 **I. NATURE OF ACTION**

10 1. This is a class action brought by Plaintiffs, on behalf of themselves and all other
11 similarly situated persons, against Rodan & Fields, LLC. Plaintiffs seek damages and equitable and
12 legal remedies for themselves and the putative Class, which includes consumers who purchased
13 Rodan & Fields Enhancements Lash Boost (hereafter, “Lash Boost”).

14 2. This action arises out of Defendant’s deceptive and misleading marketing of Lash
15 Boost, including its statements that Lash Boost is “not a drug product,” is “safe and non-irritating,”
16 “does not contain any over-the-counter (OTC) or drug ingredients,” “contains only cosmetic
17 ingredients,” and is “not associated with any significant side effects,” when in fact Lash Boost is a
18 drug, is illegally marketed and sold, and contains ingredients that are associated with serious adverse
19 effects.

20 3. Rodan & Fields has promoted itself as a company that creates safe and effective
21 skincare products, with a thoughtful process of thoroughly vetting ingredients. For instance, on its
22 website, Rodan & Fields states: “Rodan & Fields’ philosophy is to create safe and effective
23 formulations, and thus, would not place a product on the market otherwise.”¹ Through this campaign,
24 Rodan & Fields has convinced consumers that they can trust the Rodan & Fields name and the
25 specific representations Rodan & Fields makes about its products.

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¹ <http://www.rodanandfields.com/rfconnection/?s=lash+boost>.

1 4. During all times material hereto, Defendant engaged in a common plan and scheme,
2 through the use of misleading marketing, advertising, and product labeling, which led consumers to
3 believe that Lash Boost is a purely cosmetic product that is not associated with serious health risks,
4 and is legally marketed and sold, when in fact, none of these things are true.

5 5. The U.S. Food and Drug Administration has found that one of Lash Boost’s
6 ingredients, isopropyl cloprostenate, is “well known to have an effect on the structure or function of
7 the body,” and that, accordingly, products containing isopropyl cloprostenate “are drugs as defined by
8 section 201(g)(1)(C) of the [the Federal Food, Drug, and Cosmetic] Act (21 U.S.C. § 321(g)(1)(C)).”²

9 6. Because it contains isopropyl cloprostenate, Lash Boost qualifies as a drug as well as a
10 cosmetic under both federal laws and parallel state laws governing food, drugs, and cosmetics.³

11 7. Lash Boost is also a “new drug” that is illegally sold without an approved new drug
12 application in violation of Cal. Health & Safety Code § 111550 and 21 U.S.C. § 355(a), and a
13 “misbranded” drug that is illegally sold in violation of Cal. Health & Safety Code §§ 111440, 111445
14 and 21 U.S.C. § 331.

15 8. In addition to being a drug that is marketed and sold illegally, Lash Boost contains
16 ingredients that are associated with serious adverse effects. Specifically, the FDA has found that
17 isopropyl cloprostenate may cause side effects including, but not limited to “ocular irritation,
18 hyperemia, iris color change, macular edema, ocular inflammation, and interference with intraocular
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21 ² [https://wayback.archive-
22 it.org/7993/20170111100914/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/20
23 11/ucm251951.htm](https://wayback.archive-it.org/7993/20170111100914/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm251951.htm). In line with the FDA’s guidance, the District Court for the Central District of
24 California recently found that an isopropyl cloprostenate-based product known as “RevitaLash
25 Enhanced®” was “objectively intended to grow eyelashes” and was therefore a “drug[] under the
26 FDCA and the Cal. Healthy and Safety code.” *See Allergan, Inc. v. Athena Cosmetics, Inc.*, 2012 WL
27 12896222, at *8 (C.D. Cal. July 19, 2012).

28 ³ *See* <https://www.fda.gov/Cosmetics/GuidanceRegulation/LawsRegulations/ucm074201.htm>
29 (“some products meet the definitions of both cosmetics and drugs ... [f]or example, a shampoo is a
30 cosmetic because its intended use is to cleanse the hair. An antidandruff treatment is a drug because
31 its intended use is to treat dandruff. Consequently, an antidandruff shampoo is both a cosmetic and a
32 drug ... [s]uch products must comply with the requirements for both cosmetics and drugs.”)

1 pressure reduction therapy.”⁴ Defendant made misrepresentations and omissions regarding the
2 serious adverse effects of Lash Boost.

3 9. Defendant knows, or reasonably should know, that Lash Boost is a drug, that it is
4 illegally sold without having gone through the proper regulatory approval processes, and that its
5 ingredients are associated with serious adverse effects.

6 10. Accordingly, Defendant’s labeling, advertising, and marketing of Lash Boost as “not a
7 drug product,” “safe and non-irritating,” “not contain[ing] any over-the-counter (OTC) or drug
8 ingredients,” “contain[ing] only cosmetic ingredients,” and “not associated with any significant side
9 effects,” as well as its material omissions signifying that Lash Boost is legally saleable, are deceptive
10 and misleading.

11 11. But for Defendant’s deceptive and misleading representations and omissions, Plaintiffs
12 and the Class would not have purchased Lash Boost.

13 12. As discussed more fully herein, Defendant’s conduct constitutes fraudulent
14 misrepresentation, fraudulent concealment, negligent misrepresentation, common law fraud, unjustly
15 enriched Defendant, violates California’s Sherman Food, Drug, and Cosmetics Law (California’s
16 Health & Safety Code §§ 109875 *et seq.*) (“Health and Safety Code”) and the following consumer
17 protection statutes: (i) California’s Business & Professions Code §§ 17200, *et seq.* (the Unfair
18 Competition Laws or “UCL”); (ii) California Civil Code §§ 1750, *et seq.* (the Consumers Legal
19 Remedies Act or “CLRA”); (iii) California’s Business & Professions Code §§ 17500, *et seq.* (the False
20 Advertising Laws or “FAL”), (iv) 815 ILL. COMP. STAT. 505/1, *et seq.* and 720 ILL. COMP. STAT.
21 295/1A, (v) Wash Rev. Code §§ 19.86.010 *et seq.*, (vi) Fla. Stat. §§ 501.21 *et seq.*, (vii) NY Gen. Bus.
22 Law §§ 349-350 *et seq.*, (viii) Mass. Gen. Laws CH. 3A, §§ 1, *et seq.*

23 13. Plaintiffs bring this action to vindicate state law rights on behalf of themselves and
24 other class members. Specifically, Plaintiffs seek to remedy the unlawful, unfair, deceptive, and
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26 ⁴ [https://wayback.archive-](https://wayback.archive-it.org/7993/20170111100914/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm251951.htm)
27 [it.org/7993/20170111100914/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/20](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm251951.htm)
28 [11/ucm251951.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm251951.htm)

1 misleading business practices of Defendant with respect to the marketing and sale of Lash Boost,
2 which is available for purchase throughout the United States, and to recover the ill-gotten gains
3 obtained by Defendant through this deception.

4 **II. PARTIES**

5 14. Plaintiff Caryn Gorzo is and was at all relevant times a citizen of the State of California,
6 residing in the City of Murrieta, California. Plaintiff has purchased and used Lash Boost for personal,
7 family, or household purposes. She first purchased the product from Rodan & Fields on or about
8 June 1, 2017.

9 15. Plaintiff Kasey Poe is and was at all relevant times a citizen of the State of California,
10 residing in the City of Grover Beach, California. Plaintiff has purchased and used Lash Boost for
11 personal, family, or household purposes. She purchased the product from Rodan & Fields on or
12 about January 10, 2018.

13 16. Plaintiff Anna Dohnke is and was at all relevant times a citizen of the State of
14 California, residing in the City of Tehachapi, California. Plaintiff has purchased and used Lash Boost
15 for personal, family, or household purposes. She purchased the product from Rodan & Fields on or
16 about January 20, 2017, and in May 2017 and January 2018.

17 17. Plaintiff Lien Scherr is and was at all relevant times a citizen of the State of California,
18 residing in Los Angeles County, California. Plaintiff has purchased and used Lash Boost for personal,
19 family, or household purchases. She purchased the product from Rodan & Fields on or about
20 September 5, 2017.

21 18. Plaintiff Jolene Lewis Volpe (formerly Barbara Lewis) is and was at all relevant times a
22 citizen of the State of California, residing in Ventura County, California. Plaintiff has purchased and
23 used Lash Boost for personal, family, or household purposes. She purchased the product in February
24 2018.

25 19. Plaintiff Bobbie Joe Huling is and was at all relevant times a citizen of the State of
26 Florida, residing in Lake County, Florida. Plaintiff has purchased and used Lash Boost for personal,
27 family, or household purposes. She purchased the product in May 2017.

1 20. Plaintiff Cynthia Whetsell is and was at all relevant times a citizen of the State of
2 Illinois, residing in Peoria, Illinois. Plaintiff has purchased and used Lash Boost for personal, family,
3 or household purposes. She purchased the product from a Rodan & Fields consultant in May 2017.

4 21. Plaintiff Martha Merle is and was at all relevant times a citizen of the State of
5 Massachusetts, residing in Wellesley County. Plaintiff has purchased and used Lash Boost for
6 personal, family, or household purposes. She purchased the product in January 2018.

7 22. Plaintiff Teresa Gattuso is and was at all relevant times a citizen of the State of New
8 York, residing in Suffolk County, New York. Plaintiff has purchased and used Lash Boost for
9 personal, family, or household purposes. She purchased the product in June 2017.

10 23. Plaintiff Elissa Wagner is and was at all relevant times a citizen of the State of New
11 York, residing in Suffolk County, New York. Plaintiff has purchased and used Lash Boost for
12 personal, family, or household purposes. She purchased the product in September 2017, and she
13 previously received the product as a gift during the late winter or early spring of 2017.

14 24. Plaintiff Dixie Williams is currently a resident of Nevada but at all relevant times to this
15 action a citizen of the State of Washington, residing in Pierce County, Washington. Plaintiff has
16 purchased and used Lash Boost for personal, family, or household purposes. She purchased the
17 product from a Rodan & Fields consultant in March 2017.

18 25. Plaintiffs examined Lash Boost’s packaging, labeling, and/or other marketing materials.
19 If Defendant had properly disclosed the true facts regarding Lash Boost and its ingredients, Plaintiffs
20 either would not have purchased Lash Boost and/or would have paid less for it.

21 26. Defendant Rodan & Fields, LLC is a skincare company headquartered in San
22 Francisco, California and incorporated in California. Rodan & Fields markets and sells Lash Boost
23 directly through its website, as well as through its many distributors or “consultants.”

24 **III. JURISDICTION, VENUE, AND GOVERNING LAW**

25 27. This Court has jurisdiction over this matter because the amount in controversy exceeds
26 \$25,000.

1 28. Venue is proper in this District pursuant to California Code of Civil Procedure § 395(a)
2 because Rodan & Fields, LLC is a resident of San Francisco, California, which is located in this
3 District.

4 29. Rodan & Fields, LLC regularly and systematically does business throughout the State of
5 California, including in this District, and provides products and services to its customers, including
6 members of the putative Class. As such, it is subject to the personal jurisdiction of this Court.

7 30. The application of California law to this litigation is appropriate given Rodan & Fields’
8 contacts with the State of California.

9 31. Rodan & Fields maintains its headquarters, including its marketing department, in
10 California. Rodan & Fields employs hundreds of employees in California, including employees
11 responsible for marketing.

12 32. From its headquarters in California, Rodan & Fields developed and approved the
13 marketing claims alleged herein regarding Lash Boost.

14 33. The State of California has a substantial interest in ensuring that businesses do not
15 misrepresent their products, omit risks concerning those products, and otherwise engage in business
16 decisions that would deceive consumers.

17 34. The application of California law to the claims against Rodan & Fields—a California
18 company that took substantial actions in the State of California impacting Plaintiffs and the Class
19 members throughout the United States—would be neither unfair nor unlawful, nor would it violate
20 due process.

21 **IV. FACTS COMMON TO ALL CLASS MEMBERS**

22 **A. Rodan & Fields’ Representations That Lash Boost is Not a Drug**

23 35. Rodan & Fields, an American manufacturer and multi-level marketing company
24 specializing in skincare products, markets and sells a topical serum known as Lash Boost.

25 36. Lash Boost retails for approximately \$150.00 and is available without a prescription
26 through Rodan & Fields’ website and through Rodan & Fields’ many distributors, whom the
27 company refers to as “consultants.”
28

1 37. Rodan & Fields’ website describes Lash Boost as a “unique proprietary formula that
2 improves the appearance of lash volume and length for lashes that are 100% real, 100% yours.”⁵

3 38. Lash Boost, which is labeled and marketed as an “eyelash conditioning serum,”
4 contains an ingredient known as isopropyl cloprostenate.

5 39. Isopropyl cloprostenate is one of a class of chemicals known as prostaglandin analogs
6 (hereafter, “PAs”), which have long been used to reduce intraocular pressure in glaucoma patients.⁶
7 According to the Glaucoma Research Foundation, “prostaglandin analogs work by increasing the
8 outflow of intraocular fluid from the eye.”⁷ A well-known side effect of glaucoma treatments
9 containing PAs is that they cause eyelash growth.⁸

10 40. In 2008, the U.S. Food and Drug Administration (“FDA”) approved Latisse,[®] whose
11 active ingredient is a PA known as bimatoprost, for increasing eyelash length, thickness, and darkness
12 in patients with hypotrichosis (or inadequacy) of the eyelashes.⁹ Latisse is classified as an ophthalmic
13 drug and cannot be obtained without a prescription.¹⁰

14 41. The FDA has found that, like the active ingredient in Latisse, the PA isopropyl
15 cloprostenate is “well known to have an effect on the structure or function of the body,” and that,
16 accordingly, products containing isopropyl cloprostenate “are drugs as defined by section 201(g)(1)(C)
17 of the [the Federal Food, Drug, and Cosmetic] Act (21 U.S.C. § 321(g)(1)(C)).”¹¹

18 42. The California Health and Safety Code defines “drug” based on intended use.
19 Specifically, any product “intended for use in the diagnosis of disease or other condition, or in the
20 cure, mitigation, treatment, or prevention of disease in humans or any other animal” or any product

21 _____
22 ⁵ <https://www.rodanandfields.com/Shop/Product/ENHLSH01#description>.

23 ⁶ [https://wayback.archive-
24 it.org/7993/20170111100914/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/20
11/ucm251951.htm](https://wayback.archive-it.org/7993/20170111100914/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm251951.htm).

25 ⁷ https://www.glaucoma.org/treatment/medication-guide.php#prostaglandin_analogs.

26 ⁸ *See Id.*

27 ⁹ *See* https://www.accessdata.fda.gov/drugsatfda_docs/nda/2008/022369s000_Approv.pdf.

28 ¹⁰ *See* https://www.accessdata.fda.gov/drugsatfda_docs/label/2012/022369s005lbl.pdf.

¹¹ [https://wayback.archivea-
it.org/7993/20170111100914/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/20
11/ucm251951.htm](https://wayback.archive-it.org/7993/20170111100914/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm251951.htm)

1 “intended to affect the structure or any function of the body of human beings” qualifies as a “drug”
2 under California law. Code § 109925(b) and (c). The Federal Food, Drug, and Cosmetic Act
3 (“FDCA”) adopts the same definition. 21 U.S.C. § 321(g)(1)(B) and (C).

4 43. Because it is objectively intended to affect the structure or function of the body, as
5 demonstrated by the fact that it contains isopropyl cloprostenate, Lash Boost qualifies as a drug under
6 both federal laws and parallel state laws governing food, drugs, and cosmetics.¹²

7 44. Lash Boost’s pricing (\$150 for a two-to-three month supply,¹³ far more expensive than
8 most non-drug lash enhancement products on the market) and recommended method of application
9 (the website instructs consumers that “for best results,” they should “use Lash Boost for 8 weeks,”¹⁴
10 indicating that unlike most purely cosmetic products, Lash Boost does not immediately affect
11 appearance but instead changes eyelashes over time) provide further evidence of Rodan & Fields’
12 objective intent for Lash Boost to affect the structure or function of the body.

13 45. Rodan & Fields’ marketing claims regarding Lash Boost’s effects on physical
14 appearance (“get the appearance of lush, longer-looking lashes”¹⁵) also show that it is intended to
15 function as a drug. Notably, in marketing Lash Boost, Rodan & Fields deliberately uses language
16 centered around appearance in order to avoid to regulatory oversight:

17 Because Lash Boost is a cosmetic and not a drug, the company is careful to avoid saying that it
18 causes lashes to grow. Instead, it uses language centered around appearance, promising “fuller-
19 looking” and “longer-looking” lashes. Consultants for Rodan & Fields are given dos and don’ts for
20 their social media posts that advise them on lighting, as well as examples of compliant language (“I
21 have noticed longer-looking lashes”) and noncompliant phrasing (“My lashes are longer”).¹⁶

22
23 ¹² In determining whether a product is intended to affect the structure or function of the body,
24 a vendor’s objective intent in promoting, distributing, and selling the product is the key consideration.
25 *See, e.g., United States v. Kasz*, 855 F.Supp 534, 542 (D.R.I. 1994) (“[T]he objective intent of the vendor,
26 not the vendor’s subjective explanations and disclaimers” determines the intended use of a product).

27 ¹³ <http://www.rodanandfields.com/rfconnection/index.php/2017/06/26/how-long-will-a-container-of-enhancements-lash-boost-last/>.

28 ¹⁴ <https://www.rodanandfields.com/Shop/Product/ENHLSH01#description>

¹⁵ <https://www.rodanandfields.com/Shop/Product/ENHLSH01#description>

¹⁶ <https://www.nytimes.com/2017/08/25/business/media/lash-boost-eyelash-enhancer-marketing.html>.

1 However, the FDA has made clear that representations regarding appearance, when paired with
2 ingredients known to cause lash growth, indicate that a lash enhancement product is a drug.¹⁷

3 46. In marketing and selling Lash Boost, Rodan & Fields actively misleads consumers by
4 fundamentally misrepresenting what Lash Boost is – a drug. For instance, the Rodan & Fields
5 website states:

6 ENHANCEMENTS Lash Boost is a cosmetic-grade product designed to improve the appearance
7 of your lashes. It is not a drug product and will not affect the structure and function of your lashes.
18

8 ENHANCEMENTS Lash Boost is a cosmetic product and not considered a drug. It contains only
9 cosmetic ingredients to address the appearance of lashes and is not intended to be a medical
10 treatment for damaged lashes.¹⁹

11 ENHANCEMENTS Lash Boost is a cosmetic product and does not contain any over-the-counter
12 (OTC) or drug ingredients. It contains a complete formula of safe ingredients which moisturize,
nourish and protect the appearance of lashes.²⁰

13 47. Additionally, in a description of Lash Boost’s ingredients and how they “fit into the
14 R+F Philosophy,” Defendants fails to address the fact that the product is effective because it contains
15 a PA that stimulates lash growth, instead focusing on the “natural” ingredients the product also
16 contains and their supposed effects:

17 ENHANCEMENTS Lash Boost follows the Rodan + Fields philosophy of Multi-Med Therapy
18 for lashes by bringing together Biotin, Keratin and peptides to moisturize, nourish and protect your
19 lashes. Biotin and Keratin deposit an infusion of protein to the lashes, helping to moisturize and
20 condition them, while peptides enhance lash durability, supporting more voluminous looking
lashes.²¹

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23 ¹⁷ See [https://wayback.archive-
it.org/7993/20170111100914/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/20
24 11/ucm251951.htm](https://wayback.archive-it.org/7993/20170111100914/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm251951.htm) (stating that certain lash products were drugs because “The presence of the
25 prostaglandin analog, isopropyl cloprostenate, along with appearance claims such as ‘enhance the
appearance of your lashes and brows,’ ‘fuller healthier-looking lashes,’ and ‘fuller healthier-looking
brows’ indicate that your products are intended to affect the structure or function of the body.”)

26 ¹⁸ [http://www.rodanandfields.com/rfconnection/?s=lash+boost.](http://www.rodanandfields.com/rfconnection/?s=lash+boost)

27 ¹⁹ *Id.*

28 ²⁰ *Id.*

²¹ *Id.*

1 ENHANCEMENTS Lash Boost is a cosmetic product and does not contain any medical or active
2 ingredients. It contains a complete formula of safe ingredients which moisturize, nourish, and
protect the appearance of lashes.²²

3 48. Lash Boost’s label does not list any “active ingredients” or “inactive ingredients,”
4 designations consumers have come to expect on drug products,²³ nor does it contain any other
5 indications that Lash Boost is a drug.

6 49. Based on the labeling and marketing of Lash Boost, Plaintiffs reasonably believed that
7 they were purchasing a purely cosmetic product, not a drug, when in reality, the FDA has found that
8 the presence of isopropyl cloprostenate in Lash Boost makes it a drug, and a variety of other factors
9 indicate that Rodan & Fields objectively intends for Lash Boost to function as a drug.

10 50. At all relevant times, Rodan & Fields was intimately aware of the true nature of the
11 isopropyl cloprostenate in its product, including that it was designed to affect the structure and/or
12 function of the eyelashes, and thus knew or reasonably should have known that Lash Boost was a
13 drug product within the governing federal and state law definitions.

14 51. Despite this knowledge, Defendant continued to represent to consumers that Lash
15 Boost “is not a drug product and will not affect the structure and function of your lashes,” “is not
16 considered a drug,” “contains only cosmetic ingredients,” and “is a cosmetic product and does not
17 contain any over-the-counter (OTC) or drug ingredients.”

18 52. In this way, Defendant actively misled consumers about the true nature of Lash Boost
19 and its ingredients. Reasonable consumers would consider the true facts regarding Lash Boost and its
20 ingredients to be important in determining whether or not to purchase Lash Boost.

21 53. Plaintiffs reasonably understood the marketing of Lash Boost to mean or imply that the
22 Lash Boost is not a drug. Based on the labeling and marketing of Lash Boost, Plaintiffs reasonably
23 believed that they were purchasing a purely cosmetic product.

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25 _____
²² *Id.*

26 ²³ See <https://www.fda.gov/Cosmetics/GuidanceRegulation/LawsRegulations/ucm074201.htm>
27 (“Combination OTC drug/cosmetic products must have combination OTC drug/cosmetic labeling.
28 For example, the drug ingredients must be listed alphabetically as ‘Active Ingredients,’ followed by
cosmetic ingredients, listed in descending order of predominance as ‘Inactive Ingredients.’”)

1 54. Defendant knew, or reasonably should have known, that its representations are
2 deceptive, misleading, and unlawful, and intended that consumers rely on them. Alternatively,
3 Defendant was reckless in not knowing that its representations were deceptive and/or misleading at
4 the time that they were made.

5 55. As the direct and proximate result of Defendant’s false, deceptive and/or misleading
6 statements, Plaintiffs and putative Class Members have suffered injury-in-fact and a loss of money or
7 property through the out-of-pocket costs expended to purchase Lash Boost.

8 **B. Rodan & Fields’ Material Omissions Indicating That Lash Boost is Legally**
9 **Marketed and Sold**

10 56. Not only is Lash Boost a drug, it is a “new drug” as defined by 21 C.F.R. § 310.527(b),
11 incorporated into California law by Cal. Health & Safety Code § 110110, because it is “labeled,
12 represented, or promoted for external use as a hair grower.”

13 57. Lash Boost also qualifies as a “new drug” under Cal. Health & Safety Code § 109980
14 and 21 U.S.C. § 321(p) because it is “not generally recognized, among experts qualified by scientific
15 training and experience ... as safe and effective for use under the conditions prescribed,
16 recommended, or suggested” and “has not ... been used to a material extent or for a material time
17 under [those] conditions.”²⁴

18 58. Both California and federal law prohibit the sale of “new drugs” without an approved
19 new drug application. Code § 111550; 21 U.S.C. § 355(a).

20 59. Plaintiffs are informed and believe that Lash Boost is marketed and sold without an
21 approved new drug application, and that neither the FDA nor the California Department of Public
22 Health has approved it for sale.

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24 ²⁴ See also [https://wayback.archive-
25 it.org/7993/20170111100914/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/20
26 11/ucm251951.htm](https://wayback.archive-it.org/7993/20170111100914/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm251951.htm) (showing that the FDA found that several eyelash enhancement products
27 containing isopropyl cloprostenate were “new drugs, as defined by section 201(p) of the Act, (21
28 U.S.C. § 321(p)), because they are not generally recognized as safe and effective under the conditions
prescribed, recommended, or suggested in its labeling.”)

1 60. Lash Boost is also a “misbranded” drug under various provisions of the Cal. Health &
2 Safety Code, including:

3 (i) under § 111330 because the product labeling is misleading insofar as it fails to
4 disclose all significant safety concerns and/or fails to disclose that it is a drug, and is a
5 new drug sold without an approved new drug application;

6 (ii) under § 111335, because the product labeling and packaging do not conform to the
7 requirements of Chapter 4 (commencing with § 110290);

8 (iii) under § 111355 because the product labeling does not bear the established name
9 and quantity of each active ingredient;

10 (iv) under § 111360, because Rodan & Fields fails to include in all advertising materials
11 a summary of all side effects and contraindications;

12 (v) under § 111375, because the product labeling does not bear adequate warnings as to
13 unsafe dosages or methods or duration of administration or application; and/or

14 (vi) under § 111400, because it may be dangerous to health when used in the suggested
15 frequency, duration, or dosage.

16 61. Under the Health & Safety Code, it is unlawful for any person to manufacture, sell,
17 deliver, hold, or offer for sale any drug that is misbranded, or to misbrand any drug. Cal. Health &
18 Safety Code §§ 111440, 111445.

19 62. Because Lash Boost is “new drug” sold without an approved new drug application, and
20 because it is a misbranded drug, Lash Boost is sold illegally.

21 63. In marketing Lash Boost, Rodan & Fields materially omits and does not adequately
22 disclose to consumers that Lash Boost sold illegally without proper government approval.

23 64. By omitting this information, Defendant actively conceals material facts and leads
24 reasonable consumers to believe that they are purchasing a product whose sale does not violate
25 federal and/or state law. Specifically, by marketing and selling Lash Boost, Defendant effectively
26 represents to consumers that the product is recognized as safe by the relevant regulatory bodies, and
27 that it is legally saleable, when in reality, it is not.

1 65. Reasonable consumers would consider the omitted facts to be important in
2 determining whether or not to purchase Lash Boost.

3 66. Plaintiffs reasonably understood the marketing of Lash Boost to mean or imply that the
4 sale of Lash Boost is legal. Based on the labeling and marketing of Lash Boost, Plaintiffs reasonably
5 believed that they were purchasing a product that was legally saleable.

6 67. Defendant knew, or reasonably should have known, that the sale of Lash Boost was
7 illegal under federal and California law. Such facts were not known or reasonably accessible to
8 Plaintiffs. Plaintiffs are informed and believe that Defendant had superior and exclusive knowledge of
9 these material facts.

10 68. At all relevant times, Defendant was familiar with the requisite federal and state
11 regulatory scheme surrounding the marketing and sale of drugs and cosmetics, and at one point even
12 produced and publicly posted a promotional video concerning its supposed compliance with FDA
13 regulations.²⁵

14 69. Defendant omitted the above-described material information with the knowledge that
15 its omissions would mislead and deceive consumers. Alternatively, Defendant was reckless in not
16 knowing that the omissions were deceptive and/or misleading.

17 70. As the direct and proximate result of Defendant's deceptive and/or misleading material
18 omissions, Plaintiffs and putative Class Members have suffered injury-in-fact and a loss of money or
19 property through the out-of-pocket costs expended to purchase Lash Boost.

20 **C. Rodan & Fields' Representations and Material Omissions Indicating That Lash Boost**
21 **is Safe and Not Associated With Any Serious Adverse Effects**

22 71. The FDA has found that isopropyl cloprostenate poses significant health risks,
23 including but not limited to "ocular irritation, hyperemia, iris color change, macular edema, ocular
24 inflammation, and interference with intraocular pressure reduction therapy."²⁶

25 _____
26 ²⁵ See <https://www.youtube.com/watch?v=CeM1IAfmwBE>.

27 ²⁶ [https://wayback.archive-](https://wayback.archive-it.org/7993/20170111100914/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm251951.htm)
28 [it.org/7993/20170111100914/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm251951.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm251951.htm).

1 72. The FDA has advised that, because of its potentially harmful effects, products
2 containing isopropyl cloprostenate are “not safe for use except under the supervision of a practitioner
3 licensed by law to administer them.”²⁷

4 73. Despite what the FDA has said, Rodan & Fields affirmatively states in its marketing
5 materials that Lash Boost is safe to use as directed and has not been associated with any serious side
6 effects, including change in iris pigmentation, a risk specifically identified by the FDA as stemming
7 from the use of isopropyl cloprostenate. For instance, the Rodan & Fields website states:

8 Rodan + Fields’ philosophy is to create safe and effective formulations, and thus, would not place
9 a product on the market otherwise. ENHANCEMENTS Lash Boost is clinically and
10 ophthalmologist tested, and found to be safe and non-irritating.²⁸

11 ENHANCEMENTS Lash Boost ... contains a complete formula of safe ingredients which
12 moisturize, nourish and protect the appearance of lashes.²⁹

13 The only serious side effects we have heard about are those associated with drug products, not
14 cosmetics. ENHANCEMENTS Lash Boost is a cosmetic, and the ingredients have not been
15 associated with any significant side effects.³⁰

16 ENHANCEMENTS Lash Boost is not anticipated to cause permanent discoloration on the eye
17 area.³¹

18 ENHANCEMENTS Lash Boost does not cause discoloration or change in pigmentation of the
19 iris. Those serious side effects are associated with the warnings on drug products only. The
20 cosmetic ingredients used in ENHANCEMENTS Lash Boost have never been associated with
21 reports of change in iris pigmentation or any discoloration.³²

22 74. In marketing and selling Lash Boost, Rodan & Fields also materially omits and does not
23 adequately disclose to consumers the other side effects isopropyl cloprostenate is known to cause,
24 including hyperemia, macular edema, ocular inflammation, and the lowering of intraocular pressure.

25 ²⁷ *Id.*

26 ²⁸ <http://www.rodanandfields.com/rfconnection/?s=lash+boost>

27 ²⁹ *Id.*

28 ³⁰ *Id.*

³¹ *Id.*

³² *Id.*

1 75. Though the Rodan & Fields website does refer to minor potential reactions such as
2 irritation, redness, and swelling, Rodan & Fields’ instructions for how to deal with such reactions are
3 contradictory and highly likely to confuse reasonable consumers.

4 76. For instance, the Lash Boost product page states “[i]f you develop irritation or swelling,
5 *discontinue* product usage”,³³ whereas elsewhere on the website, Rodan & Fields tells consumers that
6 they may experience “temporary tingling or redness, which normally disappears after *continued* use.”³⁴
7 In yet another place on the website, Rodan & Fields tells consumers that if they experience tingling,
8 burning, redness, or irritation, they should “reduce the frequency of application to every other day
9 until the sensation no longer occurs. Gradually go back to daily application.”³⁵

10 77. In some instances, the website goes so far as to note that the product may be harmful
11 when used in very specific ways, but conspicuously fails to explain why, or provides highly misleading
12 explanations. For example, the website states:

13 Applying ENHANCEMENTS Lash Boost to the upper lashes alone will subsequently apply to the
14 lower lashes by the way of natural blinking. Thus, we do not recommend applying
15 ENHANCEMENTS Lash Boost on the lower lashes because it could lead to excessive product
usage and irritate the eye area.³⁶

16 This description grossly understates the risks associated with PAs in that it fails to mention that, when
17 PAs are applied to the lower lash line, they can cause excess hair growth outside the treatment area,
18 for instance on the cheek.³⁷

19 78. In another place, the website states:

20 If you’re . . . being treated for any eye-related disorder, undergoing cancer treatment, prone to
21 dry eyes or styes, consult your physician before use.³⁸

22
23 ³³ [https://www.rodanandfields.com/Shop/Product/ENHLSH01#usageNotes_\(emphasis supplied\)](https://www.rodanandfields.com/Shop/Product/ENHLSH01#usageNotes_(emphasis%20supplied))

24 ³⁴ [http://www.rodanandfields.com/rfconnection/?s=lash+boost_\(emphasis supplied\)](http://www.rodanandfields.com/rfconnection/?s=lash+boost_(emphasis%20supplied))

25 ³⁵ *Id.*

26 ³⁶ <http://www.rodanandfields.com/rfconnection/index.php/2017/06/26/can-enhancements-lash-boost-be-used-on-the-lower-lash-line/>

27 ³⁷ <http://www.latisse.com/FAQs.aspx>;

28 <https://www.nytimes.com/2010/05/02/health/02latisse.html> (“Latisse must be dabbed on the upper lash line only, since it can grow unintended hair — on the cheek, for example.”)

³⁸ <http://www.rodanandfields.com/rfconnection/?s=lash+boost>

1 Again, this warning is not specific with respect to the documented risk that Lash Boost may interfere
2 with glaucoma treatment or lower intraocular pressure.

3 79. These statements and omissions are likely to mislead and deceive ordinary consumers
4 of Lash Boost and have deceived Plaintiffs. Plaintiffs reasonably understood the labeling and
5 marketing of the Products to mean or imply that Lash Boost is safe to use and not associated with
6 serious adverse effects.

7 80. Yet, in reality, Lash Boost can and does cause damage to the eyes when used in
8 accordance with the instructions provided to consumers.

9 81. For instance, the Journal of Cosmetic Dermatology has published a case study noting
10 that isopropyl cloprostenate has been associated with periocular discoloration.³⁹

11 82. Furthermore, numerous consumers have complained online that Lash Boost has caused
12 side effects including, among other things, burning, itching, redness, discoloration, swelling, styes,
13 severe dry eye, eyelash fallout, hair growth outside the application area, drooping eyelids, and
14 infections.⁴⁰ For example:

- 15 • Started using this product in the late spring of 2017, by June my eyes were infected and i was in
16 severe pain, doctor visits and more doctor visits, prescriptions...loss of lashes, I am STILL
dealing with this!⁴¹
- 17 • Growing hair on cheekbones. I am horrified and totally think that R&F should be responsible
18 for not listing this as a side effect!⁴²

21 ³⁹ See Orsolya N. Horváth et. al., *Periocular discoloration after using a prostaglandin analog for eyelash*
22 *enhancement: Evaluation with reflectance confocal microscopy*, JOURNAL OF COSMETIC
23 DERMATOLOGY (Sept. 2016) (“[a] woman was admitted to our outpatient department with
24 periocular discoloration. She applied a serum with the active ingredient isopropyl cloprostenate for
enhancing the growth of the eyelashes”).

25 ⁴⁰ Notably, Latisse users are instructed to apply the drug with included one-use applicators in order to
avoid infection. See <https://www.nytimes.com/2010/05/02/health/02latisse.html>. Lash Boost comes
with a single applicator wand that is meant to be used over and over again.

26 ⁴¹ [https://rodan-and-fields.pissedconsumer.com/wish-i-d-never-heard-of-lash-boost-
201710231119104.html](https://rodan-and-fields.pissedconsumer.com/wish-i-d-never-heard-of-lash-boost-201710231119104.html)

27 ⁴² [https://rodan-and-fields.pissedconsumer.com/rodan-and-fields-lash-boost-serum-review-
201705301054140.html](https://rodan-and-fields.pissedconsumer.com/rodan-and-fields-lash-boost-serum-review-201705301054140.html)

- 1 • ...this morning as I was doing my makeup as usual I leaned in close to realize that I'm growing
2 hair on my cheek bones!!! ... I'm absolutely horrified!⁴³
- 3 • I did have dry, irritated eyes, headache and blurry vision.⁴⁴
- 4 • I have only been using it for a week and now have Droopy eyes. ⁴⁵
- 5 • ... made my skin dark and gave me a sunken in eye look.⁴⁶
- 6 • I have dark lids, very dry eyes that are red all the time, some cysts and permanent eyes
7 discomfort.⁴⁷
- 8 • ... even after stopping use of the Rodan and Fields lash booster my eyelids have a very
9 prominent red line and darkening of the eyelids.⁴⁸
- 10 • ... a few days later I noticed a STYE on my lower eyelid ... Reps will tell us its because we
11 didn't apply correctly or bacteria formed, but for me this was certainly not the case after all the
precautions I took.⁴⁹
- 12 • ... I developed two cysts, one in each eye, within two weeks of using the serum. I also noticed
13 redness, eye sensitivity, and pain.⁵⁰
- 14 • I had a bald spot in the middle of my lashes... then I woke up with my right eyelid all swollen
15 and was told I had a stye!!! I've never had a stye in my life. It wouldn't go away and turned into
a chalazion and I had to have a specialist give me a shot in my eyelid!⁵¹
- 16 • my eyelashes were falling out in clumps ... I emailed RF customer service, and I was told that
17 my experience "was completely normal" and that I should continue to use the product!⁵²

19 ⁴³ [https://rodan-and-fields.pissedconsumer.com/rodan-and-fields-lash-boost-serum-review-
20 201703051016981.html](https://rodan-and-fields.pissedconsumer.com/rodan-and-fields-lash-boost-serum-review-201703051016981.html)

21 ⁴⁴ <https://rodan-and-fields.pissedconsumer.com/lash-boost-side-effects-201801071163954.html>

22 ⁴⁵ <https://rodan-and-fields.pissedconsumer.com/lash-boost-droopy-eyelids-201803131209930.html>

23 ⁴⁶ [https://rodan-and-fields.pissedconsumer.com/lash-boost-sunken-eyes-dark-circles-
24 201711181133377.html](https://rodan-and-fields.pissedconsumer.com/lash-boost-sunken-eyes-dark-circles-201711181133377.html)

25 ⁴⁷ <https://rodan-and-fields.pissedconsumer.com/not-worth-the-pain-or-risk-201803021201352.html>

26 ⁴⁸ [https://rodan-and-fields.pissedconsumer.com/results-but-red-line-as-eyeliner-followed-
27 201802051183322.html](https://rodan-and-fields.pissedconsumer.com/results-but-red-line-as-eyeliner-followed-201802051183322.html)

28 ⁴⁹ [https://rodan-and-fields.pissedconsumer.com/styes-and-lash-boost-info-on-why-this-is-occurring-
29 201707281080630.html](https://rodan-and-fields.pissedconsumer.com/styes-and-lash-boost-info-on-why-this-is-occurring-201707281080630.html)

30 ⁵⁰ <https://rodan-and-fields.pissedconsumer.com/eye-cysts-in-both-eyes-201803221216610.html>

31 ⁵¹ [https://rodan-and-fields.pissedconsumer.com/very-dangerous-product-horrible-side-effects-
32 201706161062107.html](https://rodan-and-fields.pissedconsumer.com/very-dangerous-product-horrible-side-effects-201706161062107.html)

33 ⁵² [https://rodan-and-fields.pissedconsumer.com/i-despise-this-company-and-their-customer-service-
34 201707261079511.html](https://rodan-and-fields.pissedconsumer.com/i-despise-this-company-and-their-customer-service-201707261079511.html)

- 1 • ...my eyes were red, itchy and watery ... three weeks, 4 ophthalmologist visits, a trip to urgent care
2 and over \$200 in different medications later, my eyes are finally settling down.⁵³
- 3 • Used this product for one month. Had slight eye itchiness but tried to “deal with it” to see the
4 results. Well a month in and my left eye will NOT stop tearing. Terrible! There is something
5 dangerous in this product!⁵⁴

6 83. One consumer even posted a video on YouTube demonstrating that Lash Boost has
7 caused persistent drooping of her eyelid.⁵⁵ The video, which has attracted over 130,000 views,
8 includes a link to an article in the Review of Ophthalmology which notes that eyelid drooping is a
9 known side effect of PA use, and explains: “exposure to the prostaglandin affects [peri-orbital fat
10 cells] metabolism, causing them to shrink. The shrinkage of the fat cells surrounding the eye causes
11 enophthalmos—the eye becomes more sunken-in. The result is a deepening of the superior eye lid
12 sulcus, while periorbital fat tissue seems to melt away.”⁵⁶

13 84. Based on the marketing of Lash Boost, Plaintiffs reasonably believed that it was safe to
14 use and not associated with serious adverse effects. Plaintiffs purchased the Products in reliance on
15 Defendant’s representations and material omissions to this effect.

16 85. Unknown to Plaintiffs and putative Class Members at the time of purchase, and known
17 to Defendant, Lash Boost contains ingredients that may cause damage to the eyes upon proper
18 application.

19 86. Defendant is aware that Lash Boost may cause such damage due to an undisclosed drug
20 ingredient. Despite notice and knowledge of the injuries caused by Lash Boost via the numerous
21 consumer complaints Defendant has directly received and which are publicly available on the internet,
22 Defendant has failed and/or refused to provide an adequate remedy for the systemic injuries caused
23 by Lash Boost.

24 ⁵³ <https://rodan-and-fields.pissedconsumer.com/lash-boost-is-a-bust-201803221216835.html>

25 ⁵⁴ <https://rodan-and-fields.pissedconsumer.com/rodan-and-fields-lash-boost-201801241175433.html>

26 ⁵⁵ <https://www.youtube.com/watch?v=7HlbQeZ54Kk>

27 ⁵⁶ Stanley J. Berke, *PAP: New Concerns for Prostaglandin Use*, REVIEW OF OPHTHALMOLOGY (Oct. 2012),
28 available at <https://www.reviewofophthalmology.com/article/pap-new-concerns-for-prostaglandin-use>

1 87. Defendant has not recalled, relabeled or reformulated Lash Boost, nor has it warned
2 consumers about the dangers associated with using Lash Boost.

3 88. Plaintiffs and Class Members relied, to their detriment, on Defendant to distribute safe
4 products. Instead, Defendant marketed and sold a product that is known to cause serious adverse
5 effects.

6 89. As a result of Defendant's material omissions, and the false, deceptive, and misleading
7 statements in Lash Boost's marketing materials, including that "Lash Boost is ... safe and non-
8 irritating," "Lash Boost ... contains a complete formula of safe ingredients which moisturize, nourish
9 and protect the appearance of lashes," "[Lash Boost's] ingredients have not been associated with any
10 significant side effects," "Lash Boost is not anticipated to cause permanent discoloration on the eye
11 area," and "the cosmetic ingredients used in ... Lash Boost have never been associated with reports
12 of change in iris pigmentation or any discoloration," Plaintiffs and the putative Class Members
13 purchased Lash Boost with no reason to know or suspect the dangers associated with using it. Not
14 until eye injuries occurred would a putative Class Member have reason to know or suspect the
15 dangers associated with Lash Boost.

16 90. Defendant made the above-described statements and omissions with the knowledge
17 that they were false, deceptive and/or misleading, and with the intent that consumers rely on them.
18 Alternatively, Defendant was reckless in not knowing that the representations and omissions were
19 false, deceptive and/or misleading at the time that they were made.

20 91. Furthermore, as the direct and proximate result of Defendant's false, deceptive and/or
21 misleading statements and omissions, Plaintiffs and putative Class Members have suffered injury-in-
22 fact and a loss of money or property through the out-of-pocket costs expended to purchase Lash
23 Boost.

24 **V. PLAINTIFFS' FACTUAL ALLEGATIONS**

25 **Plaintiff Caryn Gorzo**

26 92. After viewing advertisements posted by a Rodan & Fields consultant on Facebook,
27 Plaintiff Caryn Gorzo visited the Rodan & Fields website to read more about Lash Boost.

28

1 93. Plaintiff Gorzo observed that the product was touted as being “safe” and “non-
2 irritating.” She also noted that the website did not warn of any serious side effects.

3 94. At the time, she was aware of the existence of the prescription eyelash growth product,
4 Latisse, and its attendant side effects, and believed that, unlike Latisse, Lash Boost was not a drug
5 because it was not advertised as such and did not require a prescription.

6 95. Having been assured by the website of the product’s safety and status as purely a
7 cosmetic product, Plaintiff Gorzo placed an order with the Rodan & Fields consultant on or about
8 June 1, 2017.

9 96. Plaintiff Gorzo also signed up for Rodan & Fields’ auto-ship option and has since
10 purchased and received two additional tubes of the product through Rodan & Fields’ auto-ship
11 program.

12 97. Plaintiff Gorzo reasonably relied upon the deceptive and misleading claims on Rodan
13 & Fields’ website in purchasing Lash Boost.

14 98. Plaintiff Gorzo used the product shortly after purchasing it and followed the product
15 directions during application. Part of the way through her second tube, she was forced to discontinue
16 use of the product because of the side effects she was experiencing, including redness, itching, and
17 pain.

18 99. At the time, a third tube had already been auto-shipped to her. Plaintiff Gorzo was
19 unable to use the rest of her second tube, or any of her third tube of Lash Boost.

20 100. Plaintiff Gorzo suffered injury as a result of her purchase of Lash Boost because she
21 was deceived into purchasing the product based on Defendant’s representations that it was “safe and
22 non-irritating,” and its material omissions indicating that Lash Boost was legally saleable and not a
23 drug.

24 101. At no time did Defendant provide Plaintiff Gorzo with any warnings concerning the
25 true nature of Lash Boost or the potential dangers associated with its use. Plaintiff Gorzo would not
26 have purchased Lash Boost had she known that it was being sold illegally, contained drug ingredients,
27 or contained ingredients known to cause serious adverse effects.

1 102. Plaintiff Gorzo would purchase Lash Boost in the future if she could be assured that it
2 no longer contained an undisclosed drug ingredient associated with serious undisclosed side effects.

3 **Plaintiff Kasey Poe**

4 103. Plaintiff Kasey Poe first heard about Rodan & Fields Lash Boost through a social
5 media “moms” group she was a member of. Another member of the group posted an advertisement
6 for a Rodan & Fields-themed event where people could learn more about the company’s products.

7 104. Plaintiff Poe attended this event in the Fall of 2017 and saw Lash Boost displayed
8 there. She was impressed by the results Rodan & Fields advertised, but as a general matter, is cautious
9 about the products she uses, especially when they are to be applied around her eye area. As a result,
10 she delayed purchasing the product.

11 105. Subsequently, she read through the Rodan & Fields product webpage for Lash Boost
12 and noted that it was advertised as being a safe “lash conditioner.” She did not see anything
13 indicating that Lash Boost was a drug, and believed it was a purely cosmetic product.

14 106. Several months later, in January of 2018, she saw the product being advertised on a
15 Rodan & Field consultant’s Facebook page, and placed an order with the consultant on or about
16 January 10, 2018.

17 107. Plaintiff Poe reasonably relied upon the deceptive and misleading claims on Rodan &
18 Fields’ website in purchasing Lash Boost.

19 108. Plaintiff Poe used the product shortly after purchasing it and followed the product
20 directions during application. After her third or fourth nightly application of the product, she awoke
21 to eyes that were itchy, red, and painful.

22 109. After learning that the product might contain drug ingredients, Plaintiff Poe
23 discontinued use of the product.

24 110. Plaintiff Poe suffered injury as a result of her purchase of Lash Boost because she was
25 deceived into purchasing the product based on Defendant’s representations that it was a “safe” “lash
26 conditioner” and not a drug, and its material omissions indicating that Lash Boost was legally saleable.
27
28

1 111. At no time did Defendant provide Plaintiff Poe with any warnings concerning the true
2 nature of Lash Boost or the dangers associated with its use. Plaintiff Poe would not have purchased
3 Lash Boost had she known that it was being sold illegally, contained drug ingredients, and/or
4 contained ingredients known to cause adverse effects.

5 112. Plaintiff Poe would purchase Lash Boost in the future if she could be assured that it no
6 longer contained an undisclosed drug ingredient associated with serious undisclosed side effects.

7 **Plaintiff Anna Dohnke**

8 113. Plaintiff Anna Dohnke first learned about Lash Boost from a Rodan & Fields
9 consultant who contacted her about the product in October 2016, before the product was officially
10 released on or around November 2, 2016.

11 114. Because Plaintiff Dohnke is generally cautious about the products she uses on her skin,
12 she delayed purchasing Lash Boost for several months after it was released. During this period,
13 Plaintiff Dohnke spoke with the consultant numerous times, and the consultant repeatedly assured
14 her that the product was totally safe to use.

15 115. During one of these conversations, on January 9, 2017, Plaintiff Dohnke asked the
16 consultant “Does [Lash Boost] have any reactions with the eyes (I remember a few years ago,
17 something came out to darken or thicken your lashes, and it actually caused light eyes to change
18 color.)”

19 116. The consultant responded: “Yes, that’s Latisse, it can cause darkening of the eye lids
20 and iris!! EEK this is a conditioning serum, it works totally different and does not have the same side
21 effects. It gives you longer, darker, fuller, looking lashes.”

22 117. Plaintiff Dohnke was somewhat reassured by this and her other conversations with the
23 consultant, but also visited the Rodan & Fields website and reviewed information on that website
24 about Lash Boost. Specifically, she reviewed website statements indicating that Lash Boost was safe
25 to use and not associated with any serious side effects.

1 118. On or about January 20, 2017, Plaintiff Dohnke ordered her first tube of Lash Boost
2 through the consultant she had spoken to. She subsequently bought two more tubes of Lash Boost
3 through this consultant in May 2017 and January 2018.

4 119. Plaintiff Dohnke reasonably relied upon the deceptive and misleading claims on Rodan
5 & Fields' website, as well as the deceptive and misleading claims made by the Rodan & Fields
6 consultant, in purchasing Lash Boost.

7 120. Plaintiff Dohnke used the product shortly after purchasing it and followed the product
8 directions during application. Sometime after beginning to use the product, Plaintiff Dohnke began
9 to experience gradually worsening symptoms, including redness, irritation, sharp and sudden pain in
10 the area between the tear duct and iris, yellowing of the eye, foreign body sensation ("FBS") in the
11 eyes, dry eyes, and blurry vision.

12 121. On or about June 8, 2017, one of Plaintiff Dohnke's colleagues commented on a thick,
13 yellow area that had developed on the cornea of her right eye. The colleague mentioned that it
14 appeared to be a pterygium – a discolored, triangular tissue growth that invades the eye and has the
15 potential to obscure the optical center of the cornea. The colleague noted that she recognized the
16 condition because she had experienced it herself.

17 122. In early July of 2017, Plaintiff Dohnke had a doctor's visit with her general practitioner,
18 who confirmed that her eye growth appeared to be a pterygium.

19 123. Plaintiff Dohnke began to suspect, based on the fact that she had not changed anything
20 else about her routine, that Lash Boost could be the source of her condition. She began to use the
21 product less frequently starting in the fall of 2017, and stopped using it altogether around March
22 2018, after which some of her side effects subsided and/or became less severe. She was not able to
23 use any of the third tube of Lash Boost she purchased.

24 124. Plaintiff Dohnke suffered injury as a result of her purchase of Lash Boost because she
25 was deceived into purchasing the product based on Defendant's representations that it is a safe, non-
26 drug product not associated with any significant side effects, and its material omissions indicating that
27 Lash Boost is legally saleable.

1 125. At no time did Defendant provide Plaintiff Dohnke with any warnings concerning the
2 true nature of Lash Boost or the dangers associated with its use. Plaintiff Dohnke would not have
3 purchased Lash Boost had she known that it was being sold illegally, contained drug ingredients, or
4 contained ingredients known to cause adverse effects.

5 126. Plaintiff Dohnke would purchase Lash Boost in the future if she could be assured that
6 it no longer contained an undisclosed drug ingredient associated with serious undisclosed side effects.

7 **Plaintiff Lien Scherr**

8 127. Plaintiff Lien Scherr purchased Lash Boost from the Rodan & Fields website on or
9 about September 5, 2017. Because Lash Boost is sold over the counter, Plaintiff Scherr did not need a
10 prescription to purchase the product, and she relied on the information provided in and on the Lash
11 Boost packaging and advertising to be accurate and complete.

12 128. Prior to purchasing Lash Boost, Plaintiff Scherr saw, heard, and relied on
13 advertisements, representations, and statements prepared and approved by Rodan & Fields,
14 disseminated through national advertising media, including the Rodan & Fields website.

15 129. Prior to purchasing the product, Plaintiff Scherr understood use of Lash Boost to cause
16 eyelash growth. Prior to purchasing the product, Plaintiff Scherr was unaware that Lash Boost
17 contained an undisclosed drug ingredient associated with severe side effects.

18 130. Plaintiff Scherr used the product as directed and experienced ocular irritation, burning
19 sensations in and around her eye, and a red and irritated eyelid.

20 131. Plaintiff Scherr suffered injury as a result of her purchase of Lash Boost because she
21 was deceived into purchasing the product based on Defendant's representations that it was a "safe"
22 cosmetic product and not a drug, and its material omissions indicating that Lash Boost was legally
23 saleable.

24 132. Plaintiff Scherr would not have purchased Lash Boost had she known of the potential
25 dangerous side effects.

26 133. Plaintiff Scherr would purchase Lash Boost in the future if she could be assured that it
27 no longer contained an undisclosed drug ingredient associated with serious undisclosed side effects.
28

1 **Plaintiff Jolene Lewis Volpe (Barbara Lewis)**

2 134. Plaintiff Jolene Lewis Volpe (“Plaintiff Lewis”) purchased Lash Boost in February
3 2018. Plaintiff Lewis used the product once or twice in February 2018, and she used the product for
4 approximately two weeks in March 2018.

5 135. Plaintiff Lewis reasonably relied on Rodan & Fields’ deceptive and misleading claims,
6 believing that Lash Boost was a purely cosmetic product containing no drug ingredients.

7 136. Three days after Plaintiff Lewis stopped using Lash Boost, she developed a chalazion
8 on her right eye. A chalazion is a small bump that appears on the eyelid due to blocked oil glands.
9 After developing the chalazion, Plaintiff Lewis stopped using Lash Boost.

10 137. Three days later, Plaintiff Lewis developed a hordeolum (otherwise known as a sty, or
11 a bacterial infection of an old gland in the eyelid) in her left eye.

12 138. Three days after developing the hordeolum, Plaintiff Lewis developed blepharitis
13 (inflammation of the eyelids) and was prescribed antibiotics due to the infection. Plaintiff Lewis
14 visited a doctor three times in connection with the issues she experienced as a result of using Lash
15 Boost.

16 139. Plaintiff Lewis suffered injury as a result of her purchase of Lash Boost because she
17 was deceived into purchasing the product based on Defendant’s representations that it was a “safe”
18 cosmetic product and not a drug, and its material omissions indicating that Lash Boost was legally
19 saleable.

20 140. At no time did Defendant provide Plaintiff Lewis with any warnings concerning the
21 true nature of Lash Boost or the dangers associated with its use. Plaintiff Lewis would not have
22 purchased Lash Boost had she known that it was being sold illegally, contained drug ingredients,
23 and/or contained ingredients known to cause adverse effects.

24 **Plaintiff Bobbie Joe Huling**

25 141. Plaintiff Bobbie Joe Huling purchased Lash Boost in May 2017.

26 142. Plaintiff Huling reasonably relied on Rodan & Fields’ deceptive and misleading claims,
27 believing that Lash Boost was a purely cosmetic product containing no drug ingredients.

1 143. Plaintiff Huling experienced red and itchy eyes following use of the product. In the
2 morning after using the product, Plaintiff Huling’s vision was blurry until she washed her face and put
3 cold water on her eyes. Plaintiff Huling noticed that she was blinking more following use of Lash
4 Boost.

5 144. Plaintiff Huling also noticed that her eye color was changing after using Lash Boost.
6 After using the product for approximately two weeks and experiencing an adverse reaction, Plaintiff
7 Huling stopped using the product. After ceasing use, Plaintiff Huling’s eyes returned to normal.

8 145. Plaintiff Huling suffered injury as a result of her purchase of Lash Boost because she
9 was deceived into purchasing the product based on Defendant’s representations that it was a “safe”
10 cosmetic product and not a drug, and its material omissions indicating that Lash Boost was legally
11 saleable.

12 146. At no time did Defendant provide Plaintiff Huling with any warnings concerning the
13 true nature of Lash Boost or the dangers associated with its use. Plaintiff Huling would not have
14 purchased Lash Boost had she known that it was being sold illegally, contained drug ingredients,
15 and/or contained ingredients known to cause adverse effects.

16 147. Plaintiff Huling would purchase Lash Boost in the future if she could be assured that it
17 no longer contained an undisclosed drug ingredient associated with serious undisclosed side effects.

18 **Plaintiff Cynthia Whetsell**

19 148. Plaintiff Cynthia Whetsell purchased Lash Boost in May 2017 from a Rodan & Fields
20 consultant.

21 149. Plaintiff Whetsell reasonably relied on Rodan & Fields’ deceptive and misleading
22 claims, believing that Lash Boost was a purely cosmetic product containing no drug ingredients.

23 150. Following her use of Lash Boost, Plaintiff Whetsell experienced burning, dryness, and
24 redness in her eyes. She also developed a grey spot in her vision and had serious retinopathy. It took
25 roughly six months for her vision to go back to normal after using Lash Boost.

26 151. Plaintiff Whetsell suffered injury as a result of her purchase of Lash Boost because she
27 was deceived into purchasing the product based on Defendant’s representations that it was a “safe”
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1 cosmetic product and not a drug, and its material omissions indicating that Lash Boost was legally
2 saleable.

3 152. At no time did Defendant provide Plaintiff Whetsell with any warnings concerning the
4 true nature of Lash Boost or the dangers associated with its use. Plaintiff Whetsell would not have
5 purchased Lash Boost had she known that it was being sold illegally, contained drug ingredients,
6 and/or contained ingredients known to cause adverse effects.

7 **Plaintiff Martha Merle**

8 153. Plaintiff Martha Merle purchased Lash Boost in January 2018.

9 154. Plaintiff Merle reasonably relied on Rodan & Fields' deceptive and misleading claims,
10 believing that Lash Boost was a purely cosmetic product containing no drug ingredients.

11 155. Plaintiff Merle used Lash Boost as directed from January 2018 through April 2018.
12 After using the product, Plaintiff Merle experienced swelling, irritation, itching, flaking, and eye pain,
13 and the skin around her eyes became droopy.

14 156. Plaintiff Merle suffered injury as a result of her purchase of Lash Boost because she
15 was deceived into purchasing the product based on Defendant's representations that it was a "safe"
16 cosmetic product and not a drug, and its material omissions indicating that Lash Boost was legally
17 saleable.

18 157. At no time did Defendant provide Plaintiff Merle with any warnings concerning the
19 true nature of Lash Boost or the dangers associated with its use. Plaintiff Merle would not have
20 purchased Lash Boost had she known that it was being sold illegally, contained drug ingredients,
21 and/or contained ingredients known to cause adverse effects.

22 158. Plaintiff Merle would purchase Lash Boost in the future if she could be assured that it
23 no longer contained an undisclosed drug ingredient associated with serious undisclosed side effects.

24 **Plaintiff Teresa Gattuso**

25 159. Plaintiff Teresa Gattuso purchased Lash Boost in June 2017 and used the product for
26 approximately eight weeks.

1 160. Plaintiff Gattuso reasonably relied on Rodan & Fields’ deceptive and misleading claims,
2 believing that Lash Boost was a purely cosmetic product containing no drug ingredients.

3 161. Following use of Lash Boost, Plaintiff Gattuso experienced eye pain, unusual tearing,
4 lid crusting, and blurry vision. In addition, her eyelids were redder than normal, and some of her
5 eyelashes fell out after she used Lash Boost.

6 162. Although some of her eyelashes have grown back after Plaintiff Gattuso stopped using
7 Lash Boost, her eyelashes have not been restored to what they were like prior to Plaintiff Gattuso’s
8 use of Lash Boost.

9 163. Plaintiff Gattuso suffered injury as a result of her purchase of Lash Boost because she
10 was deceived into purchasing the product based on Defendant’s representations that it was a “safe”
11 cosmetic product and not a drug, and its material omissions indicating that Lash Boost was legally
12 saleable.

13 164. At no time did Defendant provide Plaintiff Gattuso with any warnings concerning the
14 true nature of Lash Boost or the dangers associated with its use. Plaintiff Gattuso would not have
15 purchased Lash Boost had she known that it was being sold illegally, contained drug ingredients,
16 and/or contained ingredients known to cause adverse effects.

17 165. Plaintiff Gattuso would purchase Lash Boost in the future if she could be assured that
18 it no longer contained an undisclosed drug ingredient associated with serious undisclosed side effects.

19 **Plaintiff Elissa Wagner**

20 166. Plaintiff Elissa Wagner purchased Lash Boost in September 2017, and she previously
21 received a tube of Lash Boost as a gift in the late winter or early spring of 2017.

22 167. Plaintiff Wagner reasonably relied on Rodan & Fields’ deceptive and misleading claims,
23 believing that Lash Boost was a purely cosmetic product containing no drug ingredients.

24 168. After Plaintiff Wagner used Lash Boost, she experienced burning eyes, irritation, and
25 white discharge from her eyes in the mornings.

26 169. Plaintiff Wagner suffered injury as a result of her purchase of Lash Boost because she
27 was deceived into purchasing the product based on Defendant’s representations that it was a “safe”
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1 cosmetic product and not a drug, and its material omissions indicating that Lash Boost was legally
2 saleable.

3 170. At no time did Defendant provide Plaintiff Wagner with any warnings concerning the
4 true nature of Lash Boost or the dangers associated with its use. Plaintiff Wagner would not have
5 purchased Lash Boost had she known that it was being sold illegally, contained drug ingredients,
6 and/or contained ingredients known to cause adverse effects.

7 171. Plaintiff Wagner would purchase Lash Boost in the future if she could be assured that it
8 no longer contained an undisclosed drug ingredient associated with serious undisclosed side effects.

9 **Plaintiff Dixie Williams**

10 172. Plaintiff Dixie Williams purchased Lash Boost in March 2017 from a Rodan & Fields
11 consultant.

12 173. Plaintiff Williams reasonably relied on Rodan & Fields' deceptive and misleading
13 claims, believing that Lash Boost was a purely cosmetic product containing no drug ingredients.

14 174. After Plaintiff Williams used Lash Boost, she experienced burning, itching, and watery
15 eyes. She developed a rash on her eyelid, and her eyelid became discolored and darkened. In addition,
16 Plaintiff Williams developed a bump on her eyelid, and her eyelashes no longer grow where the bump
17 is located.

18 175. Plaintiff Williams suffered injury as a result of her purchase of Lash Boost because she
19 was deceived into purchasing the product based on Defendant's representations that it was a "safe"
20 cosmetic product and not a drug, and its material omissions indicating that Lash Boost was legally
21 saleable.

22 176. At no time did Defendant provide Plaintiff Williams with any warnings concerning the
23 true nature of Lash Boost or the dangers associated with its use. Plaintiff Williams would not have
24 purchased Lash Boost had she known that it was being sold illegally, contained drug ingredients,
25 and/or contained ingredients known to cause adverse effects.

26 177. Plaintiff Williams would purchase Lash Boost in the future if she could be assured that
27 it no longer contained an undisclosed drug ingredient associated with serious undisclosed side effects.
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1 **VI. CLASS ACTION ALLEGATIONS**

2 178. Plaintiffs incorporate and reallege the above paragraphs.

3 179. Plaintiffs bring this action on behalf of themselves and the members of the proposed
4 Class, which consists of:

5 All current and former consumers in the United States or its territories who purchased Lash
6 Boost for personal, family, or household purposes between October 1, 2016 and the date of
7 the entry of an order granting preliminary approval to the Settlement Agreement, (the
8 “Settlement Class Period”) excluding (a) any individuals who have pending litigation against
9 R+F; (b) any Settlement Class Members who file a timely request for exclusion; (c) any officers,
10 directors, or employees, or immediate family members of the officers, directors, or employees,
11 of R+F or any entity in which R+F has a controlling interest; (d) any person who has acted as
12 an Independent Consultant of R+F; (e) any legal counsel or employee of legal counsel for
13 R+F; (f) any federal, state, or local government entities; (g) any person who has previously
14 released the claims encompassed herein; (h) any person who returned the Product and received
15 a refund; and (i) any judicial officers presiding over the Actions and the members of their
16 immediate family and judicial staff. .

17 180. The members of the Class are so numerous that joinder is impractical. The Class
18 consist of thousands of members, the precise number which is within the knowledge of and can be
19 ascertained only by resort to Rodan & Fields’ records.

20 181. There are numerous questions of law and fact common to the Class which predominate
21 over any questions affecting only individual members of the Class. Among the questions of law and
22 fact common to the Class are:

- 23 a. Whether Lash Boost qualifies as a drug product under California laws governing food,
24 drugs, and cosmetics;
- 25 b. Whether Lash Boost is misbranded under California laws governing food, drugs, and
26 cosmetics;
- 27 c. Whether the manufacture, marketing, or sale of Lash Boost is unlawful under California
28 laws governing food, drugs, and cosmetics;
- d. Whether Defendant had a duty to disclose material facts regarding Lash Boost’s status as a
drug, safety concerns associated with Lash Boost, or the illegality of Lash Boost sales;
- e. Whether Defendant had a duty to not misrepresent material facts regarding Lash Boost’s
status as a drug, safety concerns associated with Lash Boost, or the illegality of Lash Boost
sales;
- f. Whether Defendant failed to disclose material facts regarding safety concerns associated
with Lash Boost;
- g. Whether Defendant failed to disclose material facts regarding Lash Boost’s status as a drug
or the illegality of Lash Boost sales;
- h. Whether Defendant misrepresented material facts regarding safety concerns associated with
Lash Boost;

- i. Whether Defendant misrepresented material facts regarding Lash Boost's status as a drug or the illegality of Lash Boost sales;
- j. Whether Defendant's nondisclosures and misrepresentations would be material to a reasonable consumer;
- k. Whether Defendant's nondisclosures and misrepresentations constitute an unlawful business practice in violation of the UCL;
- l. Whether Defendant's nondisclosures and misrepresentations constitute an unfair business practice in violation of the UCL;
- m. Whether Defendant's nondisclosures and misrepresentations were likely to deceive a reasonable consumer in violation of the UCL, CLRA, or FAL;
- n. Whether Defendant's nondisclosures and misrepresentations were likely to deceive a reasonable consumer in violation of 815 ILL. COMP. STAT. 505/1, *et seq.* and 720 ILL. COMP. STAT. 295/1A;
- o. Whether Defendant's nondisclosures and misrepresentations were likely to deceive a reasonable consumer in violation of Wash Rev. Code §§ 19.86.010 *et seq.*;
- p. Whether Defendant's nondisclosures and misrepresentations were likely to deceive a reasonable consumer in violation of Fla. Stat. §§ 501.21 *et seq.*;
- q. Whether Defendant's nondisclosures and misrepresentations were likely to deceive a reasonable consumer in violation of NY Gen. Bus. Law §§ 349-350 *et seq.*;
- r. Whether Defendant's nondisclosures and misrepresentations were likely to deceive a reasonable consumer in violation of Mass. Gen. Laws CH. 3A, § 1, *et seq.*
- s. Whether Defendant knowingly or willfully misrepresented or failed to disclose Lash Boost's status as a drug, significant safety concerns associated with Lash Boost, or the illegality of Lash Boost sales;
- t. Whether Defendant's conduct constituted fraudulent misrepresentation;
- u. Whether Defendant's conduct constituted fraudulent concealment;
- v. Whether Defendant's conduct constituted negligent misrepresentation;
- w. Whether Defendant's conduct constituted common law fraud;
- x. Whether Defendant was unjustly enriched by receiving moneys in exchange for Lash Boost;
- y. Whether the challenged practices harmed Plaintiffs and members of the Class; and
- z. Whether Plaintiffs and members of the Class are entitled to damages, restitution, equitable relief, and/or injunctive relief.

182. Plaintiffs' claims are typical of the claims of the members of the Class because Plaintiffs, like all members of the Class, purchased Lash Boost when its marketing materials contained serious omissions and misrepresentations regarding its safety and its status as a purely cosmetic product, as opposed to a drug product. Furthermore, like all members of the class, Plaintiffs sustained damages from Rodan & Fields' wrongful conduct. Accordingly, Plaintiffs have no interests antagonistic to the interests of any other member of the Class.

183. Plaintiffs are representatives who will fully and adequately assert and protect the interests of the Class and have retained counsel who is experienced in prosecuting class actions.

1 Accordingly, Plaintiffs are adequate representative and will fairly and adequately protect the interests
2 of the Class.

3 184. A class action is superior to all other available methods for the fair and efficient
4 adjudication of this lawsuit because individual litigation of the claims of all members of the Class is
5 economically unfeasible and procedurally impracticable.

6 185. While the aggregate damages sustained by the Class are in the millions of dollars, the
7 individual damages incurred by each member of the Class resulting from Rodan & Fields' wrongful
8 conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class
9 members prosecuting their own separate claims is remote, and, even if every member of the Class
10 could afford individual litigation, the court system would be unduly burdened by individual litigation
11 of such cases.

12 186. Rodan & Fields has acted or refused to act on grounds that apply generally to the Class,
13 thereby making appropriate final injunctive and corresponding declaratory relief with respect to the
14 Class as a whole.

15 187. The prosecution of separate actions by members of the Class would create a risk of
16 establishing inconsistent rulings and/or incompatible standards of conduct for Rodan & Fields. For
17 example, one court might enjoin Rodan & Fields from performing the challenged acts, whereas
18 another might not. Additionally, individual actions may be dispositive of the interests of the Class,
19 although certain class members are not parties to such actions.

20 188. The conduct of Rodan & Fields is generally applicable to the Class as a whole and
21 Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, the
22 systematic policies and practices of Rodan & Fields make declaratory relief with respect to the Class
23 as a whole appropriate.

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**FIRST CAUSE OF ACTION
VIOLATION OF THE “FRAUDULENT” PRONG OF THE UCL
(CAL. BUS. & PROF. CODE § 17200, et seq.)
on behalf of Plaintiffs and the Class**

189. Plaintiffs incorporate and reallege by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

190. The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. & Pro. Code § 17200.

191. A business act or practice is “fraudulent” under the UCL if it is likely to deceive members of the consuming public.

192. Defendant has violated the fraudulent prong of § 17200, because its material misrepresentations and omissions regarding safety concerns associated with Lash Boost and the fact that Lash Boost is illegally marketed and sold as a purely cosmetic product when it is actually a drug, have deceived Plaintiffs and are highly likely to deceive reasonable members of the consuming public.

193. Plaintiffs and members of the Class have suffered injury in fact, including the loss of money, as a result of Defendant’s unlawful, unfair, and/or deceptive practices. Specifically, Defendant’s material misrepresentations and omissions about the safety, legality, and drug ingredients of Lash Boost induced reasonable purchasers, including Plaintiffs, to buy the product, which they otherwise would not have purchased or would have paid less for.

194. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Rodan & Fields’ business. Defendant’s wrongful conduct is part of a general practice that is still being perpetuated and repeated throughout the State of California.

195. Furthermore, as a result of the conduct described above, Defendant has been unjustly enriched at the expense of Plaintiffs and members of the proposed Class. Specifically, Defendant has been unjustly enriched by obtaining revenues and profits that it would not otherwise have obtained absent its false, misleading and deceptive conduct.

1 204. Consequently, Plaintiffs request that this court cause Defendant to restore this money
2 to Plaintiffs and all Class members, and to enjoin Defendant from continuing to violate the UCL as
3 discussed herein and/or from violating the UCL in the future. Plaintiffs and the Class may be
4 irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

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6 **THIRD CAUSE OF ACTION**
7 **VIOLATION OF THE “UNFAIR” PRONG OF THE UCL**
8 **(CAL. BUS. & PROF. CODE § 17200, et seq.)**
9 **on behalf of Plaintiffs and the Class**

10 205. Plaintiffs incorporate and reallege by reference each and every allegation contained in
11 the preceding paragraphs as if fully set forth herein.

12 206. The UCL defines unfair business competition to include any “unlawful, unfair or
13 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal.
14 Bus. & Pro. Code § 17200.

15 207. A business act or practice is “unfair” under the UCL if the reasons, justifications and
16 motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

17 208. Defendant has violated the unfair prong of § 17200 because the acts and practices set
18 forth in the Complaint—including making misrepresentations and material omissions regarding the
19 drug ingredients contained in Lash Boost and the serious safety concerns associated with them—
20 offend established public policy.

21 209. The challenged conduct substantially injures consumers, and the harm to consumers
22 greatly outweighs any benefits associated with Defendant’s actions. Reasonable consumers are not in
23 a position to understand, given Defendant’s misrepresentations and omissions, the safety concerns
24 posed by Lash Boost, or the fact that it is actually a drug that is illegally marketed and sold.

25 210. Through its unfair acts and practices, Defendant has improperly obtained money from
26 Plaintiffs and the Class.

27 211. Consequently, Plaintiffs request that this court cause Defendant to restore this money
28 to Plaintiffs and all Class members, and to enjoin Defendant from continuing to violate the UCL as
discussed herein and/or from violating the UCL in the future. Otherwise, Plaintiffs and the Classes

1 may be irreparably harmed and/or denied an effective and complete remedy if such an order is not
2 granted.

3 **FOURTH CAUSE OF ACTION**
4 **VIOLATIONS OF THE FALSE ADVERTISING LAW**
5 **(CAL. BUS. & PROF CODE §§ 17500, *et seq.*)**
6 **on behalf of Plaintiffs and the Class**

7 212. Plaintiffs incorporate and reallege by reference each and every allegation contained in
8 the preceding paragraphs as if fully set forth herein.

9 213. California's Business and Professions Code § 17500, *et seq.* prohibits unfair, deceptive,
10 untrue, or misleading advertising. When the seller has a duty to disclose material facts about a
11 product, the sale of the product to consumers without disclosure of such material facts violates the
12 FAL.

13 214. Defendant markets and sells Lash Boost as if it were a purely cosmetic product free of
14 significant safety concerns, when in fact, the reverse is true. Specifically, Defendant materially
15 misrepresents and misleads consumers about the fact that Lash Boost is a Drug, and the fact that it
16 poses serious health risks, and omits from its marketing materials the fact that Lash Boost is
17 misbranded and sold illegally.

18 215. Through its false advertising scheme, Defendant has improperly obtained money from
19 Plaintiffs and the Class.

20 216. Consequently, Plaintiffs request that this court cause Defendant to restore this money
21 to Plaintiffs and all Class members, and to enjoin Defendant from continuing to violate the FAL as
22 discussed herein and/or from violating the FAL in the future. Plaintiffs and the Class may be
23 irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

24 **FIFTH CAUSE OF ACTION**
25 **VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT**
26 **(CAL. CIV. CODE § 1750, *et seq.*)**
27 **on behalf of Plaintiffs and the Class**

28 217. Plaintiffs incorporate and reallege by reference each and every allegation contained in
the preceding paragraphs as if fully set forth herein.

1 218. Plaintiffs and each member of the proposed class are “consumers” within the meaning
2 of California Civil Code § 1761(d).

3 219. Defendant’s sales of Lash Boost were “transactions” within the meaning of Cal. Civ.
4 Code § 1761(e).

5 220. The products purchased by Plaintiffs and the Class are “goods” within the meaning of
6 California Civil Code §1761(a).

7 221. Cal. Civ. Code § 1770(a)(2) prohibits “[m]isrepresenting the source, sponsorship,
8 approval, or certification of goods or services.”

9 222. As described herein, Defendant violated the CLRA by marketing and selling
10 misbranded drug products, which required government approval prior to sale, but which lacked such
11 approval. The sale of each Lash Boost product was a misrepresentation to consumers that the
12 product was recognized as safe by the FDA and/or California Department of Public Health, when it
13 was not.

14 223. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have
15 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not
16 have....” Furthermore, Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services
17 are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they
18 are of another.”

19 224. Defendant violated these provisions of the CLRA by marketing and selling misbranded
20 drug and cosmetic products that posed serious health and safety concerns. The sale of each Lash
21 Boost product misrepresented that the product was free of undisclosed safety concerns. In addition,
22 the sale of each Lash Boost Product misrepresented that the product is not a drug, has been
23 determined to be safe, and is otherwise legally offered for sale.

24 225. The CLRA (including §§ 1770(a) (2), (5), (7)) supports claims for omissions of material
25 fact that Defendant was obligated to disclose. In this case, Defendant was obligated, but failed to
26 disclose the known safety concerns associated with the isopropyl cloprostenate contained in its Lash
27 Boost products, the fact that Lash Boost is a drug, and the illegality of Lash Boost sales.

1 226. Plaintiffs relied on Defendant's false and misleading omissions and representations
2 about the safety and legal status of Lash Boost in deciding to use the product through Defendant's
3 website and distributors. Plaintiffs would not have purchased the products they bought or would not
4 have been willing to pay the amount they did absent Defendant's unlawful conduct.

5 227. Pursuant to Cal. Civ. Code § 1780(a), on April 17, 2018, counsel for Plaintiffs provided
6 proper notice of their intent to pursue claims under the CLRA and an opportunity to cure to
7 Defendant via certified mail to Defendant's registered agent at 2710 Gateway Oaks Drive, Suite
8 150N, San Francisco, CA 95833. The domestic return receipt indicates the letter was delivered and
9 signed for on April 19, 2018 by Vicki Plough. A copy of the letter was also sent certified to Rodan &
10 Fields' headquarters in San Francisco, California, which was signed for by Randall Vaughn on April
11 18, 2018. True and correct copies of the April 17, 2018 notice letter and the related return receipts are
12 attached hereto as Exhibit D.

13 228. Plaintiffs request this Court enjoin Defendant from continuing to violate the CLRA as
14 discussed herein and/or from violating the UCL in the future. Plaintiffs, the Classes and members of
15 the general public may be irreparably harmed and/or denied effective and complete remedy if such an
16 order is not granted.

17 229. To date, Defendant has not responded to the CLRA letter and has taken no action to
18 remedy its unlawful activities described herein or to otherwise address the CLRA violations and
19 associated harm Plaintiffs outlined in their notice letter. Thus, Plaintiffs hereby amend their complaint
20 pursuant to Cal. Civ. Code § 1782(b) and (d) to seek actual and punitive damages, in addition to
21 restitution, injunctive relief, and any other relief the Court deems proper.

22 230. Plaintiffs' affidavits stating facts showing that venue in this District is proper pursuant
23 to Cal. Civ. Code § 1780(c) are attached hereto as Exhibits A, B and C.

24 **SIXTH CAUSE OF ACTION**
25 **COMMON LAW FRAUD**
26 **on behalf of Plaintiffs and the Class**

27 231. Plaintiffs re-allege and incorporate each and every allegation set forth above as if
28 fully written herein.

1 232. Defendant engaged in fraudulent and deceptive conduct. As described above,
2 Defendant’s conduct defrauded Plaintiffs and Class members by intentionally leading them to believe,
3 through affirmative misrepresentations and omissions of material fact, that Lash Boost possesses
4 important characteristics that it in fact does not possess—namely that it is not a drug, that it is not
5 associated with any serious side effects, and that it is legally marketed and sold—and inducing their
6 purchases.

7 233. Defendant’s intentional and material misrepresentations included, among other
8 things, its advertising, marketing materials and messages, labeling and other standardized statements
9 claiming the Lash Boost is a purely cosmetic product whose ingredients have not been associated with
10 any serious side effects.

11 234. The foregoing misrepresentations were uniform across all Class members.

12 235. The same extensive and widespread advertising campaign was promoted
13 throughout the State of California, and all of the promotional materials contained the same material
14 representations regarding Lash Boost’s safety and status as a non-drug product.

15 236. These representations were false, as detailed herein. Defendant knew the
16 representations were false when it made them and thereby intended to defraud purchasers.

17 237. Defendant’s actions constitute “actual fraud” within the meaning of Cal. Civ. Code §
18 1572 because Defendant did the following with the intent to deceive Plaintiffs and Class members
19 and to induce them to enter into their contracts:

- 20 a. Positively asserted that Lash Boost is not a drug product and does not contain any over-the-
21 counter (OTC) or drug ingredients, even though it knew this to be not true;
- 22 b. Positively asserted that Lash Boost’s ingredients have not been associated with any
23 significant side effects, or with reports of change in iris pigmentation or any discoloration, in
24 a manner not warranted by the information available to Defendant;
- 25 c. Suppressed the true nature of Lash Boost, its ingredients, and its legal status from Plaintiffs
26 and Class members; and
- 27 d. Promised it would deliver a safe, purely cosmetic product with no intention of so doing.

1 238. Defendant’s actions, listed above, also constituted “deceit” as defined by Cal. Civ.
2 Code § 1710 because Defendant willfully deceived Plaintiffs and Class members with intent to induce
3 them to alter their positions to their detriment by purchasing Lash Boost.

4 239. Defendant’s fraud and concealment was also uniform across all Class members;
5 Defendant concealed from everyone the true nature of Lash Boost and its ingredients.

6 240. Defendant’s misrepresentations and omissions were material in that they would
7 affect a reasonable consumer’s decision to purchase Lash Boost. A reasonable consumer would not
8 purchase an eyelash enhancement serum advertised as being a safe, purely cosmetic product if they
9 knew it contained drug ingredients associated with serious adverse effects and had not gone through
10 the proper regulatory approval process.

11 241. Defendant’s intentionally deceptive conduct induced Plaintiffs and Class members
12 to purchase Lash Boost and resulted in harm and damage to them.

13 242. Plaintiffs believed and relied upon Defendant’s misrepresentations and concealment
14 of the true facts. Class members are presumed to have believed and relied upon Defendant’s
15 misrepresentations and concealment of the true facts because those facts are material to a reasonable
16 consumer’s decision to purchase Lash Boost.

17 243. As a result of Defendant’s inducements, Plaintiffs and Class members sustained
18 actual damages including but not limited to receiving a product that does not possess the promised
19 qualities, and not receiving the benefit of the bargain of their Lash Boost purchases. If Plaintiffs and
20 Class members had known about the true nature of Lash Boost and its ingredients, they would not
21 have purchased Lash Boost or would have paid significantly less for them. Defendant is therefore
22 liable to Plaintiffs and Class members in an amount to be proven at trial.

23 244. Defendant’s conduct was systematic, repetitious, knowing, intentional, and
24 malicious, and demonstrated a lack of care and reckless disregard for Plaintiffs’ and Class members’
25 rights and interests. Defendant’s conduct thus warrants an assessment of punitive damages under Cal.
26 Civ. Code § 3294, consistent with the actual harm it has caused, the reprehensibility of its conduct,
27 and the need to punish and deter such conduct.

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**SEVENTH CAUSE OF ACTION
UNJUST ENRICHMENT
on behalf of Plaintiffs and the Class**

245. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

246. Plaintiffs and members of the class conferred a benefit upon Defendant. Namely, Plaintiffs and members of the class paid money to Defendant for Lash Boost.

247. Defendant, however, retained that benefit under circumstances that make it unjust and inequitable for Defendant to retain it without paying Plaintiffs and members of the class the value thereof. Specifically, Defendant retained that benefit despite the fact that Lash Boost is a drug product, contains ingredients associated with serious adverse effects, and is illegally marketed and sold.

248. When purchasing Lash Boost, Plaintiffs and Class members reasonably believed that it was a purely cosmetic product whose ingredients were not associated with serious adverse effects, as advertised and as warranted, and that it was legally saleable.

249. Plaintiffs and Class members received less than what they paid for in that Lash Boost did not possess any of these qualities.

250. Plaintiffs and Class members conferred a benefit on Defendant by purchasing the Lash Boost. Had Plaintiffs and Class members known the true facts about Lash Boost, they would not have purchased it or would have paid significantly less for it.

251. Defendant should therefore be required to disgorge all profits, benefits, and other such compensation it obtained through its wrongful conduct.

**EIGHTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION
on behalf of Plaintiffs and the Class**

252. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

1 253. Plaintiffs bring their claims for negligent misrepresentation based on the laws of the
2 States of California, Florida, Illinois, Massachusetts, and Washington.

3 254. Defendant failed to disclose and omitted the adverse side effects associated with Lash
4 Boost on its product packaging and labeling. The material information omitted from the product
5 packaging and labeling that accompanied the product was also not to be found in Defendant's
6 advertising, on its website, or in its marketing materials.

7 255. Defendant had no reasonable grounds to believe that its warnings were not deceptive
8 about material facts, particularly when the side effects associated with prostaglandin analogs, such as
9 isopropyl cloprostenate, are well established within the medical and scientific community; when
10 Defendant claims that Lash Boost was ophthalmologist-tested; when Latisse, a primary competitor of
11 Defendant, which also contains a prostaglandin analog, discloses side effects associated with Latisse;
12 and when Defendant's consumers publicly disclosed significant side effects associated with using Lash
13 Bost that were consistent with the side effects identified in medical research and by the producers of
14 Latisse.

15 256. Defendant intended to induce Plaintiffs and consumers to rely on its partial warnings
16 that omitted material information.

17 257. Plaintiffs relied upon the nondisclosures when purchasing Lash Boost, and were
18 justified in relying upon the sufficiency of Defendant's warning and product labeling when purchasing
19 Lash Boost.

20 258. Defendant knew that an ingredient in Lash Bost was associated with adverse side
21 effects and failed to disclose them to consumers. Defendant perpetrated this misrepresentation by
22 providing some inadequate warnings, while failing to disclose the more serious side effects on the
23 product itself.

24 259. Defendant's omissions were intended to induce reliance. By providing some warnings
25 on its product, while failing to disclose adverse side effects associated with Lash Boost translated into
26 higher profits for Defendant than would have been possible if Defendant had fully disclosed the
27 nature and extent of the adverse side effects associated with Lash Boost.

1 Boost was also not found on Defendant’s advertising, on its website, or in its product marketing
2 materials.

3 269. Because Defendant was selling products to consumers, it had a duty to disclose facts
4 material to the transaction—namely, the adverse side effects associated with using Lash Boost.

5 270. Defendant knew that an ingredient in Lash Boost was associated with adverse side
6 effects and failed to disclose them to consumers. Defendant perpetrated this fraud and
7 misrepresentation by providing some inadequate warnings, while failing to disclose the more serious
8 side effects on the product itself.

9 271. Defendant intentionally concealed and suppressed facts regarding the adverse side
10 effects associated with Lash Boost, with the intent to defraud Plaintiffs and other consumers.

11 272. When Plaintiffs purchased Lash Boost, they were unaware of the adverse side effects
12 associated with the product. Plaintiffs would not have purchased Lash Boost if they had known of the
13 concealed and suppressed facts regarding its adverse side effects.

14 273. As a result of the concealment and suppression of the material facts relating to the
15 adverse side effects associated with Lash Boost, Plaintiffs were injured in that they experienced side
16 effects associated with prostaglandin analogs that were not disclosed by Defendant in its product
17 packaging, on the product label, or in its advertising.

18 274. As a proximate cause of the concealment, suppressions of fact, and nondisclosures,
19 Defendant caused Plaintiffs to purchase Lash Boost, and after the transaction occurred, Plaintiffs
20 suffered damages.

21 **TENTH CAUSE OF ACTION**
22 **VIOLATION OF THE FLORIDA UNFAIR AND DECEPTIVE TRADE PRACTICES**
23 **ACT**

24 **(FLA. STAT. § 501.21, et seq.)**

25 **In the alternative, on behalf of Plaintiff Huling and the members of the Class residing in**
26 **Florida at the time of the relevant transactions**

27 275. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully
28 written herein.

1 276. The Florida Unfair and Deceptive Trade Practices Act (“FDUPTA”) prohibits “[u]nfair
2 methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in
3 the conduct of any trade or commerce.” Fla. Stat. § 501.204(1).

4 277. Plaintiff Huling and members of the Class residing in Florida at the time of the relevant
5 transactions are “consumers” within the meaning of Fla. Stat. § 501.203(7).

6 278. Defendant engaged in “trade or commerce” within the meaning of Fla. Stat. §
7 501.203(8).

8 279. As alleged above, Defendant engaged in unfair methods of competition,
9 unconscionable acts, and unfair and deceptive acts or practices in violation of Fla. Stat. § 501.204(1)
10 by deceptively failing to disclose serious side effects of Lash Boost to the Class. Defendant sold and
11 marketed Lash Boost while concealing, omitting, and misrepresenting by partial disclosure in its
12 inadequate warnings, the adverse side effects, severity, and duration of side effects associated with the
13 use of Lash Boost and its synthetic prostaglandin analog ingredient.

14 280. Defendant concealed and suppressed material facts including the nature, extent, and
15 duration of adverse side effects associated with Lash Boost, including by failing to disclose the
16 harmful and potentially permanent side effects associated with Lash Boost.

17 281. By concealing and suppressing material facts regarding the side effects of Lash Boost,
18 Defendant intended to induce Plaintiffs’ reliance on the deception. By not disclosing side effects,
19 Defendant intended consumers to believe that Lash Boost did not have the same side effects as other
20 drug products on the market which disclose the side effects associated with prostaglandin analogs.
21 Rather, Defendant distinguished itself in marketing materials from other products on the market with
22 known side effects, thus inducing Plaintiffs to believe that Lash Boost did not have the same side
23 effects.

24 282. This deception occurred in the course of conduct involving commerce: the sale of Lash
25 Boost.

26 283. The consumer fraud proximately caused Plaintiffs’ injuries.
27
28

1 292. The consumer fraud proximately caused Plaintiffs' injuries.

2 293. Pursuant to 815 Ill. Comp. Stat. 505/10a(a), Plaintiff Whetsell and the members of the
3 Class residing in Illinois at the time of the relevant transactions seek monetary relief against
4 Defendant in the amount of actual damages, as well as punitive damages, because Defendant acted
5 with fraud and/or malice, and/or was grossly negligent.

6 **TWELFTH CAUSE OF ACTION**
7 **VIOLATION OF MASSACHUSETTS GENERAL LAW CHAPTER 93(A)**
8 **(MASS. GEN. LAWS CH. 3A, § 1, et seq.)**
9 **In the alternative, on behalf of Plaintiff Merle and the Class members residing in**
10 **Massachusetts at the time of the relevant transactions**

11 294. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully
12 written herein.

13 295. Massachusetts law prohibits "unfair or deceptive acts or practices in the conduct of any
14 trade or commerce." Mass. Gen. Laws ch. 93A, § 2.

15 296. Defendant, Plaintiff Merle, and the Class members residing in Massachusetts at the
16 time of the relevant transactions are "persons" within the meaning of Mass. Gen. Laws ch. 93A, §
17 1(a).

18 297. Defendant engaged in "trade" or "commerce" within the meaning of Mass. Gen. Laws
19 ch. 93A, § 1(b).

20 298. As alleged above, Defendant engaged in unfair methods of competition,
21 unconscionable acts, and unfair and deceptive acts or practices in violation of Mass. Gen. Laws ch.
22 93A by deceptively failing to disclose serious side effects of Lash Boost to the Class, the disclosure of
23 which may have influenced Plaintiffs and other Class members not to enter into the transaction.

24 299. Defendant sold and marketed Lash Boost while concealing the adverse side effects,
25 severity, and duration of side effects associated with the use of Lash Boost and the synthetic
26 prostaglandin analog ingredient included in it.

27 300. Defendant concealed and suppressed material facts including the nature, extent, and
28 duration of adverse side effects associated with Lash Boost, including by failing to disclose the
harmful and potentially permanent side effects associated with the product.

1 317. Defendant is a “person,” “corporation,” or “association” within the meaning of N.Y.
2 Gen. Bus. Law § 349(b).

3 318. Defendant’s act and practices in labeling and packaging Lash Boost were directed at
4 consumers and had a broad impact on consumers. As alleged above, Defendant engaged in deceptive
5 acts and practices by concealing the existence, severity, and duration of symptoms and adverse side
6 effects associated with using Lash Bost. These acts and practices were deceptive because they were
7 likely to mislead a reasonable consumer acting reasonably under the circumstances. For example,
8 Defendant’s concealment and misrepresentation regarding the existence, severity, and duration of
9 symptoms and adverse side effects associated with using the product would cause a reasonable
10 consumer to believe that the product was safe and did not cause any permanent side effects.

11 319. Such acts and practices caused injury to Plaintiffs and the Class.

12 320. In addition, Defendant engaged in false advertising pursuant to N.Y. Gen. Bus. Law §
13 350-a, on its labeling, direct-to-consumer advertisements, and various other forms of promotion by
14 misstating and failing to fully disclose the existence, severity, and duration of symptoms and adverse
15 side effects associated with using Lash Boost.

16 321. Defendant’s deceptive acts and practices had an impact on the public at large.

17 322. Plaintiffs did not have a reasonable opportunity to discover facts about the nature and
18 full extent of the adverse side effects associated with Lash Boost because they were not disclosed by
19 Defendant.

20 323. Plaintiffs and the Class suffered injury as a result of Defendant’s deceptive practices,
21 including lost money from purchasing Lash Boost that was unlawfully advertised and marketed in
22 violation of N.Y. Gen. Bus. Law §§ 349 and 350.

23 324. As a result of Defendant’s violations of New York’s Consumer Protection from
24 Deceptive Acts and Practices Law, Plaintiffs Gattuso and Wagner and those members of the Class
25 residing in New York at the time of the relevant transactions seek an order of this Court awarding the
26 Class, *inter alia*, actual damages, full refunds of all moneys spend on Lash Bost, restitution, attorneys’
27 fees and costs, and/or for such other relief as may be set forth below or ordered by the Court.
28

1 Plaintiffs Gattuso and Wagner and those members of the Class residing in New York at the time of
2 the relevant transactions reserve the right to seek treble damages and any other just and proper relief
3 available under N.Y. Gen. Bus. Law § 349.

4 **FIFTEENTH CAUSE OF ACTION**
5 **VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT**
6 **(WASH. REV. CODE §§ 19.86.010, *et seq.*)**

7 **In the alternative, on behalf of Plaintiff Williams and those Class members residing in**
8 **Washington at the time of the relevant transactions**

9 325. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully
10 written herein.

11 326. The Washington Consumer Protection Act broadly prohibits “[u]nfair methods of
12 competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.”
13 Wash. Rev. Code § 19.86.020.

14 327. Defendant committed the acts complained of herein in the course of “trade” or
15 “commerce” within the meaning of Wash. Rev. Code § 19.86.010.

16 328. Defendant’s acts and practices in selling Lash Boost were directed at consumers and
17 have the capacity to deceive a substantial portion of the public. As alleged above, Defendant engaged
18 in deceptive and unlawful acts and practices by concealing the existence, severity, and duration of
19 symptoms and adverse side effects associated with using Lash Boost.

20 329. Such acts and practices caused injury to Plaintiffs and the Class.

21 330. These acts were committed in the course of Defendant’s business, and the acts are a
22 part of a pattern or generalized course of conduct in consumer transactions (i.e., the omissions are
23 uniform throughout Defendant’s labeling). Such omissions were committed well before Plaintiffs
24 purchased Lash Boost, and there is a real and substantial potential for repetition of Defendant’s
25 conduct. Defendant persists in failing to disclose all of the adverse side effects associated with Lash
26 Boost. Hence, many consumers are likely to be affected by Defendant’s acts.

27 331. Defendant is liable to Plaintiff Williams and those Class members residing in
28 Washington at the time of the relevant transactions for damages in amounts to be proven at trial,

1 including attorneys' fees, costs, and treble damages, as well as any other remedies the Court may deem
2 appropriate under Wash. Rev. Code § 19.86.090.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs and the members of the Class demand a jury trial on all claims so triable
5 and judgment against Defendant Rodan & Fields as follows:

6 A. An order certifying that this action may be maintained as a class
7 action, that Plaintiffs be appointed Class Representatives and Plaintiffs' counsel be
8 appointed Class Counsel;

9 B. A judgment awarding Plaintiffs and the Class damages, rescission,
10 restitution and/or other equitable relief, including, without limitation, restitutionary
11 disgorgement of all profits and unjust enrichment that Defendant obtained from
12 Plaintiffs and the Class as a result of its unfair and fraudulent business practices described
13 herein;

14 C. An order enjoining Defendant from continuing to violate the UCL, FAL, and CLRA and, as
15 to the claims pleaded in the alternative, enjoining Defendant from continuing to violate the
16 laws of the States of Florida, Illinois, Massachusetts, New York, and Washington, as described
17 herein;

18 D. A judgment awarding actual and punitive damages to Plaintiff and the Class in an amount to
19 be determined at trial;

20 E. A judgment awarding Plaintiffs their costs of suit; including reasonable attorneys' fees
21 pursuant to California Civil Code § 1780(d), California Code of Civil Procedure § 1021.5 and as
22 otherwise permitted by statute; and pre and post judgment interest; and

23 F. Such other and further relief as may be deemed necessary or appropriate.
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs and all others similarly situated hereby demand trial by jury on all issues in this
3 complaint that are so triable as a matter of right.

4 Dated: March 14, 2022

5 Respectfully submitted,

6
7 By: /s/ Annick M. Persinger
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