UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JAMI KANDEL, MOCHA GUNARATNA, and RENEE CAMENFORTE, individually and on behalf of all others similarly situated, Plaintiffs, vs. DR. DENNIS GROSS SKINCARE, LLC, a New York Limited Liability Company, Defendant.	Case No. 1:23-cv-01967-ER Honorable Edgardo Ramos

DECLARATION OF RYAN J. CLARKSON IN SUPPORT OF PLAINTIFFS' *UNOPPOSED* MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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Attorneys for Plaintiffs and the Settlement Class

I, Ryan J. Clarkson, declare as follows:

1. I am the managing partner at Clarkson Law Firm, P.C. ("**Clarkson**") and counsel of record for named Plaintiffs Jami Kandel, Mocha Gunaratna, and Renee Camenforte ("**Plaintiffs**"). I am licensed to practice in the Southern District of New York, and I am a member in good standing of the New York State Bar Association. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently thereto. I make this declaration in support of Plaintiffs' unopposed motion for preliminary approval of class action settlement.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Parties' Settlement Agreement, which was fully executed on June 24, 2024.

3. On March 10, 2020, Plaintiff Mocha Gunaratna ("**Gunaratna**") filed a class action complaint in the United States District Court for the Central District of California, asserting five (5) causes of action against Defendant Dr. Dennis Gross Skincare, LLC ("**Defendant**" or "**DDG**"): (1) violation of California's Consumers Legal Remedies Act, the "**CLRA**") (codified at Civ. Code, §§ 1750, *et seq*., (2) violation of California's False Advertising Law (codified at Bus. & Prof. Code, §§ 17500, *et seq.*, the "**FAL**"); (3) violation of California's Unfair Competition Law (codified at Bus. & Prof. Code, §§ 17200, *et seq.*, the "**UCL**"); (4) breach of express warranty; and (5) unjust enrichment. *See Gunaratna v. Dr. Dennis Gross Skincare, LLC.*, Case No. 2:20-cv-02311-MWF-GJS (C.D. Cal.), (ECF 1.)

4. On August 26, 2020, Gunaratna filed her First Amended Complaint ("**FAC**") asserting three (3) additional causes of action against Defendant: (6) violation of MMWA written warranty (codified at 15 USC Section 2301, *et seq.*); (7) violation of MMWA implied warranty of merchantability (codified at 15 USC Section 2301, *et seq.,*); and (8) restitution based on quasi-

contract/unjust enrichment. *See Gunaratna v. Dr. Dennis Gross Skincare, LLC.*, Case No. 2:20-cv-02311-MWF-GJS (C.D. Cal.), (ECF 27.)

5. On December 16, 2021, Gunaratna filed her Second Amended Complaint ("**SAC**") to include Plaintiff Renee Camenforte's ("**Camenforte**") allegations against and to amend the class definition to clarify the date range and to remove all nationwide class allegations against Defendant. *See Gunaratna v. Dr. Dennis Gross Skincare, LLC.*, Case No. 2:20-cv-02311-MWF-GJS (C.D. Cal.), (ECF 95), (referred to herein as "***Gunaratna Action***.")

6. Over the past four (4) years, Plaintiffs Gunaratna and Camenforte engaged in extensive fact and expert discovery and expended considerable time and resources prosecuting *Gunaratna Action*. For example, Plaintiffs Gunaratna and Camenforte: (1) engaged in multiple rounds of written discovery; (2) pursued and reviewed thousands of business records, including all advertising, labeling, scientific support, and sales records; (3) issued third-party subpoenas regarding sales and manufacturing; (4) deposed Defendant's corporate designees and experts; and (5) overcame numerous discovery disputes.

7. The Parties filed cross-motions to exclude the other's experts. Plaintiffs Gunaratna and Camenforte overcame Defendant's motions, and on March 15, 2023, Judge Fitzgerald excluded substantial opinions and testimony of Defendant's dermatologist. Attached hereto as **Exhibit B** is a true and correct copy of Judge Fitzgerald's *Daubert* order denying in full Defendant's motions to exclude Plaintiffs Gunaratna and Camenforte's experts, and granting in part Plaintiffs Gunaratna and Camenforte's motion to exclude Defendant's experts.

8. On April 4, 2023, the Honorable Michael W. Fitzgerald certified the *Gunaratna Action* as a class action. In support of their class certification motion, Plaintiffs Gunaratna and Camenforte submitted reports from four (4) experts in chemistry, conjoint surveys, consumer

behavior, and economics. Attached hereto as **Exhibit C** is a true and correct copy of Judge Fitzgerald's order granting Plaintiffs' Gunaratna and Camenforte's motion for class certification and denying Defendant's motion for summary judgment. In granting the *Gunaratna Action's* motion for class certification, Judge Fitzgerald found that a California class of purchasers of the Products met each of the Rule 23 criteria with respect to the UCL, FAL, CLRA, and express warranty claims. Despite Plaintiffs' winning class certification and overcoming summary judgment, Defendant remained defiant in its litigation approach. It engaged an additional scientific expert in an attempt to disprove Plaintiffs' claims and developed a new defense arguing that certain Products contained amino acids that were in fact derived from animal tissue. With its new defense, Defendant sought to significantly narrow the class if not decertify it outright. These new alleged facts necessitated significant additional discovery including third party discovery, subpoenas, and discovery motions in the California action.

9. On September 5, 2023, Defendant also moved for judgment on the pleadings to strike punitive damages from Plaintiffs Gunaratna and Camenforte's SAC. *See Gunaratna v. Dr. Dennis Gross Skincare, LLC.*, Case No. 2:20-cv-02311-MWF-GJS (C.D. Cal.), (ECF 281). On January 26, 2024, Judge Fitzgerald denied Defendant's motion for judgment on the pleadings. *Id.* (ECF 355).

10. On March 7, 2023, Jami Kandel ("***Kandel***") filed the instant action, alleging five causes of action, including: (1) violation of New York General Business Law § 349, *et seq*.; (2) violation of New York General Business Law § 350, *et seq*.; (3) breach of express warranty; (4) breach of implied warranty; and (5) restitution based on quasi-contract/unjust enrichment. (ECF 1.) (Referred to herein as "***Kandel Action***") (*Gunaratna Action* and *Kandel Action* are collectively referred to as "**Actions**") ("Gunaratna," Camenforte," and "Kandel," are collectively referred to

as "**Plaintiffs**").

11. Defendant moved to dismiss the complaint in the *Kandel Action.* (ECF 30). On March 5, 2024, the Court denied in part Defendant's motion to dismiss, largely in Plaintiff Kandel's favor, declining to dismiss Plaintiff Kandel's statutory claims. (ECF 47). The Court granted Plaintiff Kandel leave to amend her breach of warranty and unjust enrichment claims. *Id.*

12. When the Parties reached the instant Settlement, they agreed as part of the Settlement, and for efficiency purposes, that Plaintiff Kandel would amend her complaint in the *Kandel Action* to add Plaintiffs and the causes of actions from the *Gunaratna Action* to her alleged violations of New York General Business Law § 349, *et seq*, New York General Business Law § 350, *et seq*., breach of express and implied warranty, and restitution based on quasi-contract/unjust enrichment.

13. Prior to the filing of the *Gunaratna Action*, in 2019 and 2020, Plaintiff Gunaratna and our office attempted to resolve this matter with Defendant. Unable to resolve her claims, Plaintiff Gunaratna filed her lawsuit, and the Parties proceeded to brief Defendant's motion to dismiss. Following the filing of the *Gunaratna Action*, the Parties have also informally discussed the prospect of settlement. After the court in *Gunaratna* issued a favorable order denying Defendant's motion to dismiss, in 2021, Plaintiff Gunaratna again corresponded with Defendant, inviting Defendant to consider the possibility of a class-wide settlement, to no avail. As a result, the Parties proceeded to litigate the California action further, engaging in extensive fact and expert discovery and fully briefing Plaintiffs' motion for class certification, cross-motions to exclude experts, Defendant's motion for summary judgment, and Defendant's motion to strike Plaintiffs' testimony. In May 2023, after receiving a favorable ruling on the submitted motions and oppositions in the California actions, Plaintiffs again approached Defendant about the prospect of

private mediation to resolve the claims on the nationwide class-wide basis. Defendant did not respond. The Parties continued to litigate the *Gunaratna Action* and *Kandel Action* for nearly another year in parallel, during which Defendant raised a new theory of defense that had not been tested by the courts in either action. Plaintiffs Gunaratna and Camenforte responded with focused discovery and motion practice aimed to test this new defense.

14. After a contentious four-year litigation in *Gunaratna* and approximately a year-long litigation in *Kandel*, the Parties agreed to attend a private mediation in an attempt to resolve both Actions. On February 8, 2024, the Parties participated in a virtual, full-day mediation with the Honorable Peter D. Lichtman (Ret.) of Signature Resolution in Los Angeles, California. After a full-day mediation, the Parties finally reached a settlement in principle.

15. Following the settlement in principle, for the next four months, each side continued to negotiate various terms at arm's length to ensure class members' rights are protected.

16. After substantial further negotiation on other non-monetary terms, on June 24, 2024, the Parties executed the Settlement Agreement.

17. The Parties agree that Postlethwaite & Netterville, APAC ("**P&N**")[1] shall, subject to Court approval, serve as Class Administrator. P&N has a wealth of experience serving as a class action administrator and will implement a robust Notice Plan that satisfies due process. As Class Administrator, P&N will: (1) establish and operate the Settlement Fund; (2) disseminate Class Notice; (3) handle mailing of postcards and emailing summary notices/reminder notices; (4) answer inquiries from Settlement Class Members and/or forward to Class Counsel; (5) receive and

[1] As of May 21, 2023, the Directors & employees of Postlethwaite & Netterville (P&N), APAC joined EisnerAmper as EAG Gulf Coast, LLC. Where P&N is named as an entity, EAG Gulf Coast, LLC employees will service that work. P&N's obligations to service work may be assigned by P&N to Eisner Advisory Group, LLC or EAG Gulf Coast, LLC, or one of Eisner Advisory Group, LLC's or EAG Gulf Coast, LLC's subsidiaries or affiliates.

maintain Exclusions; (6) create a Settlement Website; (7) establish a toll-free informational telephone number for Settlement Class Members; (8) process Settlement Class Member Claims and distribute payments; (9) provide regular status updates to counsel for all Parties; (10) prepare a compliance declaration for the Court at Final Approval; and (11) otherwise assist and administer the Settlement.

18. The Parties also request that the Court conditionally certify the Settlement Class for purposes of effectuating the Settlement. The proposed Settlement Class satisfies the Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy, and at least one of the requirements in Rule 23(b). There are numerous questions of law and fact implicated that are common to Plaintiffs and the Settlement Class, capable of class wide resolution, and susceptible to common proof. The named Plaintiffs' claims arise from the same set of facts and the same theory of liability as the claims of the Settlement Class Members. The interests of Plaintiffs and Class Counsel are not antagonistic to the Settlement Class. The named Plaintiffs and Settlement Class Members all purchased Dr. Dennis Gross, LLC's Products with the same "C + Collagen" representation on the label, have the same interest in recovering damages, and have no cognizable, conflicting interests. Common questions predominate over questions affecting individual Settlement Class Members. The challenged labels were uniform and consistent throughout the Class Period. All Products, irrespective of differences in use and/or size, contained the allegedly false "C + Collagen" representation. Although Defendant would have challenged that all Settlement Class Members were exposed to and relied on the "C + Collagen" representation in making their purchase, the Settlement eliminates this inquiry, and Plaintiffs allege that all Settlement Class Members suffered injury in fact when they paid a premium for the Products based on the challenged representations. Thus, Plaintiffs and the Settlement Class are unified by a

common legal theory and common facts.

19. A class action is also superior to alternative methods for resolving this controversy. Given the small size of individual Settlement Class Members' claims (average retail price of the Products is approx. $52 per Product), few, if any, Settlement Class Members could afford to, or would, individually seek legal redress. Further, no other lawsuits have been filed by Settlement Class Members arising from the same allegations. In addition to meeting certification requirements for settlement purposes, Defendant consents to this provisional class certification.

20. My law firm should be appointed as Class Counsel. We are experienced and competent in the prosecution of complex class actions, including complex questions that arise in consumer protection litigation, and are capable and committed to achieving the best result for Plaintiffs and the Class. Attached hereto as **Exhibit D** is a true and correct copy of my law firm's resume.

21. The Settlement is the result of extensive arms-length negotiations and hard-fought litigation over the last four (4) years. Plaintiffs have requested, received, and analyzed all variations of the Products' labeling and advertising, relevant changes to the labeling and advertising, the ingredients contained in the Products, relevant consumer complaints, product sales information, all studies and scientific literature in support of Defendant's advertising claims, and all relevant market research Defendant conducted related to the Products. Plaintiffs also deposed multiple DDG corporate designees and class certification experts. Discovery was adversarial in nature and conducted with an eye towards trying the Actions. In the *Gunaratna Action*, the Parties fully briefed and received favorable orders on class certification and summary judgment before the mediation in 2024. In the *Kandel Action*, the Parties fully briefed and received a favorable order on the motion to dismiss after the mediation in 2024.

22. My law firm has invested thousands of hours and hundreds of thousands of dollars in costs into the investigation of the Settlement Class Members' claims and the prosecution of the Actions, including: (1) relentlessly pursuing and reviewing thousands of business records; (2) deposing Defendant's corporate designees and experts; (3) subpoenaing third parties for sales and manufacturing data; (4) retaining and working with experts in multiple disciplines, all of whom conducted in-depth studies and produced thorough expert reports on chemistry, consumer behavior, and conjoint analysis/damages; (5) concurrently litigating the *Kandel Action* and the *Gunaratna Action*; (6) obtaining class certification in the *Gunaratna Action*; (7) successfully defending against Defendant's motions for summary adjudication, dismissal, and a judgment on the pleadings in the *Gunaratna Action*; (8) attending a full-day mediation together with four months of additional negotiations to reach the Settlement.

23. My law firm has committed substantial resources to this case, thousands of attorney hours spent and paid hundreds of thousands of dollars to their: (a) damages experts to prepare, conduct, and defend their conjoint analysis survey; (b) consumer behavior expert to prepare, conduct, and defend his consumer surveys depicting consumers' reliance on the product labels; (c) scientific expert and consultants to prepare and analyze product ingredients to opine on whether the ingredients at issue come from or constitute collagen.

24. As a result of my firm's tireless efforts in the Actions, we have helped secure a Settlement that is substantial in terms of monetary and injunctive relief. The Settlement ensures a prompt resolution of the Actions on terms that are fair, reasonable, and adequate to the Settlement Class, and $50 per product represents nearly full restitution of the average purchase price ($52) of the Products. It provides a favorable result for Class Member many years earlier than continued litigation through trial and/or appeals might. The benefits to Class Members are also certain

whereas continued litigation could result in full or partial defeat for the Settlement Class on certification, at summary judgment, at trial, or on appeal.

25. The *Gunaratna* and *Kandel Actions* are complex class actions that have been, and would continue to be, very costly to litigate through trial. Trial in the *Gunaratna Action* was set for March 25, 2025, and both Parties would need to expend significant resources over the next six months preparing to present their respective cases to a jury, including conducting further fact and expert discovery, engaging/retaining new expert witnesses, subpoenaing third parties, preparing witnesses, and extensively litigating pretrial motions. The *Kandel Action,* in which Plaintiffs filed their first amended complaint in March 2024, is in the initial stages of litigation. With the *Gunaratna Action* stayed, and the *Kandel Action* still in its infancy, further litigation in both cases would require additional fact and expert discovery, depositions, class certification briefing, summary judgment briefing, any appeals, and trial preparation, all of which would be costly and time-consuming for the Parties and the Court. It would take several years to litigate both Actions through trial. The *Gunaratna Action* was filed more than four (4) years before its current trial date, and given the Court's busy docket, the *Kandel Action* would likely take just as long, if not longer, to get to trial.

26. The Actions involved substantial risk and uncertainty. Liability depends on Plaintiffs' ability to establish elements requiring subjective determinations of fact. And, to establish liability under New York and California consumer protection laws, Plaintiffs must convince a jury that a reasonable consumer would be misled by Defendant's alleged misrepresentation. Such a determination is inherently subjective and introduces a large degree of uncertainty and risk into the litigation.

27. Had the Parties not settled, DDG made it clear that it would move to decertify the class in the *Gunaratna Action*, vigorously oppose certification in the *Kandel Action*, and, if a class was certified in the *Kandel Action*, move for summary judgment. Also, on the eve of the Parties' close of fact discovery in the *Gunaratna Action*, Defendant developed a new defense necessitating the Parties to engage in additional discovery and litigation efforts. Although Plaintiffs are confident in their success, they recognize that the new defense has not been tested by either court. Continued litigation would only delay relief to the Settlement Class. The Settlement alleviates these risks, and provides a timely, certain, and substantial benefit to the Settlement Class.

28. In negotiating the Settlement, we carefully considered the injunctive relief and the compensation of Settlement Class Members. Specifically, we balanced the Settlement against the possible outcomes of a trial on the merits. The risks of trial and the normal "perils" of litigation, as well as the specific defenses and issues discussed above, were all weighed in reaching the Settlement. We also carefully considered the time value of the present Settlement, the fact that changes will be made to the Products' Labeling, and the monetary relief that will be provided to members of the Class.

29. The risk of maintaining class status in both Actions, through trial, is significant. The Court has not yet certified the *Kandel Action* to proceed as a class, and such a determination would be reached only after exhaustive briefing. Defendant likely would have argued that individual questions predominate over questions common to the class, that a class action is not a superior method to resolve Plaintiffs' claims, and that a class trial would not be manageable. This motion and Defendant's motion to decertify the class in the *Gunaratna Action* would require extensive briefing, thereby increasing risk, expense, and delay. Accordingly, Plaintiffs have a thorough understanding of the strengths and weaknesses of this case sufficient to support the

reasonableness of the Settlement. Thus, based on our firm's collective experience, we concluded that the Settlement provides exceptional results for the Class while sparing the Class from the uncertainties of continued and protracted litigation.

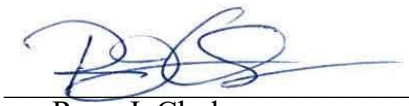
30. Pursuant to the Settlement, Class Counsel will apply for Service Awards to each Class Representative for serving as Class Representatives and parties to the Action. Plaintiffs Kandel, Gunaratna, and Camenforte have fairly protected the interest of the Class and actively participated in the litigation. The Service Award will be distributed as follows: $5,000 to Jami Kandel, $5,000 to Mocha Gunaratna, and $5,000 to Renee Camenforte. Any approved Service Awards shall be paid from the Settlement Fund. Class Counsel will also apply for reimbursement of reasonable litigation costs and expenses not to exceed $400,000. Class Counsel will seek reimbursement of attorneys' fees and costs of no more than $3,900,000 in the aggregate, to be paid from the Settlement Fund. Plaintiffs will submit a detailed attorneys' fees and costs application, and an application for class representative service awards in connection with the motion for final approval of the settlement.

31. Plaintiffs' proposed Notice satisfies these requirements, as the proposed Long Form Notice (attached as Exhibit 2 to the Settlement Agreement) includes all material terms and the options available to Class Members, including: (1) a summary of the Actions; (2) a comprehensive summary of the Settlement terms; (3) Class Counsel's intent to request attorneys' fees, reimbursement of expenses, and a Service Award for Plaintiffs; (4) detailed information about the Released Claims and their binding effect; (5) information about the Fairness Hearing; (6) Settlement Class Members' rights to seek exclusion from the Class or to object to the Settlement (as well as the deadlines and procedure for doing so); and (7) the procedure to receive additional information about the Settlement.

32. Furthermore, the Settlement Administrator will work with ClaimScore LLC to review claims submitted in this case and apply its proprietary software solution to each claim during the review process to minimize fraud and protect Class Members by helping to ensure that only legitimate claims are approved for payment.

33. For the reasons stated in Plaintiffs' memorandum in support of their unopposed motion for preliminary approval of class action settlement, this declaration, and any supporting documents, the Court should provisionally certify the Settlement Class and approve the Settlement as procedurally and substantively fair. Moreover, the Court should appoint Plaintiffs' counsel as Class Counsel, appoint Plaintiffs Jami Kandel, Mocha Gunaratna, and Renee Camenforte as Class Representatives, appoint P&N as the Class Administrator, approve the Notice Plan, and approve the proposed schedule of events and schedule a Final Approval Hearing.

I declare under penalty of perjury under the laws of the United States and the State of New York and California that the foregoing is true and correct. Executed on June 25, 2024 at Los Angeles, California.



Ryan J. Clarkson

EXHIBIT A

Settlement Agreement

Kandel, et al. v. Dr. Dennis Gross Skincare, LLC,
Case No. 1:23-cv-01967-ER

CONFIDENTIAL Settlement Communication (FRE 408)
June 14, 2024

Class Action Settlement Agreement

This Settlement Agreement and Release ("Agreement"), effective upon the date of the last signature below, is made by and between Dr. Dennis Gross Skincare, LLC ("**DDG**" or "**Defendant**") and **Plaintiffs** Mocha Gunaratna, Renee Camenforte, and Jami Kandel, individually and as representatives of the Settlement Class as defined below) (individually a "**Party**," and collectively the "**Parties**"), in the matters of *Gunaratna v. Dr. Dennis Gross Skincare, LLC*, Case No. 2:20-cv-02311-MWF-GJS (C.D. Cal.) ("***Gunaratna***") and *Kandel et al. v. Dr. Dennis Gross Skincare LLC*, Case No. 1:23-cv-01967-ER (S.D.N.Y.) ("***Kandel***") (collectively, the "**Actions**").

WHEREAS, on March 10, 2020, Plaintiff Mocha Gunaratna filed *Gunaratna* alleging various claims regarding Defendant's C+Collagen Deep Cream, C+Collagen Serum, C+Collagen Mist, C+Collagen Mask, and C+Collagen Eye Cream (collectively, the "Class Products");

WHEREAS, on March 7, 2023, Plaintiff Jami Kandel filed *Kandel*, alleging similar claims as in the *Gunaratna* Action;

WHEREAS, on April 4, 2023, the Hon. Michael W. Fitzgerald, U.S. District Judge, certified the following class in the *Gunaratna* Action:

> All persons who purchased the Products in the State of California, for personal use and not for resale during the time period of four years prior to the filing of the complaint through the date of court order approving or granting class certification.

WHEREAS, in the *Kandel* Action, no class has yet been certified, but Plaintiff has sought to represent a class comprising:

> All persons who purchased the Products in the United States, excluding California purchasers, for personal use and not for resale during the time period of six years prior to the filing of the complaint through the date of court order approving or granting class certification; and a subclass of individuals who purchased the Products in the State of New York.

WHEREAS, Plaintiffs filed an amended complaint in *Kandel* to facilitate the *Gunaratna* and *Kandel* Plaintiffs' pursuit and resolution of all claims on behalf of all Settlement Class Members in a single action in the Southern District of New York;

WHEREAS, collectively, the Actions allege claims under the consumer fraud laws of California and New York (specifically, Cal. Bus. & Prof. Code §§ 17200 and 17500, Cal. Civ. Code § 1750, and N.Y. Gen. Bus. Law §§ 349 and 350), breach of express warranty, breach of implied warranty and unjust enrichment; the Parties in the Actions engaged in substantial direct settlement discussions, and conducted several full-day mediations, the third of which was overseen by the Hon. Peter D. Lichtman on February 8, 2024, at which time they reached an agreement in principle to resolve all claims in both Actions. Because Defendant is headquartered in New York, the parties intend to pursue a nationwide settlement in federal court in the State of New York, subject to approval by the Honorable Edgardo Ramos of the United States District Court for the Southern District of New York, and stay the *Gunaratna* action accordingly;

WHEREAS, Plaintiffs and Class Counsel believe that the claims asserted in the Actions have merit and have examined and considered the benefits to be obtained under this Settlement, the risks associated with the continued prosecution of this complex and time-consuming litigation, and the likelihood of ultimate success on the merits, and have concluded that the Settlement is fair, adequate, reasonable, and in the best interests of the Settlement Class;

WHEREAS, Defendant denies Plaintiffs' claims in all respects, but it is the intention of this Agreement to resolve all potential claims with respect to the Class Products' labeling, packaging, and marketing, and to provide compensation to all purchasers of the Class Products with respect to any statement by Defendant on the Class Products and their labels or packages, or in its marketing of the Class Products. Defendant denies all of the allegations made in the Actions and denies that it did anything unlawful or improper, and its agreement to this Settlement is not an admission of guilt or wrongdoing of any kind;

WHEREAS, since the *Gunaratna* Action was filed, Defendant has discontinued sale of the Class Products which contain the advertising claims challenged in the Actions;

WHEREAS, the Plaintiffs and Class Counsel have analyzed and evaluated the merits of all Parties' contentions and this Settlement as it affects all Parties and the Settlement Class Members and, after taking into account the foregoing, along with the risks and costs of further litigation, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Actions and the prompt provision of effective relief to the Settlement Class are in the best interests of the Settlement Class Members;

WHEREAS, Defendant hereby agrees, solely for the purposes of the settlement set forth herein, that it will not oppose Plaintiffs' request to certify the Settlement Class and appoint Class Counsel as counsel for the Settlement Class and the Settlement Class Representatives as representatives of the Settlement Class; provided, however, that if this Agreement fails to receive Court approval or otherwise fails to be executed, including but not limited to, the judgment not becoming final, then the Parties retain all rights that they had immediately preceding the execution of this Agreement, and the Actions will continue as if the Settlement Class had never been certified. The fact that Defendant did not oppose certification of the Settlement Class shall not be used against Defendant by any Party or non-party for any purpose in these Actions or any other action, litigation, lawsuit, or proceeding of any kind whatsoever. The Parties agree, subject to approval by the Court, that the Actions between Plaintiffs, on the one hand, and Defendant, on the other hand, shall be fully and finally compromised, settled, and released on the terms and conditions set forth in this Agreement;

WHEREAS, this Agreement is contingent upon the issuance by the *Kandel* Court of both preliminary approval and final approval, and dismissal with prejudice of the *Gunaratna* Action. Should the *Kandel* Court not issue preliminary approval and/or final approval, the Parties do not waive, and instead expressly reserve, all rights and remedies in the Actions;

WHEREAS, this Agreement reflects a compromise between the Parties and shall in no event be construed as or be deemed an admission or concession by any Party of the truth, or lack thereof, of any allegation or the validity, or lack thereof, of any purported claim or defense asserted in any of the pleadings or filings in the Actions, any threatened but not yet filed claim, or of any

fault on the part of Defendant, and all such allegations are expressly denied. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability by or against any Party;

WHEREAS, Defendant and the Settlement Class Representatives on behalf of the Settlement Class (as defined below) wish to resolve any and all past, present, and future claims that the Settlement Class has or may have against Defendant on a nationwide basis, of any nature whatsoever, as they relate to the allegations in the Actions and the Class Products;

NOW THEREFORE, the Parties, for good and valuable consideration, the sufficiency of which is hereby acknowledged, understand and agree to the following terms and conditions.

1. DEFINITIONS.

As used in this Agreement, the following capitalized terms have the meanings specified below.

1.1 "**Actions**" means *Gunaratna v. Dr. Dennis Gross Skincare, LLC*, Case No. 2:20-cv-02311-MWF-GJS (C.D. Cal.) ("***Gunaratna***") and *Kandel et al. v. Dr. Dennis Gross Skincare LLC*, Case No. 1:23-cv-01967-ER (S.D.N.Y.) ("***Kandel***").

1.2 "**Agreement" or "Settlement Agreement"** means this Class Action Settlement Agreement.

1.3 **"Cash Award"** means a cash payment from the Settlement Fund to a Settlement Class Member with an Approved Claim.

1.4 **"Claim"** means a request for relief submitted by or on behalf of a Settlement Class Member on a Claim Form filed with the Settlement Administrator in accordance with the terms of this Agreement.

1.4.1 **"Approved Claim"** means a claim approved by the Settlement Administrator, according to the terms of this Agreement.

1.4.2 **"Claimant"** means any Settlement Class Member who submits a Claim Form for the purpose of claiming benefits, in the manner described in Section 4 of this Agreement.

1.4.3 **"Claim Form"** means the document to be submitted by Claimants seeking direct monetary benefits pursuant to this Agreement substantially in the form that is attached to this Agreement as Exhibit 1.

1.4.4 **"Claims Deadline"** means the date by which a Claimant must submit a Claim Form to be considered timely. The Claims Deadline shall be sixty (60) calendar days after the Settlement Notice Date.

1.4.5 **"Claims Process"** means the process by which Settlement Class Members may make claims for relief, as described in Section 4 of this Agreement.

1.5 "DDG" or **"Defendant"** means Dr. Dennis Gross Skincare, LLC, the defendant in the Actions.

1.6 "Class Period" means March 10, 2016, to the date of entry of preliminary approval of this Agreement.

1.7 "**Class Products**" include DDG's C+Collagen Deep Cream, C+Collagen Serum, C+Collagen Mist, C+Collagen Eye Cream and C+Collagen Mask, and any other products sold with the C+Collagen label, whether sold alone or in combination with other products.

1.8 "Settlement Class" means all persons who, between March 10, 2016, and the date of entry of preliminary approval of this Agreement (the "Class Period"), purchased in the United States, for personal or household use and not for resale or distribution, one of the Class Products as defined herein. Excluded from the Settlement Class are: (1) the presiding judges in the Actions; (2) any member of those judges' immediate families; (3) Defendant; (4) any of Defendant's subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; (5) counsel for the Parties; and (6) any persons who timely opt-out of the Settlement Class.

1.9 "Settlement Class Member" means any person who is a member of the Settlement Class other than those persons who validly request exclusion from the Settlement Class as set forth in Section 6.6 this Agreement.

1.10 "Settlement Administrator" means the independent company agreed upon by the Parties and approved by the Court to provide the Class Notice and conduct the Claims Administration. The parties agree to designate EAG Gulf Coast, LLC as the Settlement Administrator, subject to approval by the Court.

1.11 "Claims Administration" means the administration of the Claims Process by the Settlement Administrator.

1.12 "Class Counsel" means the following attorneys of record for the Settlement Class Representatives and Settlement Class in the Actions, unless otherwise modified by the Court:

Ryan J. Clarkson
Yana Hart
Clarkson Law Firm, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265
Phone: (213) 788-4050

1.13 "Class Notice" means the three documents notifying Settlement Class Members, pursuant to the Notice Plan, of the Settlement, and the substance of those documents.

1.13.1 "Long Form Notice" refers to the proposed full Class Notice (also referred to as Notice of Settlement of Class Action) substantially in the form that is attached to this Agreement as Exhibit 2.

1.13.2 "Short Form Notice" means the proposed summary Class Notice substantially in the form that is attached to this Agreement as Exhibit 3.

1.13.3 "**Postcard Notice**" refers to the proposed Postcard Notice substantially in the form that is attached to this Agreement as Exhibit 4.

1.13.4 "Notice Plan" means the plan for dissemination of Class Notice to be submitted to the Court in connection with a motion for preliminary approval of this Settlement, attached to this Agreement as Exhibit 5.

1.13.5 "Settlement Notice Date" means the date that the Settlement Administrator will send out notice to the Settlement Class. This is the first date on which notice is emailed or mailed to the Settlement Class, provided, however, that any re-emailing or re-mailing of such notice (including mailing the Postcard Notice to members of the Settlement Class as discussed in the Section 6.2 below) shall not affect or extend the Notice Date. The Notice Date shall be thirty (30) days after the Court issues the Preliminary Approval Order.

1.14 "Settlement Class Representatives" means named plaintiffs Mocha Gunaratna, Renee Camenforte, and Jami Kandel.

1.15 "Court" means the United States District Court for the Southern District of New York.

1.16 "Effective Date" means the first day after which all of the following events and conditions of this Settlement Agreement have occurred or have been met: (a) the Court has entered a Final Approval Order approving the Settlement; (b) the Court has entered judgment that has become final ("Final") in that the time for appeal or writ of certiorari has expired or, if an appeal or writ of certiorari is taken and the Settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Final Judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, the Final Judgment shall not become Final. In the event of an appeal or other effort to obtain review, the Parties may agree jointly in writing to deem the Effective Date to have occurred; however, there is no obligation to agree to advance the Effective Date.

1.17 "Fees and Costs Award" means the amount of attorneys' fees and reimbursement of expenses and costs awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

1.18 "Final Approval Hearing" means the hearing to be conducted by the Court to determine whether to grant final approval of the Settlement and to enter Judgment.

1.19 "Final Approval Order" means the order to be submitted to the Court in connection with a motion for final approval and the Final Approval Hearing substantially in the form attached hereto as Exhibit 6.

1.20 "Judgment" means the Court's act of entering a final judgment on the docket. The Final Judgment is substantially in the form attached hereto as Exhibit 7.

1.21 "Labeling" or **"Label"** means all written, printed, or graphic matter appearing upon the packaging or labeling of any of the Class Products, as well as all written, printed, or graphic matter used in the distribution or sale of any of the Class Products, including, without limitation, all information, representations, instructions, communications, statements, and pictorial content published or appearing in any advertising, promotions, commercials, displays, print media, websites, social media, television, and all other media platforms and outlets, describing, explaining, communicating about, and/or promoting any of the Class Products.

1.22 "**Notice and Other Administrative Costs**" means all costs and expenses actually incurred by the Settlement Administrator in administering the Settlement, including e-mailing, mailing and publication of Class Notice as provided herein and in the Notice Plan, establishment of the Settlement Website, the processing, handling, reviewing, and paying of claims made by Claimants, and paying taxes and tax expenses related to the Settlement Fund (including all federal, state, or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants). All taxes on the income of the Settlement Fund, and any costs or expenses incurred in connection with the taxation of the Settlement Fund shall be paid out of the Settlement Fund, shall be considered to be a Notice and Other Administrative Cost, and shall be timely paid by the Settlement Administrator without prior order of the Court. The Parties shall have no liability or responsibility for the payment of any such taxes.

1.23 "Objection Deadline" means the date by which Settlement Class Members must file with the Court a written statement objecting to any terms of the Settlement or to Class Counsel's request for fees or expenses. The Parties will request that the Court set the Objection Deadline to be sixty (60) calendar days after the Settlement Notice Date.

1.24 "Opt-Out Deadline" means the deadline by which a Settlement Class Member must exercise their option to opt out of the Settlement so as not to release their claims as part of the Released Claims. The parties will request that the Court set the Opt-Out Deadline to coincide with the Objection Deadline.

1.25 "Person" means any individual, corporation, partnership, association, or any other legal entity.

1.26 "Plaintiffs" means the Settlement Class Representatives, either individually or on behalf of the Class.

1.27 "Preliminary Approval Date" means the date of entry of the Court's order granting preliminary approval of the Settlement.

1.28 "Preliminary Approval Order" means the proposed order to be submitted to the Court in connection with the motion for preliminary approval, substantially in the form attached hereto as Exhibit 8.

1.29 "Non-Monetary Relief" means the relief as set forth in detail in paragraph 5.1 below.

1.30 "Proof of Purchase" means a receipt or other purchase record from Defendant, a third party commercial source, a Released Party, a removed UPC code, or other documentation reasonably establishing confirmation of purchase of the applicable Class Product during the Class Period in the United States.

1.31 "Released Claims" means the claims released by the Settlement Class Members via this Agreement.

1.32 "Released Parties" means all manufacturers, distributors, retailers, sellers, suppliers, and resellers of any of the Class Products, together with each of their direct and indirect parent companies, predecessor entities, successor entities, related companies, direct and indirect subsidiaries, divisions, holding entities, past and present affiliates and banners, franchisees, distributors, wholesalers, retailers, advertising and production agencies, ingredient suppliers, licensors, and agents, including all current and former officers, directors, managers, members, partners, owners, contractors, employees, shareholders, consultants, attorneys, legal representatives, insurers, agents, assigns, and other equity interest holders of any of the foregoing, and their heirs, executors, administrators, and assigns. For the avoidance of doubt, Released Parties includes, but is not limited to Defendant, Main Post Partners, Shiseido Americas Corporation, Dr. Dennis Gross, and Carrie Gross.

1.33 "**Releasing Parties**" means Plaintiffs, all Settlement Class Members, and any Person claiming by or through them, including any Person claiming to be their spouse, parent, child, heir, guardian, associate, co-owner, agent, insurer, administrator, devisee, predecessor, successor, assignee, equity interest holders or representatives of any kind (other than Class Counsel), shareholder, partner, member, director, employee or affiliate, and their heirs, executors, administrators, and assigns.

1.34 "Request for Exclusion" means the written submission submitted by a Settlement Class Member to be excluded from the Settlement consistent with the terms of this Agreement, which request shall include the requestor's name, address, the name of the Action, and lawful signature.

1.35 "**Service Award**" means any award approved by the Court that is payable to the Settlement Class Representatives from the Total Settlement Fund.

1.36 "Settlement" means the resolution of this Action embodied in the terms of this Agreement.

1.37 "Total Settlement Fund" means the qualified settlement fund this Agreement obligates Defendant to fund in the amount of $9,200,000, which is in the form of a non-reversionary common fund and is established in accordance with 26 C.F.R. §§ 1.468B-1(c) and (e)(1).

1.38 "Settlement Payment" means the amount to be paid to valid Claimants as detailed in Section 4.

1.39 "Settlement Website" means a website maintained by the Settlement Administrator to provide the Settlement Class with information relating to the Settlement.

1.40 "Undertaking" means an agreement between Clarkson Law Firm, P.C. and Defendant substantially in the form that is attached to this Agreement as Exhibit 9.

2. SETTLEMENT FUND.

2.1 Settlement Consideration. Defendant agrees to establish a non-reversionary common fund of $9,200,000 (the "Total Settlement Fund"), which shall be used to pay all Settlement expenses, including Notice and Other Administrative Costs; Fees and Costs Award; Service Awards; and Class Members' Claims. Defendant shall not be liable to pay more than the amount of the Total Settlement Fund or to pay anything apart from the Total Settlement Fund. The Total Settlement Fund shall be established to pay the following: (1) Settlement Class Members' claims, (2) the costs of class notice, (3) the costs of settlement administration, (4) Plaintiffs' service awards, (5) Plaintiffs' litigation expenses (in an amount awarded by the Court), and (6) Plaintiffs' attorneys' fees (in an amount awarded by the Court). The "Net Settlement Fund" shall be the amount of the Total Settlement Fund less any notice costs, settlement administration costs, Plaintiffs' attorneys' fees, and litigation expenses (in an amount awarded by the Court), and service awards (in an amount awarded by the Court).

2.2 Creation and Administration of Qualified Settlement Fund. The Settlement Administrator is authorized to establish the Settlement Fund under 26 C.F.R. §§ 1.468B-1(c) and (e)(1), to act as the "administrator" of the Settlement Fund pursuant to 26 C.F.R. § 1.468B-2(k)(3), and to undertake all duties as administrator in accordance with the Treasury Regulations promulgated under § 1.468B of the Internal Revenue Code of 1986. All costs incurred by the Settlement Administrator operating as administrator of the Settlement Fund shall be construed as costs of Claims Administration and shall be borne solely by the Total Settlement Fund. Interest on the Settlement Fund shall inure to the benefit of the Settlement Class.

2.3 Defendant shall fund the Total Settlement Fund within 30 days following the Preliminary Approval Order.

3. ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS.

3.1 Application for Attorneys' Fees and Costs. At least thirty (30) calendar days before the Objection Deadline, Class Counsel and Settlement Class Representatives shall file a motion, set for hearing on the same date as the Final Approval Hearing, requesting any Fees and Costs Award to be paid from the Settlement Fund. Class Counsel shall also apply for reimbursement of reasonable litigation costs and expenses to be paid from the Settlement Fund. Class Counsel will seek reimbursement of attorneys' fees and costs of no more than $3,900,000.00 in the aggregate. The Parties have not agreed on the amount of any attorneys' fees, costs or expenses, and Defendant reserves the right to oppose or object to such amounts.

3.2 Application for Service Awards. Class Counsel shall also apply for Service Awards to the Settlement Class Representatives to be paid from the Settlement Fund. The Parties have not agreed on the amount of any service awards , and Defendant reserves the right to oppose or object to such amounts.

3.3 Distribution of Attorneys' Fees and Costs. The Settlement Administrator shall pay to Class Counsel from the Settlement Fund the amount of attorneys' fees and costs awarded

by the Court within fourteen (14) calendar days of entry of Judgment, notwithstanding any appeals or any other proceedings which may delay the Effective Date of the Settlement, subject to an Undertaking from Clarkson Law Firm, P.C. Notwithstanding the foregoing, if for any reason the settlement, plaintiffs' attorneys' fees or litigation costs are overturned, reduced, vacated, or otherwise modified, Class Counsel shall be obligated by Court order to return any difference between the amount of the original award and any reduced award. If the Settlement remains in force, the difference shall be returned to the Settlement Fund; if the Settlement is not in force, the difference shall be returned to Defendant.

3.4 Distribution of Service Awards. Each Settlement Class Representative agrees she will not seek a Service Award of greater than $5,000. Any Service Award approved by the Court for the Settlement Class Representatives shall be paid from the Settlement Fund in the form of a check or wire transfer to the Settlement Class Representatives that is sent care of Class Counsel within the earlier of thirty (30) calendar days after the Effective Date, or the date the Settlement Administrator begins making distributions to Claimants.

3.5 Settlement Independent of Award of Fees, Costs, and Service Awards. The awards of attorneys' fees and costs, and payment to the Settlement Class Representatives are subject to and dependent upon the Court's approval. However, this Settlement is not dependent or conditioned upon the Court's approving any requests by Class Counsel or the Settlement Class Representatives for such payments or awarding the particular amounts sought by Class Counsel and Settlement Class Representatives. In the event the Court declines Class Counsel's or the Settlement Class Representatives' requests or awards less than the amounts sought, this Settlement will continue to be effective and enforceable by the Parties, provided, however, that the Class Representatives and Class Counsel retain the right to appeal the amount of the Fees and Costs Award, even if the Settlement is otherwise approved by the Court.

4. CLAIMS PROCESS.

4.1 General Process. To obtain monetary relief as part of the Settlement, a Settlement Class Member must fill out and submit a Claim Form, completed online or in hard copy mailed to the Settlement Administrator.

4.1.1 Those Settlement Class Members who submit a Claim Form ("Claimants") will be asked to provide identifying information. The Claimant will have the opportunity to upload or otherwise provide proof of purchase evidencing their purchases.

4.1.2 The Claimant will be asked to identify how many Class Products they have purchased for personal or household use since March 10, 2016, and to certify that such Class Products were purchased for personal or household use and not for distribution or resale.

4.1.3 The Class Payment shall be fifty dollars ($50) per Class Product purchased, up to a cap of two (2) Class Products without proof of purchase or ten (10) Class Products with proof of purchase. If the amount of the Net Settlement Fund is either less or more than the amount of the total direct payments and valid cash claims submitted by the Settlement Class Members, then the claims of each Settlement Class Member shall be decreased or increased, respectively, *pro rata,* to ensure the Net Settlement Fund is exhausted, with no reversion to Defendant, provided,

however, that the per Class Product Class Payment shall not exceed one hundred dollars ($100) per Class Product purchased ("**Payment Cap**").

4.1.4 If, after Class Payments are increased to the Payment Cap, $50,000 or more would remain in the Net Settlement Fund, the Parties will meet and confer regarding possible additional notice or other steps (to be paid for from the Net Settlement Fund) to increase total claims, and/or may agree to modify the allocation plan without notice to the Settlement Class, provided any such modification is approved by the Court.

4.1.5 Those Settlement Class Members whose payments are not cleared within one hundred and eighty (180) calendar days after issuance will be ineligible to receive a cash settlement benefit and the Settlement Administrator will have no further obligation to make any payment from the Settlement Fund pursuant to this Settlement Agreement or otherwise to such Class Member. Any amounts in the Net Settlement Fund not paid to Settlement Class Members shall be distributed to an appropriate *cy pres* charity or charities agreed upon by the Parties and approved by the Court; if the Parties cannot agree, they shall submit their respective proposals as part of preliminary and/or final approval briefing for a *cy pres* charity or charities to the Court and the Court shall select the *cy pres* charity or charities. Any uncashed or expired checks shall be distributed *cy pres* to a charity or charities selected according to the process described herein.

4.2 The Claim Form and Timing. The Claim Form will be available on the Settlement Website, and may be submitted to the Settlement Administrator online or by mail. A maximum of one Claim Form may be submitted for each Claimant and subsequent Claim Forms received from persons residing at the same address without proof of purchase will be rejected. Claim Forms must be submitted or postmarked on or before the Claims Deadline to be considered timely. The Claims Deadline shall be clearly and prominently stated in the Preliminary Approval Order, the Class Notice, on the Settlement Website, and on the Claim Form.

4.3 Substance of the Claim Form. In addition to information about the number of Class Products as set forth in Section 4.1 above, the Claim Form will request customary identifying information (including the Claimant's name, address, email address, and telephone number), and may seek limited additional information from Claimants to provide reasonable bases for the Settlement Administrator to monitor for and detect fraud. Such additional information may include, for purchases at physical stores, retailers and locations (city and state) or, for online purchases, the website, at which the Class Products were purchased, the name of each Class Product, and the date (month and year) the purchase was made. The Claim Form also will require the Claimant to declare that the Class Products were not purchased for resale or distribution. In addition, the Claim Form will require the Claimant to declare that the information provided is true and correct to the best of the Claimant's memory and understanding.

4.4 Claim Validation. The Settlement Administrator shall be responsible for reviewing all claims to determine their validity. The Settlement Administrator shall reject any Claim that does not comply in any material respect with the instructions on the Claim Form or with the terms of this Section 4, that is submitted after the Claims Deadline, or that the Settlement Administrator identifies as fraudulent. The Settlement Administrator shall retain sole discretion in accepting or rejecting claims.

4.5 Timing of Distribution. The Settlement Administrator shall pay out approved Claims in accordance with the terms of this Agreement commencing within thirty (30) calendar days after the Effective Date, or as otherwise ordered by the Court. The Parties shall work with the Settlement Administrator to choose a manner of payment that is secure, cost-effective, and convenient for Claimants.

4.6 Taxes on Distribution. Any person that receives a Cash Award will be solely responsible for any taxes or tax-related expenses owed or incurred by that person by reason of that Award. Such taxes and tax-related expenses will not be paid from the Settlement Fund. In no event will Defendant, the Settlement Class Representatives, Class Counsel, the Settlement Administrator, or any of the other Released Parties have any responsibility or liability for taxes or tax-related expenses arising in connection with the issuance of Cash Awards or other payments made from the Settlement Fund to Settlement Class Representatives, Settlement Class Members, or any other person or entity.

4.7 No Unclaimed Property Rights. This Agreement does not create any vested property interest or unclaimed property rights for Settlement Class Members who do not file valid Claims.

5. NON-MONETARY RELIEF.

5.1 Defendant discontinued sale of the Class Products, which contained the advertising claims challenged in the Actions, in 2022. As part of this settlement, Defendant and its successors in interest agree not to relaunch cosmetics using the "C+Collagen" name and without actual collagen.

5.1.1 Exhaustion of Inventory. For the avoidance of doubt, the Released Parties, including Defendant, (i) shall be permitted to sell existing Class Product inventory and Class Products manufactured prior to 2022; (ii) shall not be required to withdraw, destroy, or recall any Class Products; and (iii) shall not be obligated to modify or replace existing promotional materials already in the hands of third parties.

6. CLASS NOTICE AND CLAIMS ADMINISTRATION.

6.1 Email Notice. Defendant will provide to the Settlement Administrator (but not to Class Counsel) the names, addresses, and email addresses for all members of the Settlement Class for whom it has records within 30 days of the date of entry of the Preliminary Approval Order. The Parties have obtained contact information from certain of DDG's resellers. The Settlement Administrator shall commence e-mailing the Short Form Notice on the Settlement Notice Date.

6.2 Postcard Notice. For members of the Settlement Class for whom Defendant and/or the Settlement Administrator has street addresses, the Settlement Administrator will mail to each such member of the Settlement Class for whom a mailing address can be located a Postcard Notice. The Settlement Administrator shall commence mailing of Postcard Notice on the Settlement Notice Date.

6.3 Publication Notice. The Settlement Administrator shall implement published notice of the Settlement to the Settlement Class through advertisements in suitable media,

including through appropriate internet and social media channels, to be agreed upon by the Parties in consultation with the Settlement Administrator and set forth in the Notice Plan to be submitted to and approved by the Court. Published notice will be implemented by the Settlement Administrator and shall commence on the Settlement Notice Date and continue for 30 days thereafter. The ads will provide a link to the Settlement Website and contact information for the Settlement Administrator. The selection of websites and the content of the ads shall be subject to Defendant's approval.

6.4 Settlement Administrator. The Settlement Administrator shall assist with various administrative tasks including, without limitation:

6.4.1 Establishing and operating the Settlement Fund;

6.4.2 Arranging for the dissemination of the Class Notice pursuant to the Notice Plan agreed to by the Parties and approved by the Court;

6.4.3 Assisting in the distribution to the United States Department of Justice and to State Attorneys General, within ten (10) days after the Parties present this Agreement to the Court for Preliminary Approval, of the notices of settlement required by the Class Action Fairness Act;

6.4.4 Making any other mailings required under the terms of this Agreement or any Court order or law, including handling returned mail;

6.4.5 Answering inquiries from Settlement Class Members and/or forwarding such inquiries to Class Counsel;

6.4.6 Receiving and maintaining Requests for Exclusion;

6.4.7 Establishing a Settlement Website;

6.4.8 Establishing a toll-free informational telephone number for Settlement Class Members;

6.4.9 Receiving and processing (including monitoring for fraud and validating or rejecting) Settlement Class Member Claims and distributing payments to Settlement Class Members;

6.4.10 Providing regular updates on the Claims status to counsel for all Parties;

6.4.11 Preparing a declaration attesting to compliance with the Notice Plan; and

6.4.12 Otherwise assisting with the implementation and administration of the Settlement.

6.5 Timing of Class Notice. Class Notice will commence no later than thirty (30) calendar days following entry of the Preliminary Approval Order ("Settlement Notice Date").

6.6 Opt-Out Procedures. Settlement Class members who wish to opt out of and be excluded from the Settlement must submit a Request for Exclusion to the Settlement Administrator, postmarked or received no later than the Opt-Out Deadline. The Request for Exclusion must be personally completed and submitted by each Settlement Class member or their attorney, and so-called "mass" or "class" opt-outs shall not be permitted or recognized. The Settlement Administrator shall periodically notify Class Counsel and Defendant's counsel of any Requests for Exclusion. All Settlement Class members who submit a timely, valid Request for Exclusion will be excluded from the Settlement Class and will not be bound by the terms of this Agreement, and all Settlement Class Members who do not submit a timely, valid Request for Exclusion will be bound by this Agreement and the Judgment, including the releases in Section 8 below.

6.7 Procedures for Objecting to the Settlement. Settlement Class Members have the right to appear and show cause why the Settlement should not be granted final approval, subject to each of the provisions of this paragraph:

6.7.1 Timely Written Objection Required. Any objection ("Objection") to the Settlement must be in writing, postmarked on or before the Objection Deadline, and sent to the Claims Administrator at the addresses set forth in the Class Notice. The Settlement Administrator shall immediately forward to Class Counsel and Defendant's counsel any Objection submitted to the Settlement Administrator, after which Class Counsel shall timely file any Objection with the court.

6.7.2 Form of Written Objection. Any objection regarding or related to the Settlement must contain (i) a caption or title that clearly identifies the Action and that the document is an objection, (ii) information sufficient to identify and contact the objecting Settlement Class Member or their attorney if represented, (iii) information sufficient to establish the person's standing as a Settlement Class Member, (iv) a clear and concise statement of the Settlement Class Member's objection, as well as any facts and law supporting the objection, (v) identification of the case name, case number, and court for any prior class action lawsuit in which the objector and the objector's attorney (if applicable) has objected to a propose class action settlement, the general nature of such prior objection(s), and the outcome of said prior objection(s), (vi) the objector's signature, and (vii) the signature of the objector's counsel, if any. The Court may, but is not required to, hear Objections in substantial compliance with these requirements, so Settlement Class Members should satisfy all requirements.

6.7.3 Authorization of Objections Filed by Attorneys Representing Objectors. Settlement Class Members may object either on their own or through an attorney hired at their own expense, but a Settlement Class Member represented by an attorney must sign either the Objection itself, or execute a separate declaration stating that the Class Member authorizes the filing of the Objection.

6.7.4 Effect of Both Opting Out and Objecting. If a Settlement Class Member submits both an Opt-Out Form and Objection, the Settlement Class Member will be deemed to have opted out of the Settlement, and thus to be ineligible to object. However, any objecting Settlement Class Member who has not timely submitted a completed Opt-Out Form will be bound by the terms of the Agreement and Judgment upon the Court's final approval of the Settlement.

6.7.5 Appearance at Final Approval Hearing. Objecting Settlement Class Members may appear at the Final Approval Hearing and be heard. If an objecting Settlement Class Member chooses to appear at the Final Approval Hearing, a notice of intention to appear must be filed with the Court or postmarked no later than the Objection Deadline.

6.7.6 Right to Discovery. Upon Court order, the Parties will have the right to obtain document discovery from and take depositions of any Objecting Settlement Class Member on topics relevant to the Objection.

6.7.7 Response to Objections. The Parties shall have the right, but not the obligation, either jointly or individually, to respond to any objection, with a written response due the same day as the motion for final approval, or as otherwise ordered by the Court.

6.7.8 Effect of Non-Objection. A Settlement Class Member who does not file and serve a timely written objection is bound by this Settlement and the final Judgment in the Actions and may not later object or appeal from the entry of any order approving the Settlement.

7. COURT APPROVAL.

7.1 Preliminary Approval. Plaintiffs will submit to the Court this Agreement, and will request via unopposed motion that the Court enter the Preliminary Approval Order in substantially similar form as the proposed order attached as Exhibit 7. In the motion for preliminary approval, Plaintiffs will request that the Court grant preliminary approval of the proposed Settlement, provisionally certify the Class for settlement purposes and appoint Class Counsel, approve the forms of Notice and find that the Notice Plan satisfies Due Process, and schedule a Final Approval Hearing to determine whether the Settlement should be granted final approval, whether an application for attorneys' fees and costs should be granted, and whether an application for service awards should be granted. Class Counsel shall submit filings pertaining to this preliminary approval in a neutral manner where doing so would not prejudice the Settlement Class.

7.2 Final Approval. A Final Approval Hearing to determine final approval of the Agreement shall be scheduled as soon as practicable, subject to the calendar of the Court, Court, but no sooner than one hundred twenty (120) calendar days after the Preliminary Approval Date. If the Court issues the Preliminary Approval Order and all other conditions precedent of the Settlement have been satisfied, no later than fourteen (14) calendar days before the Final Approval Hearing all Parties will request, individually or collectively, that the Court enter the Final Approval Order in substantially similar form as the proposed order attached as Exhibit 4, with Class Counsel filing a memorandum of points and authorities in support of the motion and in response to any objections. Defendant may, but is not required to, file a memorandum in support of the motion or in response to any objections. Class Counsel shall submit filings pertaining to this Final Approval in a neutral manner where doing so would not prejudice the Settlement Class.

7.3 Failure to Obtain Approval. If this Agreement is not given preliminary or final approval by the Court, or if an appellate court reverses final approval of the Agreement, the Parties will be restored to their respective places in the litigation. In such event, the terms and provisions of this Agreement will have no further force or effect; the Parties' rights and defenses will be

restored, without prejudice, to their respective positions as if this Agreement had never been executed; and any orders entered by the Court in connection with this Agreement will be vacated.

8. RELEASE.

8.1 Effect. By executing this Agreement, the Parties acknowledge that, upon both the entry of the Final Approval Order by the Court, and the passing of the Effective Date, and the Settlement amount being fully funded, the Actions shall be dismissed with prejudice, and all Released Claims shall thereby be conclusively settled, compromised, satisfied, and released as to the Released Parties. The Final Approval Order and Judgment shall provide for and effect the full and final release, by the Releasing Parties, of all Released Claims, consistent with the terms of this Agreement. The relief provided for in this Agreement shall be the sole and exclusive remedy for any and all claims of Settlement Class Members against the Released Parties related to the Released Claims.

8.2 Scope of Release. The Releasing Parties hereby fully release and forever discharge the Released Parties from any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, asserted or unasserted, claims, demands, liabilities, rights, debts, obligations, liens, contracts, agreements, judgments, actions, suits, causes of action, contracts or agreements, extra-contractual claims, damages of any kind, punitive, exemplary or multiplied damages, expenses, costs, penalties, fees, attorneys' fees, and/or obligations of any nature whatsoever (including "Unknown Claims" as defined below), whether at law or in equity, accrued or unaccrued, whether previously existing, existing now or arising in the future, whether direct, individual, representative, or class, of every nature, kind and description whatsoever, based on any federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, relating in any way to any conduct prior to the date of the Preliminary Approval Order and that: (a) is or are based on any act, omission, inadequacy, statement, communication, representation (express or implied), harm, injury, matter, cause, or event of any kind related in any way to any Class Product; (b) involves legal claims related to the Class Products that have been asserted in the Actions or could have been asserted in the Actions; or (c) involves the advertising, marketing, promotion, purchase, sale, distribution, design, testing, manufacture, application, use, performance, warranting, communications or statements about the Class Products, packaging or Labeling of the Class Products (collectively, the "Released Claims").

8.3 Waiver. Without limiting the foregoing, the Released Claims specifically extend to and include claims related to the Class Products that the Releasing Parties do not know or suspect to exist in their favor at the time that the Settlement and the releases contained herein become effective, including, without limitation, any Released Claims that if known, might have affected the Plaintiffs' settlement with and release of the Releasees, or might have affected a decision to object to or Opt-Out of this Settlement (the "Unknown Claims"). This paragraph constitutes a waiver of, without limitation as to any other applicable law, section 1542 of the California Civil Code, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF

KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

8.4 Later Discovered Facts. The Releasing Parties understand and acknowledge the significance of these waivers of section 1542 of the California Civil Code and any other applicable federal or state statute, case law, rule, or regulation relating to limitations on releases. In connection with such waivers and relinquishment, the Releasing Parties acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Actions and the Settlement, but that it is their intention to release fully, finally and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts at any time.

8.5 Claim Preclusion. Each of the Releasing Parties shall forever refrain, whether directly or indirectly, from instituting, filing, maintaining, prosecuting, assisting with or continuing any suit, action, claim, or proceeding against any of the Released Parties in connection with any of the Released Claims (a "Precluded Action"). If any of the Releasing Parties do institute, file, maintain, prosecute, or continue any such Precluded Action, Plaintiffs and Class Counsel shall cooperate with the efforts of any of the Released Parties to obtain dismissal with prejudice. The releases provided for herein shall be a complete defense to, and will preclude, any Released Claim in any suit, action, claim, or proceeding. The Final Approval Order shall further provide for and effect the release of all known or unknown claims (including Unknown Claims) actions, causes of action, claims, administrative claims, demands, debts, damages, costs, attorney's fees, obligations, judgments, expenses, compensation, or liabilities, in law or in equity, contingent or absolute, that the Released Parties now have against Plaintiffs, Settlement Class Representatives, or Class Counsel, by reason of any act, omission, harm, matter, cause, or event whatsoever arising out of the initiation, prosecution, or settlement of the Actions, except with respect to any breach of the terms of this Agreement by any of Plaintiffs, Settlement Class Representatives, or Class Counsel.

8.6 Court Retains Jurisdiction. The Court shall retain jurisdiction over the Parties and this Agreement with respect to the future performance of the terms of this Agreement, and to assure that all payments and other actions required of any of the Parties by the Settlement are properly made or taken.

8.7 Covenant Not to Sue. Plaintiffs agree and covenant, and each Settlement Class Member who has not opted out will be deemed to have agreed and covenanted, not to sue any of Released Parties, with respect to any of the Released Claims, or otherwise to assist others in doing so, and agree to be forever barred from doing so, in any court of law or equity, or any other forum.

8.8 Release of Settlement Class Representatives and Class Counsel. Upon the Effective Date, Defendant will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, discharged, and covenanted not to sue Settlement Class Representatives and Class Counsel from any and all claims, demands, rights, suits, liabilities, and causes of action, whether past, present, or future, known or unknown, asserted or unasserted, that arise out of or relate to the filing and conduct of the Actions.

9. TERMINATION.

9.1 Exclusion list. No later than fifteen (15) days after the Opt-Out Deadline, the Settlement Administrator will provide Class Counsel and DDG's Counsel with the list of persons who have timely and validly excluded themselves from the Settlement.

9.2 Defendant's Option to Terminate. If 5% or more of the members of the Settlement Class validly and timely exclude themselves from the Settlement, then Defendant shall have the option to rescind this Agreement, in which case all of Defendant's obligations under this Agreement shall cease to be of any force and effect, and this Agreement shall be rescinded, cancelled, and annulled. If Defendant exercises this option, it shall provide Plaintiffs with written notice of its election within fifteen (15) days of receiving the exclusion list from the Settlement Administrator, at which point the Parties shall return to their respective positions that existed prior to the execution of this Agreement. No term of this Agreement or any draft thereof, or the negotiation, documentation, or other part of aspect of the Parties' settlement discussions, or any filings or orders respecting the Settlement or any aspect of the Settlement, shall have any effect or be admissible as evidence for any purpose in the Actions, or in any other proceeding.

10. NO ADMISSION OF LIABILITY.

10.1 No Admission of Liability. Defendant, while continuing to deny all allegations of wrongdoing and disclaiming all liability with respect to all claims, considers it desirable to resolve the Actions on the terms stated in this Agreement to avoid further expense, inconvenience, and burden, and therefore has determined that this Settlement Agreement on the terms set forth herein is in Defendant's best interests. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Actions, and denies the material allegations of all the complaints filed in the Actions. Neither the Settlement Agreement nor any actions taken to carry out the Settlement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or of the validity of any claim, defense, or of any point of fact or law on the part of any Party, including but not limited to an admission that the Actions are properly brought on a class or representative basis, or that a class or classes may be certified, other than for settlement purposes. Neither the Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission, concession, presumption, inference, or evidence thereof of any wrongdoing by Defendant or of the appropriateness of these or similar claims for class certification in any proceeding.

11. DEFENDANT'S POSITION ON CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS.

11.1 Conditional Certification of Settlement Class. Solely for purposes of avoiding the expense and inconvenience of further litigation, Defendant does not oppose the certification of the Settlement Class for the purposes of this Settlement only. Preliminary certification of the Settlement Class will not be deemed a concession that certification of a litigation class or any subclass is appropriate, nor will Defendant be precluded from challenging class certification in further proceedings in the Actions or in any other actions if the Settlement Agreement is not finalized or finally approved. If the Settlement Agreement is not finally approved by the Court for

any reason whatsoever, and said failure to obtain final approval is conclusive after any and all appeals, Defendant's stipulation not to oppose certification only for purposes of effectuating this Settlement will be automatically rescinded, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in the Actions or any other judicial proceeding. No agreements made by or entered into by Defendant in connection with the Settlement Agreement may be used by Plaintiffs, any Settlement Class Member, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Actions or any other judicial proceeding.

12. MISCELLANEOUS.

12.1 Change of Time Periods. The time periods and/or dates described in this Settlement Agreement are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties, without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Settlement Agreement.

12.2 Time for Compliance. If the date for performance of any act required by or under this Settlement Agreement falls on a Saturday, Sunday, or court holiday, that act may be performed on the next business day with the same effect as it had been performed on the day or within the period of time specified by or under this Settlement Agreement.

12.3 Entire Agreement. This Agreement shall constitute the entire Agreement among the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreements, representations, communications, and understandings among the Parties with respect to the subject matter of this Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or undertaking concerning any part or all of the subject matter of the Agreement has been made or relied upon except as expressly set forth herein.

12.4 Notices Under Agreement. All notices or mailings required by this Agreement to be provided to or approved by Class Counsel, Defense Counsel, or either Party, or otherwise made pursuant to this Agreement, shall be provided as follows:

If to Settlement Class Representatives or Class Counsel
Ryan Clarkson
rclarkson@clarksonlawfirm.com
Clarkson Law Firm, P.C.
25525 Pacific Coast Highway
Malibu, CA 90265

If to Defendant or Defense Counsel
Claudia Vetesi
CVetesi@mofo.com
Morrison & Foerster LLP
425 Market Street

San Francisco, CA 94105

And

Jason Kerr
JasonKerr@ppktrial.com
PRICE PARKINSON & KERR, PLLC
5742 West Harold Gatty Drive
Salt Lake City, Utah 84116

12.5 Good Faith. The Parties acknowledge that each intends to implement the Agreement. The Parties have at all times acted in good faith and shall continue to, in good faith, cooperate and assist with and undertake all reasonable actions and steps in order to accomplish all required events on the schedule set by the Court, and shall use reasonable efforts to implement all terms and conditions of this Agreement.

12.6 Parties Accept Risk of Changes in Fact and Law. Each Party, including Plaintiffs on behalf of themselves and the Settlement Class, expressly accepts and assumes the risk that, if facts or laws pertinent to matters covered by this Agreement are hereafter found to be other than as now believed or assumed by that Party to be true or applicable, this Agreement shall nevertheless remain effective.

12.7 Binding on Successors. Except as specifically provided herein, this Agreement is binding on, and shall inure to the benefit of, the Parties, the Released Parties, and their respective direct and indirect parent companies, predecessor entities, successor entities, related companies, direct and indirect subsidiaries, holding entities, past and present affiliates, franchisees, distributors, wholesalers, retailers, advertising and production agencies, licensors, and agents, including all current and former officers, directors, managers, members, partners, contractors, owners, employees, shareholders, consultants, attorneys, legal representatives, insurers, agents, assigns, or other equity interest holders of any of the foregoing, and their heirs, executors, administrators, and assigns. All Released Parties other than Defendant, which is a Party, are intended to be third-party beneficiaries of this Agreement.

12.8 Evidentiary Preclusion. The Parties agree that, to the fullest extent permitted by law, neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Released Party or the appropriateness of class certification in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. In addition, any failure of the Court to approve the Settlement and/or any objections or interventions may not be used as evidence in the Actions or any other proceeding for any purpose whatsoever. However, the Released Parties may file this Agreement and Final Approval Order in any action or proceeding that may be brought against them in any jurisdiction to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12.9 No Reliance on Other Representations. No Party has relied on any statement, representation, omission, inducement, or promise of any other Party (or any officer, agent, employee, representative, or attorney for any other Party) in executing this Agreement, or entering the Settlement provided for herein, except as expressly stated in this Agreement.

12.10 Arms'-Length Negotiations. This Agreement compromises claims that are contested, and the Parties agree that the consideration provided to the Settlement Class and other terms of this Agreement were negotiated in good faith and at arms' length by the Parties, and reflect an Agreement that was reached voluntarily, after consultation with competent legal counsel, and guided in part by the Parties' private mediation with the Honorable Judge Peter Lichtman (Ret.) of Signature Resolution.

12.11 The Parties reached the Agreement after considering the risks and benefits of litigation. The determination of the terms of, and the drafting of, this Agreement, have been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto and their counsel. Accordingly, the rule of construction that any ambiguities are to be construed against the drafter shall have no application.

12.12 Confidentiality. The Parties, Class Counsel, and Defendant's Counsel agree that until publication of this Agreement by submission to the Court, the terms of this Agreement and all associated documents and communications, including the negotiations leading to the execution of the Agreement and all submissions and arguments related to the mediation, shall not be disclosed by the Parties, Class Counsel, and Defendant's Counsel other than as necessary to finalize the Settlement and Notice Plan. Upon publication of the Agreement by submission to the Court, the nondisclosure obligations set forth here will no longer apply, but such obligations will continue to apply to the Parties' mediations, submissions in the mediations, and any settlement related negotiations leading to the execution of the Agreement.

12.13 Non-Disparagement. Class Counsel and the Settlement Class Representatives agree to refrain from disparaging Defendant or Main Post Partners, Shiseido Americas Corporation, Dr. Dennis Gross, Carrie Gross, the Class Products, Defendant's counsel, Defendant's parent companies, subsidiaries, affiliates, successors or assigns and Defendant's past, present, or future direct or indirect parents (collectively, "Related Entities"), in the media regarding the issues in the Actions. Defendant and Related Entities agree to refrain from disparaging Class Counsel and the Settlement Class Representatives in the media regarding the issues in the Actions. Provided, however, that nothing in this paragraph shall prohibit Class Counsel, Settlement Class Representatives, Defendant or Related Entities from discussing or commenting regarding any public facts about the Settlement, the Actions and Court orders in the Actions.

12.14 Independent Advice. Each Party has had the opportunity to receive, and has received, independent legal advice from his, her, or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.

12.15 Requisite Corporate Power. Defendant represents and warrants, severally and not jointly, that: (a) it has the requisite corporate power and authority to execute, deliver, and perform the Agreement and to consummate the transactions contemplated hereby; (b) the

execution, delivery, and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of the Defendant; and (c) the Agreement has been duly and validly executed and delivered by the Defendant and constitutes its legal, valid, and binding obligation.

12.16 Reasonable Best Efforts to Effectuate. The Parties acknowledge that it is their intent to consummate this Agreement, and agree to cooperate to the extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their best efforts to accomplish the terms and conditions of this Agreement. The Parties further agree they will not engage in any conduct that will or may frustrate the purpose of this Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Agreement.

12.17 No Other Consideration. Each Settlement Class Representative represents and warrants, severally and not jointly, that he is entering into the Agreement on behalf of himself individually and as a proposed representative of the Settlement Class Members, of his own free will and without the receipt of any consideration other than what is provided in this Agreement or disclosed to, and authorized by, the Court. Each Settlement Class Representative represents and warrants, severally and not jointly, that he has reviewed the terms of the Agreement in consultation with Class Counsel and believes them to be fair and reasonable, and covenants that he will not file an Opt-Out request or object to this Agreement.

12.18 Non-assignment. Plaintiffs represent and warrant, severally and not jointly, that no portion of any Released Claim or claim, right, demand, action, or cause of action against any of the Released Parties that Plaintiffs have or may have arising out of the Actions or pertaining to their purchase and/or use of the Class Products and/or the design, manufacture, testing, marketing, Labeling, packaging, or sale of the Class Products otherwise referred to in this Agreement, and no portion of any recovery or settlement to which Plaintiffs may be entitled, has been assigned, transferred, or conveyed by or for Plaintiffs in any manner; and no Person other than Plaintiffs have any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of Plaintiffs themselves.

12.19 Stay Pending Court Approval. Plaintiffs' Counsel and Defendant's Counsel agree to stay all proceedings in the Actions, other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred. If, despite the Parties' best efforts, this Agreement should fail to become effective, the Parties will return to their prior positions in the Actions.

12.20 Exhibits and Recitals. All Exhibits and Recitals to this Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.

12.21 Variance; Dollars. In the event of any variance between the terms of this Agreement and any of the Exhibits hereto, the terms of this Agreement shall control and supersede the Exhibit(s). All references in this Agreement to "Dollars" or "$" shall refer to United States dollars.

12.22 Waiver. The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

12.23 Modification in Writing Only. This Agreement and any and all parts of it may be amended, modified, changed, or waived only by Court order or a writing signed by duly authorized agents of Defendant and Plaintiffs.

12.24 Headings. The descriptive headings of any paragraph or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

12.25 Governing Law. This Agreement shall be interpreted, construed and enforced according to the laws of the State of New York, without regard to conflicts of law.

12.26 Continuing Jurisdiction. After entry of the Judgment, the Court shall have continuing jurisdiction over the *Kandel* Action solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

12.27 Execution. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. Photocopies and electronic copies (e.g., PDF copies) shall be given the same force and effect as original signed documents.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated: 6/18/2024

Mocha Gunaratna

Dated: 6/17/2024

Renee Camenforte

Dated: 6/18/2024

Jami Kandel

Dated: _____

Dr. Dennis Gross Skincare, LLC
By: _____
Its: _____

APPROVED AS TO FORM:

CLARKSON LAW FIRM, P.C.

DATED: June 18, 2024

Ryan J. Clarkson
Yana Hart
Tiara Avaness

Attorneys for Plaintiffs and the Settlement Class

PRICE PARKINSON & KERR, PLLC

DATED: June ___ , 2024

Steven Garff
Jason M. Kerr
David Parkinson

Attorneys for Defendant

Dated: 6/18/2024

Mocha Gunaratna

Dated: 6/17/2024

Renee Camenforte

Dated: 6/18/2024

Jami Kandel

Dated: _____

Dr. Dennis Gross Skincare, LLC
By: _____
Its: _____

APPROVED AS TO FORM:

DATED: June 18, 2024

CLARKSON LAW FIRM, P.C.

Ryan J. Clarkson
Yana Hart
Tiara Avaness

Attorneys for Plaintiffs and the Settlement Class

DATED: June 21, 2024

PRICE PARKINSON & KERR, PLLC

Steven Garff
Jason M. Kerr
David Parkinson

Attorneys for Defendant

Dated: 6/18/2024

Mocha Gunaratna

Dated: 6/17/2024

Renee Carnenforte

Dated: 6/18/2024

Jami Kandel

Dated: 6/23/2024

Dr. Dennis Gross Skincare, LLC
By: Dennis Gross
Its: Principal

APPROVED AS TO FORM:

CLARKSON LAW FIRM, P.C.

DATED: June 18, 2024

Ryan J. Clarkson
Yana Hart
Tiara Avaness

Attorneys for Plaintiffs and the Settlement Class

PRICE PARKINSON & KERR, PLLC

DATED: June ___, 2024

Steven Garff
Jason M. Kerr
David Parkinson

Attorneys for Defendant

MORRISON & FOERSTER LLP

DATED: June 24, 2024

Claudia M. Vetesi
Adam Hunt

Attorneys for Defendant

EXHIBIT 1

Claim Form

Settlement Agreement

Kandel, et al. v. Dr. Dennis Gross Skincare, LLC

Case No. 1:23-cv-01967-ER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Settlement Proof of Claim Form

If you purchased any of the Dr. Dennis Gross Skincare, LLC's "C+Collagen" Products (the "Class Products") in the United States, for personal or household use and not for resale or distribution between March 10, 2016, and [Date Of Preliminary Approval] (collectively referred to as the "Settlement Class"), then you may be eligible to participate in the benefits of the proposed settlement in ***Kandel v. Dr. Dennis Gross Skincare, LLC.*** To participate, you must fill this claim form out completely and either (i) mail it to the address given below, or (ii) submit it online through the Settlement website below. This Claim form must be postmarked or electronically filed no later than _____, 2024. If you provide incomplete or inaccurate information, your claim may be denied.

- Please read the full notice of this settlement (available at) carefully before filling out this Form.
- To be eligible to receive any benefits from the settlement obtained in this class action lawsuit, you must complete or submit your claim form online or by mail:
  ONLINE: Visit www.Cpluscollagenlawsuit.com and submit your claim online; or
  MAIL: Dr. Dennis Gross C+Collagen Products, P.O. Box _____.
- Keep a copy of your completed Claim Form for your records. Any documents you submit with your Claim Form cannot be returned.
- If your claim is rejected for any reason, the Settlement Administrator will notify you of the rejection and the reasons for such rejection.

PART A: CLAIMANT INFORMATION

FIRST NAME LAST NAME

STREET ADDRESS

STREET ADDRESS 2

CITY STATE ZIP CODE

EMAIL ADDRESS PHONE NUMBER

PART B: PURCHASE INFORMATION

- To be eligible for a payment you must not have previously received a refund for your purchase of the Class Product.
- To qualify for cash, you must have purchased one or more Class Products.

  a. If you provide a receipt or other proof of purchase for the Class Products, you will receive a cash refund of Fifty Dollars ($50) per Class Product purchased with a cap of ten (10) Class Products.
  b. If you do not provide a receipt or other proof of purchase for the Class Products, but complete this Claim Form under penalty of perjury, you will receive a cash refund of Fifty Dollars ($50) per Class Product purchased with a cap of two (2) Class Products.
  c. If the amount in the Net Settlement (net of costs of notice and settlement administration, Settlement Class Counsel's attorneys' fees and litigation expenses and the service awards for Plaintiffs), is either less or more than the amount of the total cash claims submitted by Claimants, the claims of each Claimant will be decreased or increased, respectively, *pro rata*, to ensure the Settlement Fund is exhausted, with no reversion from the Settlement Fund to Defendant. *Pro rata* upward adjustment of cash claims shall be capped at one hundred dollars ($100) per Class Product. Any amounts remaining in the Net Settlement Fund after checks are issued and cashed or expired shall be disbursed *cy pres*.

- Please fill out the chart below identifying the purchase transaction(s) for which you are making a claim:

TOTAL NUMBER OF CLASS PRODUCTS

Write the **total number** of Class Products you purchased in the United States between March 10, 2016 and [Date of Preliminary Approval] in the chart below:

Product Purchased	Check all that apply	Quantity of Products Purchased	Approximate Date of Purchase (Month and Year)
C+Collagen Serum	☐		
C+Collagen Eye Cream	☐		
C+Collagen Mist	☐		
C+Collagen Deep Cream	☐		
C+Collagen Mask	☐		

Please choose <u>one</u> of the following:

☐ (a) Check here if you are uploading or mailing Proof of Purchase documentation with this claim form:

If you are submitting this Claim Form by mail, please mail a copy of your receipt(s) memorializing the purchase of the Class Products along with this Claim Form to Dr. Dennis Gross Skincare Lawsuit Administrator, P.O. Box _____.

☐ (b) Check here if you are making a claim without a Proof of Purchase (limit of two claims without proof of purchase).

***Failure to include Proof of Purchase for claims for which a Proof of Purchase is required will result in the reduction of your claims.**

***Submission of false or fraudulent information will result in the claim being rejected in its entirety.**

PART C: ATTESTATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States of America that I purchased the products listed between March 10, 2016 and [Date of Preliminary Approval] that all of the information on this Claim Form is true and correct to the best of my knowledge. I understand that my Claim Form may be subject to audit, verification, and Court review and that I may be required to provide additional information to establish that my claim is valid. I also understand that by submitting this claim, I am releasing all Released Claims, as detailed in the Notice of the Proposed Class Action Settlement.

[INSERT QR CODE]

SIGNATURE DATE

CLAIM FORM REMINDER CHECKLIST

Before submitting this Claim Form, please make sure you:

1. Complete all fields in the Claimant Information section of this Claim Form in Part A.
2. Complete Part B, indicating the number of Class Products you purchased and enclosing your receipt(s).
3. Sign the Attestation under penalty of perjury in Part C. You must sign the Attestation to be eligible to receive benefits.
4. Keep a copy of your Claim Form and supporting documentation for your records.
5. If you desire an acknowledgment of receipt of your Claim Form, please complete the online Claim Form or mail this Claim Form via Certified Mail, Return Receipt Requested.
6. If you move or your name changes, please email your new address, new name or contact information to info@[ ]. **Keep a copy of your Claim Form for your records.**

EXHIBIT 2

Long-Form Notice

Settlement Agreement

Kandel, et al. v. Dr. Dennis Gross Skincare, LLC

Case No. 1:23-cv-01967-ER

UNITED STATES DISTRICT COURT – SOUTHERN DISTRICT OF NEW YORK

If you bought any of the Dr. Dennis Gross' "C+Collagen" Products between March 10, 2016, and [Date of Preliminary Approval], then you may be entitled to compensation.

A court authorized this notice. This is not a solicitation from a lawyer.

C+Collagen Products

Note: This notice applies *only* to C+Collagen products, not any other Dr. Dennis Gross Skincare products.

A settlement has been reached between Dr. Dennis Gross Skincare, LLC ("Defendant" or "DDG") and Jami Kandel, Mocha Gunaratna, and Renee Camenforte ("Settlement Class Representatives" or "Plaintiffs"), individually and on behalf of the Settlement Class. The Settlement resolves class action lawsuits alleging that: (1) Dr. Dennis Gross Skincare owns, manufactures, and distributes products labeled as "C+Collagen" and purporting to contain collagen, when in reality, the products do not contain any collagen; (2) Settlement Class members lost money in the form of the price premium they paid for products as a result of the label. Defendant denies the allegations, contends that the products contain Vitamin C, which promotes production of collagen in human skin, and further denies that it did anything unlawful or improper. The Court did not rule in favor of either side. The parties agreed to the Settlement to avoid the expense and risks of the lawsuit.

- You are a Settlement Class member if you purchased any C+Collagen Product in the United States, for personal or household use and not for resale or distribution, whether sold alone or in combination with other products ("Class Products"), between March 10, 2016 and [Date of Preliminary Approval] (the "Class Period").

- Settlement Class Members who purchased any of the Class Products during the Class Period may submit a claim to receive Fifty Dollars ($50) per Class Product purchased, capped at two (2) or ten (10) Class Products, depending on whether they submit proof of purchase.

- Settlement Class Members who purchased a Class Product during the Class Period and provide a receipt will receive a cash refund of Fifty Dollars ($50) per Class Product purchased, with a cap of ten (10) Class Products.

- Settlement Class Members who purchased a Class Product during the Class Period and do not provide a receipt, but complete the Claim Form under penalty of perjury, will receive a cash refund of Fifty Dollars ($50) per Class Product purchased with a cap of two (2) Class Products.

- Each Settlement Class Member may submit a claim either electronically through a settlement website or by mail.

- If the amount in the Net Settlement Fund (net of costs of notice and settlement administration, Settlement Class Counsel's attorneys' fees and litigation expenses and the service awards for Plaintiffs), is either less or more than the amount of the total cash claims submitted by Claimants, the claims of each Claimant will be decreased or increased, respectively, *pro rata*, to ensure the Settlement Fund is exhausted, with no reversion from the Settlement Fund to Defendant. *Pro rata* upward adjustment of cash claims shall be capped at one hundred dollars ($100) per Class Product. Any amounts remaining in the Net Settlement Fund after checks are issued and cashed or expired shall be disbursed *cy pres*.

Please read this Notice carefully and in its entirety. Your rights may be affected by the Settlement of this lawsuit, and you have a choice to make now about how to act:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A VALID CLAIM BY [SIXTY (60) CALENDAR DAYS AFTER SETTLEMENT NOTICE DATE], 2024	The only way to get a cash payment, is if you submit a valid claim and qualify.
EXCLUDE YOURSELF FROM THE CLASS BY [SIXTY (60) CALENDAR DAYS AFTER NOTICE BEGINS], 2024	You will not get any benefits under this Settlement. This is the only option that allows you to be part of any other lawsuit against Defendant about the legal claims in this case.
OBJECT TO THE SETTLEMENT BY [SIXTY (60) CALENDAR DAYS AFTER NOTICE BEGINS], 2024	Tell the Court about why you don't like the Settlement.
GO TO A HEARING ON [DATE OF FINAL APPROVAL HEARING], 2024	Ask to speak in Court about the Settlement.
DO NOTHING	Get no benefits. Give up rights to be part of any other lawsuit against Defendant about the legal claims in this case.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.

- The Court in charge of this case still has to decide whether to approve the Settlement. Cash payments for valid claims will be issued only if the Court approves the Settlement and after the time for appeals has ended and any appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why was this notice issued?

A Court authorized this notice because you have a right to know about the proposed Settlement in this class action lawsuit, and about all of your options, before the Court decides whether to give "final approval" to the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

The case is known as *Kandel, et al., v. Dr. Dennis Gross Skincare, LLC*, Case No. 1:23-cv-01967-ER, currently pending in the U.S. District Court for the Southern District of New York. The Plaintiffs (Jami Kandel, Mocha Gunaratna, and Renee Camenforte) are suing the company Dr. Dennis Gross Skincare, LLC, the Defendant.

2. What is the lawsuit about?

On March 10, 2020, a class action lawsuit was filed against Defendant Dr. Dennis Gross Skincare, LLC, entitled *Gunaratna, et al v. Dr. Dennis Gross Skincare, LLC,* in United States District Court for the Central District of California, Case No. 2:20-cv-02311-MWF-GJS, alleging that: (1) Defendant owns, manufactures, and distributes products labeled as "C + Collagen" and purporting to contain collagen, when in reality, the products do not contain any collagen; and (2) Class Members lost money in the form of the price premium they paid for the "C+ Collagen" products—that is, had they known that the products did not contain collagen, they would not have purchased the products, let alone paid a "premium" for them. Plaintiffs seek injunctive relief, restitutionary, actual, statutory, compensatory, and punitive damages, as well as reasonable attorneys' fees and costs.

On March 7, 2024, a similar class action lawsuit was filed against Defendant Dr. Dennis Gross Skincare, LLC, entitled *Kandel, et al v. Dr. Dennis Gross Skincare, LLC*, in United States District Court for the Southern District of New York, Case No. 1:23-cv-01967-ER, alleging the same claims against Defendant as the California action. On March 26, 2024, the New York action was amended to include the California class and California class representatives. (Collectively, these two lawsuits are referred to as "Actions").

Defendant contends that the products contain Vitamin C, which promotes production of collagen in human skin, among other arguments. Defendant denies that it charged a premium and asserts that consumers suffered no harm because they received what they paid for. Defendant denies all the allegations and claims in these cases and denies that it did anything unlawful or improper.

3. Why is this a class action?

In a class action one or more people called “class representatives” (in this case, the named Plaintiffs are Jami Kandel, Mocha Gunaratna, and Renee Camenforte) sue on behalf of people who have similar claims. All of these people or entities are a “class” or “class members.” One court resolves the issues for all class members, except for those who exclude themselves from the class.

4. Why is there a settlement?

Both sides agreed to the settlement to avoid the cost and risk of further litigation and trial. The settlement does *not* mean that any law was broken. Defendant denies all of the legal claims in this case. The Class Representatives and the lawyers representing them think the settlement is best for all Settlement Class members.

WHO IS IN THE SETTLEMENT?

To see if you are affected or if you can get benefits, you first have to determine whether you are a Settlement Class Member.

5. How do I know if I am part of the Settlement?

You are a member of the Settlement Class if you purchased DDG’s C+Collagen Deep Cream, C+Collagen Serum, C+Collagen Mist, C+Collagen Eye Cream or C+Collagen Mask, or any other products sold with the C+Collagen label, whether sold alone or in combination with other products, in the United States, for personal or household use and not for resale or distribution, between March 10, 2016, and [Date of Preliminary Approval]. This time period is referred to as the “Class Period.” Excluded from the Settlement Class are the presiding judges in the Actions, any member of those judges’ immediate families, Defendant, any of Defendant’s subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns, counsel for the Parties, and any persons who timely opt-out of the Settlement Class.

6. I'm still not sure if I'm included in the Settlement.

If you are not sure whether you are included in the Settlement Class, call XXXXXXXX or go to www.Cpluscollagenlawsuit.com.

THE SETTLEMENT BENEFITS—WHAT YOU GET

7. What does the Settlement provide?

Dr. Dennis Gross Skincare, LLC, has agreed to make available a Total Settlement Fund of Nine Million Two Hundred Thousand Dollars ($9,200,000) ("Total Settlement Fund"). Settlement Class Members who submit a valid Claim may receive a benefit from the Settlement Fund.

Settlement Class Members who previously purchased any of the Class Products during the Class Period may submit a claim to receive Fifty Dollars ($50) per Class Product purchased capped at two (2) or ten (10) Class Products, depending on whether they submit proof of purchase.

Settlement Class Members who purchased a Class Product during the Class Period and provide a receipt will receive a cash refund of Fifty Dollars ($50) per Class Product purchased, with a cap of ten (10) Class Products.

Settlement Class Members who purchased a Class Product during the Class Period and do not provide a receipt, but complete the Claim Form under penalty of perjury, will receive a cash refund of Fifty Dollars ($50) per Class Product purchased with a cap of two (2) Class Products.

Each Settlement Class Member may submit a claim either electronically through the Settlement Website (www.Cpluscollagenlawsuit.com) or by mail.

If the amount in the Net Settlement Fund (net of costs of notice and settlement administration, Settlement Class Counsel's attorneys' fees and litigation expenses and the service awards for Plaintiffs), is either less or more than the amount of the total cash claims submitted by Claimants, the claims of each Claimant will be decreased or increased, respectively, *pro rata*, to ensure the Settlement Fund is exhausted, with no reversion from the Settlement Fund to Defendant. *Pro rata* upward adjustment of cash claims shall be capped at one hundred dollars ($100) per Class Product. Any amounts remaining in the Net Settlement Fund after checks are issued and cashed or expired shall be disbursed *cy pres*.

Those Settlement Class Members whose payments are not cleared within one hundred and eighty (180) calendar days after issuance will be ineligible to receive a cash settlement benefit and the Settlement Administrator will have no further obligation to make any payment from the Settlement Fund pursuant to this Settlement Agreement or otherwise to such Settlement Class Member. Any funds that remain unclaimed or are unused after the distribution of the Settlement Fund will be distributed to an appropriate *cy press* charity or charities approved by the Court. Instructions for submitting a Claim are included in Section 9 below.

Any award of attorneys' fees and litigation costs to Class Counsel (not to exceed $3,900,000) upon Court approval, service awards (up to $5000 each for the three Settlement Class Representatives), and costs to administer the Settlement will be paid from the Settlement Fund. More details are in a document called the Settlement Agreement, which is available at www.Cpluscollagenlawsuit.com.

8. What am I giving up in exchange for the Settlement benefits?

If the Settlement becomes final, Settlement Class Members will be releasing Defendant and all related people and entities for all the claims described and identified in Section 8 of the Settlement Agreement ("Release"). The Release is included below:

> The Releasing Parties (as defined in the Settlement Agreement) hereby fully release and forever discharge the Released Parties (as defined in the Settlement Agreement) from any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, asserted or unasserted, claims, demands, liabilities, rights, debts, obligations, liens, contracts, agreements, judgments, actions, suits, causes of action, contracts or agreements, extra-contractual claims, damages of any kind, punitive, exemplary or multiplied damages, expenses, costs, penalties, fees, attorneys' fees, and/or obligations of any nature whatsoever (including "Unknown Claims" as defined below), whether at law or in equity, accrued or unaccrued, whether previously existing, existing now or arising in the future, whether direct, individual, representative, or class, of every nature, kind and description whatsoever, based on any federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, relating in any way to any conduct prior to the date of the Preliminary Approval Order and that: (a) is or are based on any act, omission, inadequacy, statement, communication, representation (express or implied), harm, injury, matter, cause, or event of any kind related in any way to any Covered Class Product; (b) involves legal claims related to the Covered Class Products that have been asserted in the Actions or could have been asserted in the Actions; or (c) involves the advertising, marketing, promotion, purchase, sale, distribution, design, testing, manufacture, application, use, performance, warranting, communications or statements about the Covered Class Products, packaging or Labeling of the Covered Class Products (collectively, the "Released Claims").

Notice of the Court's final judgment will be effected by posting it on the Settlement Administrator's website and by posting a copy of the final judgment and final approval order on the Settlement Administrator's website at www.Cpluscollagenlawsuit.com. The full Settlement Agreement is available at www.Cpluscollagenlawsuit.com. The Settlement Agreement describes the Releasing Parties, Released Parties, and Released Claims with specific descriptions, in necessarily accurate legal terminology, so please read it carefully. You can talk to one of the lawyers listed below for free or you can, of course, talk to your own lawyer if you have questions about the Released Claims or what they mean.

HOW TO GET A CASH PAYMENT—SUBMITTING A VALID CLAIM FORM

9. How can I get a cash payment?

To ask for a Cash Award you must complete and submit a Valid Claim Form along with the required supporting documentation, if you have it. You can get a Claim Form at www.Cpluscollagenlawsuit.com. You may also submit your claim via the website. The Claim Form describes what you must provide to prove your claim and receive a Cash Award and generally requires information regarding the quantity of Class Products you purchased during the Class Period. Please read the instructions carefully, fill out the Claim Form, and either submit it online at www.Cpluscollagenlawsuit.com or mail it postmarked no later than, [SIXTY (60) CALENDAR DAYS AFTER NOTICE BEGINS], **2024** to:

[TBD]

The Settlement Administrator may seek additional information to validate the Claim Form and/or disqualify an invalid Claim. If you provide incomplete or inaccurate information, your Claim may be denied.

10. When will I get my payment?

Payments will be sent to Settlement Class Members who send in Valid Claim Forms on time, after the Court grants "final approval" of the Settlement, and after the time for appeals has ended and any appeals have been resolved. If the Court approves the Settlement after a hearing on [DATE OF FINAL APPROVAL HEARING], **2024** (*see* the section "The Court's Fairness Hearing" below), there may be appeals. Resolving these appeals can take time. Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to sue or continue to sue Defendant over the legal issues in this case, you must take steps to get out of the Settlement. This is called asking to be excluded from—sometimes called "opting out" of—the Settlement Class. If you exclude yourself from the settlement, you will not be entitled to receive any money from this lawsuit.

11. If I exclude myself, can I get anything from the Settlement?

If you ask to be excluded, you will not get a Cash Award under the Settlement, and you cannot object to the Settlement. But you may be part of a different lawsuit against Defendant in the future. You will not be bound by anything that happens in this lawsuit.

12. If I don't exclude myself, can I sue later?

No. Unless you exclude yourself, you give up the right to sue Defendant for the claims that this Settlement resolves. You must exclude yourself from *this* Class to start or continue your own lawsuit.

13. How do I get out of the Settlement?

To opt out of the Settlement, you must send a letter by mail saying that you want to be excluded from *Kandel, et al. v. Dr. Dennis Gross Skincare, LLC,* U.S. District Court for the Southern District of New York, Case No. 1:23-cv-01967-ER. Be sure to include your name, address, telephone number, the approximate date of purchase, and your signature. You can't ask to be excluded at the website or on the phone. You must mail your opt out request postmarked no later than [SIXTY (60) CALENDAR DAYS AFTER NOTICE BEGINS], **2024** to:

[TBD]

Requests to opt out that do not include all required information and/or that are not submitted on a timely basis, will be deemed null, void, and ineffective. Settlement Class Members who fail to submit a valid and timely Request for opting out on or before the deadline above shall be bound by all terms of the Settlement and any Final Judgment entered in this litigation if the Settlement is approved by the Court, regardless of whether they ineffectively or untimely requested exclusion from the Settlement.

OBJECTING TO THE SETTLEMENT

14. How do I tell the Court I don't like the proposed Settlement?

To object to the Settlement, you or your attorney must send a written objection ("Objection") to the Settlement Administrator showing the basis for your objections. Your objection must contain the following information:

(i) A caption or title that clearly identifies the Action (*Kandel, et al. v. Dr. Dennis Gross Skincare, LLC*, Case No. 1:23-cv-01967-ER (S.D.N.Y.) and that the document is an objection;
(ii) Your name, current address, and telephone number or your lawyer's name, address, and telephone number if you are objecting through counsel;
(iii) What Product(s) you bought during the Class Period;
(iv) a clear and concise statement of the Class Member's objection, as well as any facts and law supporting the objection,
(v) If applicable, the identity of any other objections you or your counsel (if you have counsel) submitted to any other class action settlements within the past five years including the case name, case number, and court, the general nature of such prior objection(s), and the outcome of said prior objection(s) (or a statement that you and/or your attorneys have submitted no such objections);
(vi) Your signature attesting that all facts are true and correct; and
(vii) If applicable, the signature of your counsel (the "Objection").

Any Objection to the Settlement must be postmarked on or before the Objection Deadline and sent to the Settlement Administrator at the addresses set forth in the Class Notice. The Court may, but is not required to, hear Objections in substantial compliance with these requirements, so Settlement Class Members should satisfy all requirements.

You or your lawyer may, but are not required to, appear at the Final Approval Hearing. If you or your lawyer wish to appear at the Final Approval Hearing, you must file with the Court a Notice of Intention to Appear along your written objection no later than [SIXTY (60) CALENDAR DAYS AFTER NOTICE BEGINS], **2024**. You must file your Notice of Intention to Appear by certified mail or in person, along with any other supporting materials to: Clerk, United States District Court for the Southern District of New York, 40 Foley Square, New York, NY 10007. Your written Objection must be marked with the Case name and Case Number (*Kandel, et al. v. Dr. Dennis Gross Skincare, LLC,* Case No. 1:23-cv-01967-ER, U.S. District Court for the Southern District of New York). In addition, you must also send copies of all documents you file with the Court to:

CLARKSON LAW FIRM, PC.
Ryan J. Clarkson, Esq.
Yana Hart, Esq.
Tiara Avaness, Esq.
22525 Pacific Coast Highway
Malibu, CA 90265
DDG@Clarksonlawfirm.com

The Court may only require substantial compliance with the requirements for submitting an objection. The requirement to submit a written objection may be waived upon a showing of good cause.

OBJECTION AND OPT-OUT DIFFERENCES

15. What is the difference between objecting and opting out?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. If you stay in the Class, you will be legally bound by all orders and judgments of the Court, and you won't be able to sue, or continue to sue, Defendant as part of any other lawsuit involving the same claims that are in this lawsuit. Opting out is telling the Court that you don't want to be part of the Class. If you opt out, you have no basis to object because the case no longer affects you. You cannot both opt out of and object to the Settlement. If a person attempts to do both, the Court will treat the submissions as an opt-out.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in the case?

The Court has designated Ryan J. Clarkson, Yana Hart, and Tiara Avaness of Clarkson Law Firm, P.C., 22525 Pacific Coast Highway, Malibu, CA 90265 to represent you as "Class Counsel." You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

17. How will the costs of the lawsuit and Settlement be paid?

The Settlement Administrator's and costs and fees associated with administering the Settlement, including all costs associated with the publication of the Notice of Settlement will be paid out of the Settlement Fund and shall not exceed [TBD], plus postage. Class Counsel's reasonable attorneys' fees and costs related to obtaining the Settlement consistent with applicable law will also be paid out of the Settlement Fund, subject to Court approval.

The three Settlement Class Representatives will also request that the Court approve a payment to them of up to $5,000 each, a total of $15,000, from the Settlement Fund, as service awards for their participation as the Settlement Class Representatives—for taking on the risk of litigation, and for settlement of their individual claims as Settlement Class Members in the settled Actions. The amounts are subject to Court approval and the Court may award less.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. If you have filed an objection on time, you may attend and you may ask to speak, but you don't have to.

18. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at 10:00 a.m. on **[TBD],** ___2024, at the U.S. District Court for the Southern District of New York, 40 Foley Square, Courtroom 619, New York, NY 10007. The hearing may be moved to a different date or time without additional notice, so please check for updates at www.Cpluscollagenlawsuit.com. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. In order to speak at the Fairness Hearing, you must file a notice of intention to appear with the Clerk. The Court will also decide how much to pay the Settlement Class Representatives and the lawyers representing Settlement Class Members. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the judge may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. If you have sent an objection but do not come to the Court hearing, however, you will not have a right to appeal an approval of the Settlement. You may also pay another lawyer to attend on your behalf, but it's not required.

20. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intent to Appear" in the *Kandel, et al. v. Dr. Dennis Gross Skincare, LLC,* litigation. Be sure to include your name, address, telephone number, and your signature as well as the name, address and telephone number of any lawyer representing you (if applicable). Your Notice of Intent to Appear must be postmarked no later than no later than [SIXTY (60) CALENDAR DAYS AFTER NOTICE BEGINS], **2024** and be sent to the addresses listed in Questions 13 and 14. You cannot speak at the hearing if you excluded yourself from the Class.

IF YOU DO NOTHING

21. What happens if I do nothing at all?

If you are a Settlement Class member and do nothing, you will not receive a payment from this Settlement. And, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant about the claims in this case, ever again.

GETTING MORE INFORMATION

22. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement, download a Claim Form, and review additional case information at www.Cpluscollagenlawsuit.com. You may also call toll-free XXXXXXXX.

PLEASE DO NOT TELEPHONE THE DEFENDANT, THE COURT, OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

DATED: _____, 2024

BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

EXHIBIT 3

Short-Form Notice

Settlement Agreement

Kandel, et al. v. Dr. Dennis Gross Skincare, LLC

Case No. 1:23-cv-01967-ER

LEGAL NOTICE

If you bought any of the Dr. Dennis Gross Skincare, LLC's "C+Collagen" Products Between March 10, 2016, and [Date of Preliminary Approval], you may be entitled to payment.

Kandel, et al. V. Dr. Dennis Gross Skincare, LLC, No. 1:23-cv-01967-ER
U.S. District Court for the Southern District of New York

What Is This Notice About? This Notice is to inform you of the settlement of the class action lawsuit referenced above (the "Action") with Dr. Dennis Gross Skincare LLC ("Defendant" or "DDG"). Plaintiffs in this lawsuit claim that Defendant deceptively labeled its C + Collagen products as containing "Collagen," when in fact, they did not contain any collagen. Defendant denies all claims in the lawsuit and denies that it did anything unlawful or improper. The Court did not rule in favor of either side. Rather, the parties have agreed to settle the lawsuit to avoid the uncertainties and expenses associated with ongoing litigation.

Am I A Member of The Class? You are a Settlement Class member if purchased any of Defendant's C+Collagen Products in the United States, for personal or household use and not for resale or distribution, including DDG's C+Collagen Deep Cream, C+Collagen Serum, C+Collagen Mist, C+Collagen Eye Cream and C+Collagen Mask, and any other products sold with the C+Collagen label, whether sold alone or in combination with other products ("Class Products"), between March 10, 2016, and [DATE OF PRELIMINARY APPROVAL] (the "Class Period").

What Does the Settlement Provide? With Court approval, the Settlement provides a Cash Award to Settlement Class Members that submit a valid and timely Claim Form. Settlement Class Members who previously purchased any of the Class Products during the Class Period may submit a claim to receive Fifty Dollars ($50) per Class Product purchase, capped at two (2) or ten (10) Class Products, depending on whether they submit proof of purchase.

If the amount in the Net Settlement Fund (net of costs of notice and settlement administration, Settlement Class Counsel's attorneys' fees and litigation expenses and the service awards for Plaintiffs), is either less or more than the amount of the total cash claims submitted by Claimants, the claims of each Claimant will be decreased or increased, respectively, *pro rata*, to ensure the Settlement Fund is exhausted, with no reversion from the Settlement Fund to Defendant. *Pro rata* upward adjustment of cash claims shall be capped at one hundred dollars ($100) per Class Product. Any amounts remaining in the Net Settlement Fund after checks are issued and cashed or expired shall be disbursed *cy pres*. Those Settlement Class Members whose payments are not cleared within one hundred and eighty (180) calendar days after issuance will be ineligible to receive a cash settlement benefit and the Settlement Administrator will have no further obligation to make any payment from the Settlement Fund pursuant to this Settlement Agreement or otherwise to such Settlement Class Member.

What Are My Rights and Options? You have three options:

You Can Make a Claim. Settlement Class Members who wish to receive a Cash Award **must** submit a Claim Form by visiting the Settlement Website, **www.Cpluscollagenlawsuit.com,** and submitting a Claim Form (which can also be printed and mailed). The deadline to **postmark or submit your claim online is [SIXTY (60) CALENDAR DAYS AFTER SETTLEMENT NOTICE DATE].**

You Can Object to the Settlement. You may also object to any part of this Settlement. Objections must be mailed to the Settlement Administrator and **postmarked no later than [SIXTY (60) CALENDAR DAYS AFTER SETTLEMENT NOTICE DATE], 2024**.

You Can "Opt-Out" of the Settlement. You can exclude yourself ("opt-out") of the Settlement by submitting an exclusion request to the Settlement Administrator that is **postmarked no later than [SIXTY (60) CALENDAR DAYS AFTER SETTLEMENT NOTICE DATE], 2024.** This is the only option that allows you to be part of any other lawsuit against Defendant about the legal claims in this case.

Details about how to opt-out, object, and submit your Claim Form are available on the Settlement Website.

BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

The Fairness Hearing

On ___ , 2024 at 10:00 am, the Court will hold a hearing at the United States District Court for the Southern District of New York, 40 Foley Square, Courtroom 619, New York, NY 10007 to approve: (1) the Settlement as fair, reasonable, and adequate; and (2) the application for Plaintiffs' attorneys' fees and litigation costs of up to $3,900,000, and payment of up to $15,000 in total to the three Settlement Class Representatives. Settlement Class Members who support the proposed settlement do not need to appear at the hearing or take any other action to indicate their approval.

How Can I Get More Information?

This is only a summary of the settlement. If you have questions or want to view the detailed notice or other documents about the Litigation, including the Settlement Agreement visit **www.Cpluscollagenlawsuit.com,** contact the Settlement Administrator at 1- **XXX XXX XXXX** or by writing to [address]**,** or contact Class Counsel at DDG@Clarksonlawfirm.com.

BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

EXHIBIT 4

Postcard Notice

Settlement Agreement

Kandel, et al. v. Dr. Dennis Gross Skincare, LLC

Case No. 1:23-cv-01967-ER

EXHIBIT 4

Postcard Notice

Settlement Agreement

Kandel, et al. v. Dr. Dennis Gross Skincare, LLC

Case No. 1:23-cv-01967-ER

United States District Court
Kandel, et al. v. Dr. Dennis Gross Skincare, LLC
Case No. 1:23-cv-01967-ER

[INSERT QR CODE]

Class Action Notice
Authorized by the U.S. District Court

Did you buy any Dr. Dennis Gross Skincare, LLC C + Collagen Products for personal or household use in the United States between March 10, 2016, and [*Date of Preliminary Approval*]?

There is a $9,200,000 million settlement of a lawsuit.

You may be entitled to money.

To get a payment under this settlement, you must submit a claim by [*60 calendar days after settlement notice*].

You can visit [*website*] to learn more.

Key things to know:

- This is an important legal document.
- The parties agreed to this settlement. The Court did not rule for either side and Defendant denies all claims or wrongdoing.
- If you do not act before [date], any ruling from the Court will apply to you, and you will not get a payment or be able to sue about the same issues.
- If you have questions or need assistance, please call [Insert Phone Number]
- You can learn more, including about how to make a claim, object to the settlement or exclude yourself from the settlement, and about the Court's Final Approval Hearing, at [www.Cpluscollagenlawsuit.com] or by scanning the QR code.

[INSERT STAMP]

Court-Approved Legal Notice

This is an important notice about a class action lawsuit.

<<MAIL ID>>

<<NAME 1>>
<<NAME 2>>
<<ADDRESS LINE 1>>
<<ADDRESS LINE 2>>
<<ADDRESS LINE 3>>
<<ADDRESS LINE 4>>
<<ADDRESS LINE 5>>
<<CITY, STATE ZIP>>
<<COUNTRY>>

EXHIBIT 5

Notice Plan

Settlement Agreement

Kandel, et al. v. Dr. Dennis Gross Skincare, LLC

Case No. 1:23-cv-01967-ER

Case Name: *Kandel v. Dr. Dennis Gross Skincare, LLC* , No. 1:23-cv-01967 (S.D.N.Y.)
Project Description: Estimate for Settlement Administration Services

KEY ASSUMPTIONS:

Description	Volume	Percentage
Number of Products Sold	614,183	
Estimated Number of Products Purchased per Class Member	2.14	
Approximate Number of Class Members	287,001	
Class Population with Contact Information Available	160,000	25%
Class Member Population with Email Address Information	155,000	90%
Class Member Population with Mailing Addresses Information Available	120,000	100%
Initial Email Volume	155,000	
Undeliverable Email Rate	15,500	10%
Initial Mail Volume	120,000	42%
Undeliverable Mail Rate	9,600	8%
Skip Tracing Hit Rate	5,760	60%
Forwarding Address Hit Rate	96	1%
Remails	5,856	
Reminder Emails	106,330	37%
Reminder Postcards	90,576	32%
Claims Submission Rate	122,837	20%
Online Claims	98,837	80%
Hard Copy Claims	24,000	20%
Deficient Claims Rate	614	0.5%
Disbursement via Standard Check	12,222	10%
Disbursement via Digital Payments	110,000	90%
Undeliverable Mail Rate - Checks	611	5%
Failed Digital Payments	2,750	2.5%
Opt Outs/Objections	50	0.017%
Number of IVR Calls	2,870	1%
Connect Minutes per Call - IVR	3.5	

CLAIMS ADMINISTRATION ESTIMATE

Direct Notice	Volume	Unit
Class List Data Processing and Research		
Processing class data list, notice database setup, and notice list production	16	Hours
Email Notice		
Email Notice Setup and Formatting	1	One Time Fee
Email Blast	155,000	Emails
Mail Notice		
Postcard Notice Setup and Formatting	1	One Time Fee
Print/prep Postcard Notice (double postcard w/ Unique ID - includes 48-month NCOA)	120,000	Postcards
Processing Undeliverable Mail and Re-Mailing		
Processing Undeliverable Mail	9,600	Postcards
Skip Tracing Inputs	9,600	Per Record
Skip Tracing Results	5,760	Per Hit
Notice Re-mails: Notices with a forwarding address (est. @1%) + notices with new addresses from skip trace research	5,856	Postcards
Reminder Email Notice		
Email Notice Setup and Formatting	1	One Time Fee
Email Blast	106,330	Emails
Reminder Mail Notice		
Notice Setup and Formatting	1	One Time Fee
Print/prep Postcard Notice (double postcard w/ Unique ID - includes 48-month NCOA)	90,576	Postcards

Media Plan	Volume	Unit
Media Notice Program - 80% (details in separate attachment)	1	Campaign
Translation Costs	1	As Incurred

CAFA Notice	Volume	Unit
Mail relevant settlement documents and cover letter on a CD-ROM to appropriate State and Federal officials per 28 U.S.C. Section 1715	1	If Needed

Case Website	Volume	Unit
Case Website Setup and Design	1	One Time
Online Claim Filing Portal Development	40	Hours
Monthly Website Hosting and Claims Portal Maintenance	9	Month

CLAIMS ADMINISTRATION ESTIMATE (cont'd)

Claimant Support and Communications	Volume	Unit
P.O. Box Setup & Maintenanance	1	One Time Fee
Setup and design of IVR with voicemail option (English only, additional costs for each additional language)	1	One Time Fee
IVR Monthly Maintenance Charge	9	Months
Per minute usage costs for IVR (est. number of minutes)	10,045	Minutes
Direct communication with claimants (phone calls/emails, etc.)	10,200	Minutes
Fulfilling Detailed Notice & Claim Form Requests	200	Requests

Claims Administration	Volume	Unit
Data Intake, Management, and Processing		
P.O. Box Setup & Maintenance	1	Annual
Processing Opt-Outs and Objections	50	Opt-Outs
Online Claims Processing	98,837	Claims
Hard Copy Claim Form Intake and Data Capture	24,000	Claims
Claims Review and Analysis	250	Hours
Fulfilling Detailed Notice & Claim Form Requests (a minimum fee that assumes fulfillment in bi-weekly batches during claim period)	8	Batch

Distributions and Reporting	Volume	Unit
Fund Distribution		
Disbursement Preparation, Allocations, QC, & Management	12	Hours
Check Printing (Standard Checks)[1]	12,222	Checks
Digital Payments	110,000	Payments
Re-issue Processing and Banking		
Re-Issue Processing Fee Minimum	1	Minimum Fee
Processing Undeliverable Checks	611	Checks
Skip Tracing Inputs - Undeliverable Checks	611	Per Input
Skip Trace Results - Undeliverable Checks	428	Hit
Print Check Reissues[1]	3,178	Checks
Payment Distribution Management & Reporting	12	Hours
Bank Reconciliation and Tax Reporting		
Bank Account Reconciliations and Reviews	9	Months
QSF and Bank Account Setup	1	One Time
QSF Tax Filings	2	Years
1099 Tax Form Distributions and eFilings[2]	-	Per 1099

Project Planning, Administration, & Management	Volume	Unit
Planning, Administration, & Management	80	Hours
Court/Settlement/Process Documents and Declarations	24	Hours

Estimated Postage[3]	Volume	Unit
Notice Postcard Mailings	120,000	Postcards
Notice Re-mails	5,856	Postcards
BRM Account Setup	1	One-Time
BRM Postage on Return Postcards	22,800	Postcards
Deficiency Letters	307	Letters/Emails
Disbursement Checks	12,222	Checks
Check Reissues	3,178	Checks

Key Notes:

[1] Due to raw material supply chain volatility, P&N reserves the right to re-quote print pricing based on current market conditions at the time of actual print production. The unit pricing for print production quoted above is for current market rates.

[2] Assumes that all information needed for issuing 1099s (e.g. Tax ID numbers) is collected via the claim form or provided directly by Defendant.

[3] Postage rates are estimates based on estimated USPS postage rate increases that went into effect January 21, 2024 and may fluctuate.

^ As of May 21, 2023, the Directors & employees of Postlethwaite & Nettwerville (P&N), APAC joined EisnerAmper as EAG Gulf Coast, LLC. Where P&N is named and contracted, EAG Gulf Coast, LLC employees will service the work under those agreements. P&N's obligations to service work may be assigned by P&N to Eisner Advisory Group, LLC or EAG Gulf Coast, LLC, or one of Eisner Advisory Group LLC's or EAG Gulf Coast, LLC's subsidiaries or affiliates.

*Estimated volumes are contingent on the key assumption that class data is delivered per P&N Data File Transmission Guidelines.

*The volumes reflected in this document are ESTIMATES based on key assumptions and is NOT intended to be a final or a contract between P&N and any other party.

*All hours are ESTIMATES and reflect a minimum hourly per category. Actual hours may vary based on actual time incurred.

* P&N may derive financial benefits from financial institutions in connection with the deposit and/or investment of settlement funds with such institutions, including, without limitation, discounts on certain banking services/fees and compensation for services P&N performs for financial institutions to be eligible for FDIC deposit insurance and in connection with the disbursement of funds in foreign currencies.

*All up front costs for notice administration (print, postage, email and publication notice) must be paid 5 business days prior to the program inception.

EISNERAMPER

***Kandel v. Dr. Dennis Gross Skincare, LLC,* No. 1:23-cv-01967 (S.D.N.Y.)**
Proposed Settlement Notice Plan

Target:	Adults aged 25 and older who have purchased cosmetic skincare products.
Est. Direct Notice:	136,325
Est. Min. Overall Average Reach[1]:	80%
Est. Min. Overall Average Frequency[1]:	2.56
Digital Targeting:	Behavioral, Contextual, Language, Interest-based, Engagement and Remarketing, among others

Online	**Impressions**	**Ad Size**	**Duration**	**Language**
Behavior targeting for individuals who have viewed cosmetic products and their related conditions; contextual targeting for those who consume content related to skincare, moisturizing creams, skin cleansers, and skin blemish treatments; interest targeting for individuals who have liked or followed Dr. Dennis Gross Skincare and other cosmetic skincare-related social media accounts; language targeting; remarketing; select placement strategies in coordination with defense counsel; look-alike targeting based on known class data (if approved); additional targeting based on demographic data provided by Class Counsel (if available); developing a look-alike audience model based on the first ~1,000 claims and continuously refining it as additional claims are submitted (if approved), and targeting users who visited the Gunaratna class certification website, as well as utilizing data from the website analytics.				
Basis Programmatic Platform	88,228,800	various	4 weeks	English
Facebook & Instagram	23,760,000	custom/video	4 weeks	English
TikTok	4,950,000	:15/:30 video	4 weeks	English
X (formerly Twitter)	4,950,000	custom	4 weeks	English
Reddit	2,970,000	custom	4 weeks	English
	124,858,800			

Search Advertising	**Impressions**	**Ad Size**	**Duration**	**Language**
Google/Bing Ads	TBD	custom	4 weeks	English

Press Release	**Newsline**	**Words**	**Description**
PR Newswire	US1	600	Distributed to over 20,000 English media outlets in the U.S.

[1] Estimated costs and totals depend on ad content and are subject to change at the time of the media buy. All advertising is subject to publisher's approval and availability at the time of the buy. The estimated cost is exclusive of project management hours and time spent preparing the opinion, including research and drafting any affidavits, as well as any time spent attending a deposition or hearing. Any such time will be billed at EAG Gulf Coast, LLC standard hourly rates. All expenses associated with providing testimony and/or the preparation of testimony will be billed at cost. Internet publishers reserve the right to adjust quotes throughout the calendar year without notification, which may alter the estimated cost. This change may also impact the estimated impression levels, the overall media delivery and/or reach of the notice program.

Source: Basis Audience Reach Planner, 2023 MRI-Simmons Fall Doublebase USA, comScore April 2024, and media representatives.

EXHIBIT 6

Proposed Final Approval Order

Settlement Agreement

Kandel, et al. v. Dr. Dennis Gross Skincare, LLC

Case No. 1:23-cv-01967-ER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMI KANDEL, MOCHA GUNARATNA, and RENEE CAMENFORTE, and others similarly situated, Plaintiffs, v. DR. DENNIS GROSS SKINCARE, LLC Defendant.	Case No. 1:23-cv-01967-ER **[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTIONS FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, ATTORNEYS' FEES AND COSTS, AND SERVICE AWARDS**

WHEREAS, Plaintiffs' Motion for Final Approval of Class Action Settlement came on for hearing before this Court on [TBD] with Class Counsel Clarkson Law Firm, P.C. ("**Class Counsel**") appearing on behalf of Mocha Gunaratna, Renee Camenforte, and Jami Kandel ("Settlement **Class Representatives**" or "**Plaintiffs**"), and Morrison & Foerster, LLP and Price Parkinson & Kerr, PLLC appearing on behalf of Dr. Dennis Gross Skincare, LLC ("**Defendant**") (collectively, the "**Parties**");

WHEREAS, on December 16, 2021, Settlement Class Representatives Mocha Gunaratna and Renee Camenforte filed their operative complaint in *Gunaratna v. Dr. Dennis Gross Skincare, LLC,* Case No. 20-2311-MWF (GJSx) (C.D. Cal.) ("***Gunaratna***");

WHEREAS, on March 7, 2023, Settlement Class Representative Jami Kandel filed this action ("***Kandel***" or "the Action," and together with *Gunaratna*, the "**Actions**");

WHEREAS, Plaintiffs allege in the Actions that Defendant deceptively and unlawfully labeled, packaged, and marketed its "C+Collagen" line of products, including the C+Collagen Deep Cream, C+Collagen Serum, C+Collagen Mist, C+Collagen Eye Cream and C+Collagen Mask, and any other products sold with the C+Collagen label, whether sold alone or in combination with other products (the "**Class Products**");

WHEREAS, Plaintiffs filed an amended complaint in this action on March 26, 2024 to facilitate their pursuit and resolution of claims on behalf of all nationwide Settlement Class Members in a single action before this Court (the "**Action**");

WHEREAS, the Parties have submitted their Settlement, which this Court preliminarily approved on [TBD] (the "**Preliminary Approval Order**");

WHEREAS, the Preliminary Approval Order established a Claim Submission and Objection Deadline of [TBD];

WHEREAS, the Preliminary Approval Order established an Opt-Out Deadline of [TBD];

WHEREAS, in accordance with the Preliminary Approval Order, Class Members have been given notice of the terms of the Settlement and the opportunity to object to or exclude themselves from its provisions;

WHEREAS, having received and considered the Settlement, all papers filed in connection therewith, including Plaintiffs' Motion for Final Approval of Class Action Settlement, Plaintiffs' Motion for Award of Attorneys' Fees and Costs, and Plaintiffs' Motion for Approval of Service Awards, and the evidence and argument received by the Court at the hearing before it entered the Preliminary Approval Order and at the final approval hearing on [TBD], the Court HEREBY ORDERS and MAKES DETERMINATIONS as follows:

1. Incorporation of Other Documents. The Settlement Agreement, including its exhibits, and the definitions of words and terms contained therein are incorporated by reference in this Order. The terms of this Court's Preliminary Approval Order are also incorporated by reference in this Order.

2. Jurisdiction. This Court has jurisdiction over the subject matter of this Action and over the Parties, including all members of the following Settlement Class certified for settlement purposes in this Court's Preliminary Approval Order:

> All persons in the United States who, between March 10, 2016 and the date of entry of this Preliminary Approval Order, purchased in

the United States, for personal or household consumption and not for resale or distribution, one of the Class Products.

Excluded from the Settlement Class are: (1) the presiding judges in the Actions; (2) any member of those judges' immediate families; (3) Defendant; (4) any of Defendant's subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; (5) counsel for the Parties; and (6) any persons who timely opt-out of the Settlement Class.

3. Class Certification. The Court finds and determines that the Settlement Class, as defined in the Settlement Agreement and above, meets all of the legal requirements for class certification for settlement purposes under Fed. R. Civ. P. 23(a), (b)(2), and b(3), and it is hereby ordered that the Class is finally certified for settlement purposes.

4. Pursuant to the Settlement Agreement, and for settlement purposes only, the Court finds as to the Settlement Class with respect to all aspects of the Settlement Agreement except the provisions of section 5 thereof that the prerequisites for a class action under Fed. R. Civ. P. 23(a) and (b)(3) have been satisfied in that:

a. The Settlement Class is so numerous that joinder of all members is impracticable;

b. There are questions of law or fact common to the Settlement Class;

c. The claims of the Settlement Class Representatives are typical of the claims of the Settlement Class;

d. The Settlement Class Representatives Jami Kandel, Mocha Gunaratna, and Renee Camenforte, have fairly and adequately protected the interests of the Settlement Class and are, therefore, appointed as Settlement Class Representatives;

e. Clarkson Law Firm, P.C. has fairly and adequately protected the interests of the Settlement Class and are qualified to represent the Settlement Class and are, therefore, appointed as Class Counsel;

f. The questions of law and fact common to the Settlement Class predominate over the questions affecting only individual members; and

g. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

5. Pursuant to the Settlement Agreement, and for settlement purposes only, for purposes of the non-monetary relief specified in section 5 of the Settlement Agreement, the Court further finds as to the Settlement Class that the prerequisites for a class action under Fed. R. Civ. P. 23(a) and (b)(2) have been satisfied in that:

a. The Settlement Class is so numerous that joinder of all members is impracticable;

b. There are questions of law or fact common to the Settlement Class;

c. The claims of the Settlement Class Representatives are typical of the claims of the Settlement Class;

d. The Settlement Class Representatives Jami Kandel, Mocha Gunaratna, and Renee Camenforte, and Class Counsel have fairly and adequately protected the interests of the Settlement Class;

e. Defendant has acted or refused to act on grounds generally applicable to the Settlement Class, thereby making appropriate final injunctive relief with respect to the Settlement Class as a whole.

6. Adequate Representation. The Court orders that Settlement Class Representatives Mocha Gunaratna, Renee Camenforte, and Jami Kandel are appointed as the Settlement Class Representatives. The Court also orders that Clarkson Law Firm, P.C., Ryan J. Clarkson, and Yana Hart are appointed as Class Counsel. The Court finds that the Settlement Class Representatives and Class Counsel fairly and adequately represent and protect the interests of the absent Settlement Class Members in accordance with Fed. R. Civ. P. 23.

7. Arms-Length Negotiations. The Court finds that the proposed Settlement is fair, reasonable, and adequate based on the value of the Settlement, and the relative risks and benefits

of further litigation. The Settlement was arrived at after sufficient investigation and discovery and was based on arms-length negotiations, including a full day mediation, followed by months of continued settlement discussions to finalize the settlement.

8. Class Notice. The Court directed that notice be given to Settlement Class Members by publication, e-mail, mail, and other means pursuant to the notice program proposed by the Parties in the Settlement and approved by the Court. The declaration from Settlement Administrator EAG Gulf Coast, LLC attesting to the dissemination of notice to the Settlement Class demonstrates compliance with this Court's Order Granting Preliminary Approval of Class Settlement. The notice program set forth in the Settlement successfully advised Settlement Class members of the terms of the Settlement, the Final Approval Hearing (referred to in the Settlement as the "Fairness Hearing"), and their right to appear at such hearing; their rights to remain in or opt out of the Settlement Class and to object to the Settlement; the procedures for exercising such rights; and the binding effect of the Judgment herein.

9. The Court finds that distribution of the Notice constituted the best notice practicable under the circumstances, and constituted valid, due, and sufficient notice to all members of the Settlement Class. The Court finds that such notice complies fully with the requirements of Fed. R. Civ. P. 23, the Constitution of the United States, and any other applicable laws. The Notice informed the Settlement Class of: (1) the terms of the Settlement; (2) their right to submit objections, if any, and to appear in person or by counsel at the final approval hearing and to be heard regarding approval of the Settlement; (3) their right to request exclusion from the Settlement Class and the Settlement; and (4) the location and date set for the final approval hearing. Adequate periods of time were provided by each of these procedures.

10. The Court finds and determines that the notice procedure carried out by EAG Gulf Coast LLC afforded adequate protections to Settlement Class members and provides the basis for the Court to make an informed decision regarding approval of the Settlement based on the responses of the Settlement Class members. The Court finds and determines that the Notice was the best notice practicable, and has satisfied the requirements of law and due process.

11. Settlement Class Response. A total of _____ Settlement Class Members submitted Approved Claims, and there have been X Objections to the Settlement (defined below) and X Requests for Exclusion.

a. [After careful consideration, the Court hereby overrules Objector X's Objection for the reasons stated on the record.]/[No Objections were received to the Settlement. This positive reaction by the Settlement Class demonstrates the strength of the Settlement.]

b. [The Court also hereby orders that each of the individuals appearing on the list annexed hereto as Exhibit A who submitted valid Requests for Exclusion are excluded from the Settlement Class. Those individuals will not be bound by the Settlement Agreement, and neither will they be entitled to any of its benefits.]/[No Settlement Class members opted out of the Settlement. This positive reaction by the Settlement Class demonstrates the strength of the Settlement.]

12. Final Settlement Approval. The Court hereby finally approves the Settlement Agreement, the exhibits, and the Settlement contemplated thereby ("Settlement"), including but not limited to all releases contained within the Settlement Agreement, and finds that the terms constituted, in all respects, a fair, reasonable, and adequate settlement as to all Settlement Class members in accordance with Fed. R. Civ. P. 23 and direct consummation pursuant to its terms and conditions.

13. The Court finds that the Settlement Agreement provides substantial and meaningful monetary benefits to the Settlement Class as follows: Defendant agreed to provide cash benefits with a gross potential payout of $9,200,000 (nine million and two hundred thousand dollars) in the aggregate.

14. The Court finds that the Settlement Agreement also provides substantial and meaningful non-monetary relief to the Settlement Class as follows: Defendant agrees not to relaunch cosmetics using the "C+Collagen" name that do not contain collagen.

15. The Court finds that the Settlement is fair when compared to the strength of Plaintiffs' case, Defendant's defenses, the risks involved in further litigation and maintaining class status throughout the litigation, and the amount offered in settlement.

16. The Court finds that the Parties conducted extensive investigation, research, and fact and expert discovery, and that their attorneys were able to reasonably evaluate their respective positions.

17. The Court finds that Class Counsel has extensive experience acting as counsel in complex class action cases and their view on the reasonableness of the settlement was therefore given its due weight.

18. The Court hereby grants final approval to and orders the payment of those amounts to be made to the Settlement Class Members in accordance with the terms of the Settlement Agreement. The Court finds and determines that the Settlement Payments to be paid to each Settlement Class Member as provided for by the Settlement are fair and reasonable.

19. The Court further finds that the Settlement Class's reaction to the settlement weighs in favor of granting Final Approval of the Settlement.

20. The Settlement Agreement is not an admission of liability by Defendant, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement, shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or Released Parties.

21. Based upon claims received as of the date of this Order, the Parties expect approximately $_____ of the gross settlement fund to be available for *cy pres* distribution to appropriate charitable organizations identified by the parties and approved by the Court. The Court hereby approves awards of [insert details of *cy pres* awards]. The Parties may adjust these awards upwards or downwards as necessary to fully exhaust (but not exceed) the amounts available for distribution after payments of all other settlement expenses, without further Order of the Court.

22. Attorneys' Fees and Costs; Service Awards. The Court approves payment of attorneys' fees to Class Counsel in the amount of $_____ plus their costs of $_____. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement. The Court, having considered the materials submitted by Class Counsel in support of final approval of the Settlement and their request for attorneys' fees and costs, finds the award of attorneys' fees and costs fair, adequate, and reasonable, and the Court notes that the class notice specifically and clearly advised the class that Class Counsel would seek the award.

23. In making this award of attorneys' fees and costs, the Court has further considered and found that:

a. The Settlement Agreement created a Total Settlement Fund of $9,200,000.00 in cash for the benefit of the Settlement Class pursuant to the terms of the Settlement Agreement;

b. Defendant's cessation of the challenged labels and/or products, and agreement not to reintroduce the challenged products without collagen;

c. Settlement Class Members who submitted valid proof of claim forms will obtain a substantial monetary benefit for the products they purchased from of the efforts of the Class Counsel and the Settlement Class Representatives;

d. The fee sought by the Class Counsel is fair and reasonable and based on the fees incurred by Class Counsel;

e. Class Counsel have prosecuted the action with skill, perseverance, and diligence, as reflected by the Settlement Fund, and the positive reaction to the Settlement Agreement by the Settlement Class;

f. This Action involved complex factual and legal issues that were extensively researched and developed by the Class Counsel;

g. Class Counsel's rates are fair, reasonable, and consistent with rates accepted within this jurisdiction for complex consumer class action litigation;

h. Had the Settlement not been achieved, a significant risk existed that Plaintiffs and the Settlement Class Members may have recovered significantly less or nothing from Defendant; and

i. The amount of attorneys' fees awarded and expenses reimbursed are appropriate to the specific circumstances of this action.

24. Defendant and the Released Parties shall not be liable for any additional fees or expenses for Class Counsel or counsel of any Class Representative or Settlement Class Member in connection with the Actions beyond those expressly provided in the Settlement Agreement.

25. The attorneys' fees and costs set forth in this Order shall be paid and distributed in accordance with the terms of the Settlement Agreement.

26. The Court approves the Service Award payments of $_____ to each Settlement Class Representative, Jami Kandel, Mocha Gunaratna, and Rene Camenforte, and finds such amounts to be reasonable in light of the services performed by Plaintiffs for the class. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement. This Service Award is justified by: (1) the risks the Settlement Class Representatives faced in bringing this lawsuit, financial and otherwise; (2) the amount of time and effort spent on this action by the Settlement Class Representatives; and (3) the benefits the Settlement Class Representatives helped obtain for the Settlement Class Members under the Settlement.

27. The Court finds that the Settlement Administrator, EAG Gulf Coast, LLC, is entitled to recover costs in the amount of $_____ for settlement administration.

28. Dismissal. The Action is hereby DISMISSED WITH PREJUDICE, on the merits, by Plaintiffs and all Settlement Class Members as against Defendant on the terms and conditions set forth in the Settlement Agreement without costs to any party, except as expressly provided for in the Settlement Agreement.

29. Release. Upon the Effective Date as defined in the Settlement Agreement, the Releasing Parties shall be deemed to have, and by operation of the Judgment herein shall have,

unconditionally, fully, and finally released and forever discharged the Released Parties from all Released Claims.

30. Injunction Against Released Claims. Each and every Settlement Class Member, and any person actually or purportedly acting on behalf of any Settlement Class Member(s), is hereby permanently barred and enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting, or enforcing any Released Claims (including, without limitation, in any individual, class or putative class, representative or other action or proceeding), directly or indirectly, in any judicial, administrative, arbitral, or other forum, against the Released Parties. This permanent bar and injunction is necessary to protect and effectuate the Settlement Agreement, this Final Order of Dismissal, the Judgment herein, and this Court's authority to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

31. No Admission of Liability. The Settlement Agreement and any and all negotiations, documents, discussions and actions associated with it will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation, or principle of common law or equity, or of any liability, wrongdoing or omission by Defendant, or the truth of any of the claims before any court, administrative agency, arbitral forum or other tribunal. Evidence relating to the Agreement will not be discoverable or admissible, directly or indirectly, in any way, whether in this Action or in any other action or proceeding before any court, administrative agency, arbitral forum or other tribunal, except for purposes of demonstrating, describing, implementing, or enforcing the terms and conditions of the Agreement, the Preliminary Approval Order, or this Order.

32. Findings for Purposes of Settlement Only. The findings and rulings in this Order are made for the purposes of settlement only and may not be cited or otherwise used to support the certification of any contested class or subclass in any other action.

33. Effect of Termination or Reversal. If for any reason the Settlement terminates or Final Approval is reversed or vacated, the Settlement and all proceedings in connection with the

Settlement will be without prejudice to the right of Defendant or the Settlement Class Representatives to assert any right or position that could have been asserted if the Agreement had never been reached or proposed to the Court, except insofar as the Agreement expressly provides to the contrary. In such an event, the certification of the Settlement Class will be deemed vacated. The certification of the Settlement Class for settlement purposes will not be considered as a factor in connection with any subsequent class certification issues.

34. Settlement as Defense. In the event that any provision of the Settlement or this Final Order of Dismissal is asserted by Defendant as a defense in whole or in part to any claim, or otherwise asserted (including, without limitation, as a basis for a stay) in any other suit, action, or proceeding brought by a Settlement Class Member or any person actually or purportedly acting on behalf of any Settlement Class Member(s), that suit, action or other proceeding shall be immediately stayed and enjoined until this Court or the court or tribunal in which the claim is pending has determined any issues related to such defense or assertion. Solely for purposes of such suit, action, or other proceeding, to the fullest extent they may effectively do so under applicable law, the Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of this Court, or that this Court is, in any way, an improper venue or an inconvenient forum. These provisions are necessary to protect the Settlement Agreement, this Order and this Court's authority to effectuate the Settlement and are ordered in aid of this Court's jurisdiction and to protect its judgment.

35. Retention of Jurisdiction. Without affecting the finality of the Judgment and Order in any way, the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Order and the Settlement.

36. Nothing in this Order shall preclude any action before this Court to enforce the Parties' obligations pursuant to the Settlement Agreement or pursuant to this Order, including the requirement that Defendant make payments to participating Settlement Class Members in accordance with the Settlement.

37. The Parties and the Settlement Administrator will comply with all obligations under the Settlement Agreement until the Settlement is fully and finally administered.

38. The Parties shall bear their own costs and attorneys' fees except as otherwise provided by the Settlement Agreement and this Court.

39. Entry of Judgment. The Court finds, pursuant to Rules 54(a) and (b) of the Federal Rules of Civil Procedure, that Final Judgment ("Judgment") should be entered and that there is no just reason for delay in the entry of the Judgment, as Final Judgment, as to Plaintiffs, the Settlement Class Members, and Defendant.

IT IS SO ORDERED.

Dated: _____

_____

The Honorable Edgardo Ramos
United States District Judge

EXHIBIT 7

Proposed Final Judgment

Settlement Agreement

Kandel, et al. v. Dr. Dennis Gross Skincare, LLC

Case No. 1:23-cv-01967-ER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMI KANDEL, MOCHA GUNARATNA, and RENEE CAMENFORTE, and others similarly situated,

Plaintiffs,

v.

DR. DENNIS GROSS SKINCARE, LLC

Defendant.

Case No. 1:23-cv-01967-ER

[PROPOSED] FINAL JUDGMENT

[PROPOSED] FINAL JUDGMENT

For the reasons set forth in this Court's Final Approval Order, in the above-captioned matter as to the following class of persons:

> All persons in the United States who, between March 10, 2016 and [date of entry of the Preliminary Approval Order] purchased in the United States, for personal or household consumption and not for resale or distribution, one of the Class Products.

Excluded from the Settlement Class are: (1) the presiding judges in the Actions; (2) any member of those judges' immediate families; (3) Defendant; (4) any of Defendant's subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; (5) counsel for the Parties; and (6) any persons who timely opt-out of the Settlement Class.

JUDGMENT IS HEREBY ENTERED, pursuant to Federal Rule of Civil Procedure 58, as to the above-specified class of persons and entities, Plaintiffs Mocha Gunaratna, Renee Camenforte, and Jami Kandel (collectively "Plaintiffs" or "Settlement Class Representatives") and Defendant Dr. Dennis Gross Skincare, LLC ("Defendant") on the terms and conditions of the Class Action Settlement Agreement (the "Settlement Agreement") approved by the Court's Final Approval Order, dated _____.

1. The Court, for purposes of this Final Judgment, adopts the terms and definitions set forth in the Settlement Agreement incorporated into the Final Approval Order.

2. All Released Claims of the Releasing Persons are hereby released as against Defendant and the Released Persons, as defined in the Settlement Agreement.

3. The claims of Plaintiffs and the Settlement Class Members are dismissed with prejudice in accordance with the Court's Final Approval Order.

4. The Parties shall bear their own costs and attorneys' fees, except as set forth in the Final Approval Order.

5. This Judgment adopts and incorporates the reasonable attorneys' fees, costs, and service awards as set forth in the Final Approval Order.

6. This document constitutes a final judgment and separate document for purposes of Federal Rule of Civil Procedure 58(a).

7. The Court finds, pursuant to Rule 54(a) of the Federal Rules of Civil Procedure, that this Final Judgment should be entered and that there is no just reason for delay in the entry of this Final Judgment as to Plaintiffs, the Settlement Class Members, and Defendant. Accordingly, the Clerk is hereby directed to enter Judgment forthwith.

IT IS SO ORDERED.

JUDGMENT ENTERED this _____.

_____
The Honorable Edgardo Ramos
United States District Judge

EXHIBIT 8

Proposed Preliminary Approval Order

Settlement Agreement

Kandel, et al. v. Dr. Dennis Gross Skincare, LLC

Case No. 1:23-cv-01967-ER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMI KANDEL, MOCHA GUNARATNA, and RENEE CAMENFORTE, *Plaintiffs*, v. DR. DENNIS GROSS SKINCARE, LLC *Defendant*.	Case No. 1:23-cv-01967-ER [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT

WHEREAS, the above-entitled action is pending before this Court (the "**Action**");

WHEREAS, Plaintiffs Jami Kandel, Mocha Gunaratna, and Renee Camenforte ("**Plaintiffs**"), and Defendant Dr. Dennis Gross Skincare, LLC ("**Defendant**") (collectively, the "**Parties**") have reached a proposed settlement and compromise of the disputes between them in the above Action as set forth in the Class Action Settlement Agreement (the "**Settlement Agreement**," and the settlement contemplated thereby, the "**Settlement**");

WHEREAS, Plaintiffs have applied to the Court for preliminary approval of the Settlement;

AND NOW, the Court, having read and considered the Settlement Agreement and accompanying documents, as well as the Motion for Preliminary Approval of Class Action Settlement and supporting papers, and all capitalized terms used herein having the meaning defined in the Settlement, IT IS HEREBY ORDERED AS FOLLOWS:

1. Settlement Terms. The Court, for purposes of this Preliminary Approval Order, adopts all defined terms as set forth in the Settlement.

2. Jurisdiction. The Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all members of the Settlement Class.

3. Preliminary Approval of Proposed Settlement Agreement. Subject to further consideration by the Court at the time of the Final Approval Hearing, the Court preliminarily

approves the Settlement as fair, reasonable, and adequate to the Settlement Class, as falling within the range of possible final approval, and as meriting submission to the Settlement Class for its consideration. The Court also finds the Settlement Agreement: (a) is the result of serious, informed, non-collusive, arms-length negotiations, involving experienced counsel familiar with the legal and factual issues of this case and guided in part by the Parties' private mediation with a respected former judge of the Superior Court of Los Angeles County, the Honorable Judge Peter Lichtman (Ret.) of Signature Resolution, and (b) appears to meet all applicable requirements of law, including Fed. R. Civ. P. 23. Therefore, the Court grants preliminary approval of the Settlement.

4. Class Certification for Settlement Purposes Only. For purposes of the Settlement only, the Court conditionally certifies the Settlement Class, as described below:

> All persons in the United States who, between March 10, 2016 and the date of entry of this Preliminary Approval Order, purchased in the United States, for personal or household consumption and not for resale or distribution, one of the Class Products.

Excluded from the Settlement Class are: (1) the presiding judges in the Actions; (2) any member of those judges' immediate families; (3) Defendant; (4) any of Defendant's subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; (5) counsel for the Parties; and (6) any persons who timely opt-out of the Settlement Class.

5. The Court preliminarily finds, solely for purposes of considering this Settlement, with respect to the monetary relief portions of the Settlement Agreement (i.e., all of the Settlement Agreement except the provisions in section 5 thereof), that: (a) the number of Settlement Class members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the named representatives are typical of the claims of the Settlement Class they seek to represent; (d) the Plaintiffs will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the Settlement Class predominate over any questions affecting only

individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

6. The Court preliminarily finds, solely for purposes of considering this Settlement, with respect to the non-monetary portions of the Settlement Agreement specified in section 5 thereof, that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the named representatives are typical of the claims of the Settlement Class they seek to represent; (d) the Plaintiffs will fairly and adequately represent the interests of the Settlement Class; (e) the Defendant allegedly has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole if the Settlement Agreement receives final approval.

7. Class Representatives. The Court orders that Jami Kandel, Mocha Gunaratna, and Renee Camenforte are appointed as the Representative Plaintiffs.

8. Class Counsel. The Court also orders that Clarkson Law Firm, P.C. is appointed Class Counsel. The Court preliminarily finds that the Representative Plaintiffs and Class Counsel fairly and adequately represent and protect the interests of the absent Settlement Class members in accordance with Fed. R. Civ. P. 23.

9. If the Settlement Agreement does not receive the Court's final approval, if final approval is reversed on appeal, or if the Settlement Agreement is terminated or otherwise fails to become effective, the Court's grant of conditional class certification of the Settlement Class shall be vacated, the Parties shall revert to their positions in the Action as they existed on [date before the Settlement Agreement is fully executed], and the Settlement Class Representatives and the Settlement Class members will once again bear the burden to prove the propriety of class certification and the merits of their claims at trial.

10. Class Notice. The Court finds that the Settlement as set forth in the Settlement Agreement falls within the range of reasonableness and warrants providing notice of such

Settlement to the members of the Settlement Class and accordingly, the Court, pursuant to Fed. R. Civ. P. 23(c) and (e), preliminarily approves the Settlement upon the terms and conditions set forth in the Settlement Agreement. The Court approves, as to form and content, the notices and claim form substantially in the form attached to the Settlement Agreement. Non-material modifications to the notices and claim form may be made by the Settlement Administrator without further order of the Court, so long as they are approved by the Parties and consistent in all material respects with the Settlement Agreement and this Order.

11. The Court finds that the plan for providing notice to the Settlement Class (the "Notice Plan") described in the Settlement Agreement constitutes the best notice practicable under the circumstances and constitutes due and sufficient notice to the Settlement Class of the terms of the Settlement Agreement and the Final Approval Hearing and complies fully with the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law. The Court directs that the settlement notice plan will commence no later than thirty (30) days from the date of this Preliminary Approval Order (the "Settlement Notice Date").

12. The Court further finds that the Notice Plan adequately informs members of the Settlement Class of their right to exclude themselves from the Settlement Class so as not to be bound by the terms of the Settlement Agreement. Any member of the Class who desires to be excluded from the Settlement Class, and therefore not bound by the terms of the Settlement Agreement, must submit a timely and valid written Request for Exclusion pursuant to the instructions set forth in the Notice.

13. Settlement Administrator. The Court appoints EAG Gulf Coast, LLC as the Settlement Administrator. EAG Gulf Coast, LLC shall be required to perform all duties of the Settlement Administrator as set forth in the Settlement Agreement and this Order. The Settlement Administrator shall post the Long Form Notice on the Settlement Website.

14. Objection and "Opt-Out" Deadline. Settlement Class Members who wish to object to the Settlement or to exclude themselves from the Settlement must do so by the Objection Deadline and Opt-Out Deadline, which is _____, 2024 [60 days from the

Settlement Notice Date]. If a Settlement Class member submits both an Opt-Out Form and Objection, the Settlement Class member will be deemed to have opted out of the Settlement, and thus to be ineligible to object. However, any objecting Settlement Class Member who has not timely submitted a completed Opt-Out Form will be bound by the terms of the Agreement upon the Court's final approval of the Settlement.

15. Exclusion from the Settlement Class. Settlement Class members who wish to opt out of and be excluded from the Settlement must following the directions in the Class Notice and submit a Request for Exclusion to the Settlement Administrator, postmarked no later than the Opt-Out Deadline, which is _____, 2024 [60 days from the date of the Settlement Notice Date]. The Request for Exclusion must be personally completed and submitted by the Settlement Class member or his or her attorney. One person may not opt someone else and so-called "class" opt-outs shall not be permitted or recognized. The Settlement Administrator shall periodically notify Class Counsel and Defendant's counsel of any Requests for Exclusion.

16. All Settlement Class members who submit a timely, valid Request for Exclusion will be excluded from the Settlement Class and will not be bound by the terms of the Settlement Agreement, shall not be bound by the release of any claims pursuant to the Settlement Agreement or any judgment, and shall not be entitled to object to the Settlement Agreement or appear at the Final Approval Hearing. All Settlement Class Members who do not submit a timely, valid Request for Exclusion will be bound by the Settlement Agreement and the Judgment, including the release of any claims pursuant to the Settlement Agreement.

17. Objections to the Settlement. Any objection to the Settlement must be in writing, postmarked on or before the Objection Deadline, which is _____, 2024 [60 days from the Settlement Notice Date], and sent to the Settlement Administrator at the addresses set forth in the Class Notice. Any objection regarding or related to the Settlement must contain (i) a caption or title that clearly identifies the Action and that the document is an objection, (ii) information sufficient to identify and contact the objecting Settlement Class Member or his or her attorney if represented, (iii) information sufficient to establish the person's standing as a

Settlement Class Member, (iv) a clear and concise statement of the Settlement Class Member's objection, as well as any facts and law supporting the objection, (v) identification of the case name, case number, and court for any prior class action lawsuit in which the objector and the objector's attorney (if applicable) has objected to a proposed class action settlement in the last five years, the general nature of such prior objection(s), and the outcome of said prior objection(s), (vi) the objector's signature, and (vii) the signature of the objector's counsel, if any. Upon Court order, the Parties will have the right to obtain document discovery from and take depositions of any Objecting Settlement Class Member on topics relevant to the Objection.

18. Objecting Settlement Class Members may appear at the Final Approval Hearing and be heard. If an objecting Settlement Class Member chooses to appear at the Final Approval Hearing, a notice of intention to appear must be filed with the Court or postmarked no later than the Objection Deadline.

19. Any Settlement Class Member who does not make a valid written objection as set forth by the Settlement shall be deemed to have waived such objection and forever shall be foreclosed from making any objection to the fairness or adequacy of or from seeking review by any means, including an appeal, of the following: the Settlement, the Settlement Agreement, the payment of attorneys' fees and costs, service award, or the Final Approval Order and Judgment.

20. Submission of Claims. To receive a Cash Award, the Settlement Class Members must follow the directions in the Notice and file a claim with the Settlement Administrator by the Claims Deadlines, which is which is _____, 2024 [60 days from the Settlement Notice Date]. Settlement Class Members who do not submit a valid claim will not receive a Cash Award and will be bound by the Settlement.

21. Schedule of Events. The following events shall take place as indicated in the chart below:

Event	Date
Deadline for Settlement Website to go live	21 calendar days following entry of this Preliminary Approval Order

Deadline to commence Notice Plan ("Settlement Notice Date")	30 calendar days following entry of this Preliminary Approval Order
Deadline for Claim Forms to be postmarked or submitted online	60 calendar days after the Settlement Notice Date
Deadline for Objections to be postmarked	60 calendar days after the Settlement Notice Date
Deadline for Opt-Out Requests to be postmarked	60 calendar days after the Settlement Notice Date
Deadline for Plaintiffs' application for attorneys' fees and costs and Plaintiffs' service awards	30 calendar days after Settlement Notice Date
Deadline for Plaintiffs to file motion for final approval of class action settlement	14 calendar days prior to Final Approval Hearing
Deadline for Parties to file all papers in response to any timely and valid Objections	14 calendar days prior to Final Approval Hearing
Final Approval Hearing	120 calendar days after entry of this Preliminary Approval Order of class action settlement (or the earliest date thereafter available on the Court's calendar)

22. On or before fourteen (14) days prior to the Final Approval Hearing, the Settlement Administrator shall prepare and deliver a report stating the total number of Settlement Class members who have submitted timely and valid Requests for Exclusion and Objections, along with the names of such Settlement Class members, to Class Counsel, who shall file the report with the Court, and Defendant's counsel.

23. Authority to Extend. The Court may, for good cause, extend any of the deadlines set forth in this Preliminary Approval Order without further notice to the Settlement Class Members. The Final Approval Hearing may, from time to time and without further notice to the Settlement Class, be continued by order of the Court.

24. If, for any reason, the Settlement Notice Date does not or cannot commence at the time specified above, the Parties will confer in good faith and recommend a corresponding

extension of the Claims Deadline and, if necessary, appropriate extensions to the Objection and Opt-Out deadlines, to the Court.

25. Notice to appropriate federal and state officials. Defendant shall, within ten (10) calendar days of the entry of this Preliminary Approval Order, prepare and provide the notices required by the Class Action Fairness Act of 2005, Pub. L. 109-2 (2005), including, but not limited to, the notices to the United States Department of Justice and to the Attorneys General of all states in which Settlement Class members reside, as specified in 28 U.S.C. § 1715. Class Counsel shall cooperate in the drafting of such notices and shall provide Defendant with any and all information in their possession necessary for the preparation of these notices.

26. Final Approval Hearing. The Court shall conduct a Final Approval Hearing to determine final approval of the Agreement on _____ at _____ [am/pm] [a date no earlier than 120 days after the Preliminary Approval Order]. At the Final Approval Hearing, the Court shall address whether the proposed Settlement should be finally approved as fair, reasonable and adequate, and whether the Final Approval Order and Judgment should be entered; and whether Class Counsel's application for attorneys' fees, costs, expenses and service award should be approved. Consideration of any application for an award of attorneys' fees, costs, expenses and service award shall be separate from consideration of whether or not the proposed Settlement should be approved, and from each other. The Court will not decide the amount of any service award or Class Counsel's attorneys' fees until the Final Approval Hearing. The Final Approval Hearing may be adjourned or continued without further notice to the Class.

27. In the Event of Non-Approval. In the event that the proposed Settlement is not approved by the Court, the Effective Date does not occur, or the Settlement Agreement becomes null and void pursuant to its terms, this Order and all orders entered in connection therewith shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in this civil action or in any other case or controversy before this or any other Court, administrative agency, arbitration forum, or other tribunal; in such event the

Settlement and all negotiations and proceedings directly related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement.

28. Stay of Proceedings. With the exception of such proceedings as are necessary to implement, effectuate, and grant final approval to the terms of the Settlement Agreement, all proceedings are stayed in this Action and all Settlement Class members are enjoined from commencing or continuing any action or proceeding in any court or tribunal asserting any claims encompassed by the Settlement Agreement, unless the Settlement Class member timely files a valid Request for Exclusion as defined in the Settlement Agreement.

29. No Admission of Liability. By entering this Order, the Court does not make any determination as to the merits of this case. Preliminary approval of the Settlement Agreement is not a finding or admission of liability by Defendant. Furthermore, the Settlement Agreement and any and all negotiations, documents, and discussions associated with it will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation, or p1inciple of common law or equity, or of any liability or wrongdoing by Defendant, or the truth of any of the claims. Evidence relating to the Settlement Agreement will not be discoverable or used, directly or indirectly, in any way, whether in this Action or in any other action or proceeding before this or any other Court, administrative agency, arbitration forum, or other tribunal, except for purposes of demonstrating, describing, implementing, or enforcing the terms and conditions of the Agreement, this Order, the Final Approval Order, and the Judgment.

30. Retention of Jurisdiction. The Court retains jurisdiction over this Action to consider all further matters arising out of or connected with the Settlement Agreement and the settlement described therein.

IT IS SO ORDERED.

Dated: _____

_____
The Honorable Edgardo Ramos
United States District Judge

EXHIBIT 9

Undertaking

Settlement Agreement

Kandel, et al. v. Dr. Dennis Gross Skincare, LLC

Case No. 1:23-cv-01967-ER

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May 31, 2024

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Re: ***Jami Kandel, et al. v. Dr. Dennis Gross Skincare, LLC; Clarkson Law Firm P.C.' Undertaking Regarding Attorneys' Fees and Costs***
Case No. 1:23-cv-01967-ER

Dear Counsel:

Plaintiffs Jami Kandel, Mocha Gunaratna, and Renee Camenforte ("**Plaintiffs**"), and Defendant Dr. Dennis Gross Skincare, LLC ("**Defendant**"), by and through their undersigned counsel stipulate and agree as follows:

WHEREAS, Class Counsel (as defined in the underlying Settlement Agreement) and their law firm desire to give an undertaking (the "**Undertaking**") for repayment of their award of attorneys' fees and costs, as is required by the Settlement Agreement, and

WHEREAS, the Parties agree that this Undertaking is in the interests of all Parties and in service of judicial economy and efficiency.

WHEREAS, capitalized terms used herein without definition have the meanings given to them in the Settlement Agreement.

By receiving any payments pursuant to the Settlement Agreement, Clarkson Law Firm, P.C., submit to the jurisdiction of the United States District Court, Southern District of New York ("Court") for the enforcement of and any and all disputes relating to or arising out of the reimbursement obligation set forth herein and the Settlement Agreement.

Clarkson Law Firm, P.C., and its successors and assigns, shall be liable for Class Counsel's obligations to return such payments pursuant to this Undertaking and Paragraph 3.3 of the underlying Settlement Agreement. In the event of dissolution of the Clarkson Law Firm, P.C., its shareholders shall be jointly and severally liable to return such payments.

Defendant will pay Class Counsel the Court awarded attorneys' fees and costs as provided in the Settlement Agreement within fourteen (14) calendar days of entry of the Court's Final Order and Judgment approving the settlement and fee award, notwithstanding any appeals or any other proceedings which may delay the Effective Date of the Settlement.

If the Final Approval Order and Judgment or any part of it is overturned, reduced, vacated, or otherwise modified prior to the Effective Date, then within forty-five (45) days of such event Clarkson Law Firm, P.C. shall be obligated by Court order to return any difference between the amount of the original award and any reduced award. If the Settlement remains in force, the difference shall be returned to the Settlement Fund; if the Settlement is not in force, the difference shall be returned to Defendant. The terms set forth herein are expressly incorporated into this Class Action Settlement Agreement and shall be binding as if fully set forth herein.

This Undertaking and all obligations set forth herein shall expire upon finality of all direct appeals of the Final Order and Judgment.

In the event Class Counsel fails to repay to Defendant any attorneys' fees and costs that are owed pursuant to this Undertaking, the Court shall, upon application of Defendant, and notice to Class Counsel, summarily issue orders, including but not limited to judgments and attachment orders against Clarkson Law Firm, P.C. for the unpaid sum.

The undersigned stipulate, warrant, and represent that they have both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of Clarkson Law Firm, P.C.

DATED: May 31, 2024

CLARKSON LAW FIRM, P.C.

By: */s/*
Ryan J. Clarkson, Esq.
590 Madison Avenue, 21st FLR
New York, NY 10022

Counsel for Plaintiffs and the Proposed Class

EXHIBIT B

Daubert Order

Gunaratna, et al. v. Dr. Dennis Gross Skincare, LLC,
Case No. 2:20-cv-02311-MWF-GJS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 20-2311-MWF (GJSx) **Date: March 15, 2023**
Title: Mocha Gunaratna v. Dennis Gross Cosmetology LLC et al

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): **[REDACTED] AMENDED** ORDER (CORRECTING DOCKET NO. 243) RE: MOTIONS TO EXCLUDE OR STRIKE EXPERT REPORTS AND TESTIMONY [186] [188] [214] [221]

Before the Court are two motions:

The first is Defendant Dr. Dennis Gross Skincare, LLC's Motion to Strike Expert Reports and to Exclude Testimony of Plaintiffs' Experts Under Federal Rule of Evidence 702 and *Daubert* ("Defendant's or Def. Motion"), filed on December 9, 2022. (Docket Nos. 186, 221). Plaintiffs Mocha Gunaratna and Renee Camenforte filed an Opposition on January 6, 2023. (Docket Nos. 197, 215). Defendant filed a Reply on January 23, 2023. (Docket Nos. 202, 222).

The second is Plaintiffs' Motion to Exclude the Opinion and Testimony of Defendant's Experts ("Plaintiffs or Pltfs. Motion"), filed on December 9, 2022. (Docket Nos. 188, 214). Defendant filed an Opposition on January 6, 2023. (Docket Nos. 198, 223). Plaintiffs filed a Reply on January 23, 2023. (Docket Nos. 203, 216).

The Court notes that several versions of each brief have been filed due to partially unsuccessful sealing requests and notices of errata. In this Order, the Court relies on the complete, unsealed versions of each brief, which were filed pursuant to this Court's Order Requiring Parties to File Complete Unredacted Versions of Briefs (Docket No. 212).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 20-2311-MWF (GJSx) **Date: March 15, 2023**
Title: Mocha Gunaratna v. Dennis Gross Cosmetology LLC et al

The Court has read and considered the papers filed in connection with the Motions and held a hearing on **February 13, 2023**.

The Court rules as follows:

- Defendant's Motion is **DENIED *in full***. All of Defendant's challenges either improperly fault Plaintiffs' experts for testing Plaintiffs' theory of the facts and/or go to the weight, not the admissibility, of the evidence. However, because Plaintiffs' damages experts have not yet conducted the conjoint analysis, the denial of Defendant's Motion is, of course, ***without prejudice*** as Defendant may seek to exclude supplements to those experts' reports once the analysis is conducted and conclusions are drawn therefrom.

- Plaintiffs' Motion is **GRANTED *in part*** and **DENIED *in part*.**

    - **Sarah Aaron M.D., Ph.D.:** Dr. Arron's opinions and testimony regarding the efficacy of Defendant's products are excluded to the extent Defendant relies on those opinions to rebut/disprove liability, though those opinions are admissible on the issue of damages. Dr. Arron's opinions and testimony regarding the equivalency of the "AC Vegetable Collagen PF" and hydrolyzed animal collagen, are likewise excluded, because Dr. Arron, a dermatologist, is not qualified to interpret lab results regarding the chemical composition of Defendant's products, and even if she was, she failed to adequately explain her methodology in independently evaluating the equivalency report provided to Defendant by Active Concepts LLC ("Active Concepts"). Likewise, to the extent Dr. Arron's statements regarding certain properties of collagen are unsupported by any reliable scientific evidence in the record, or even by an explanation as to how Dr. Arron arrived at those opinions, those statements are excluded. However, Dr. Arron's opinions regarding Vitamin C's ability to boost collagen are admissible and her report

will not be excluded based on her alleged bias as an endorser and consumer of Defendant's products.

- **Sarah Butler:** To the extent Ms. Butler's opinions rely on a novel and unsubstantiated scientific theory (i.e., that "plant based collagen amino acids" exist), her opinions and report are excluded because they are irrelevant, unreliable, and subject to exclusion under Rule of Evidence 403. Specifically, the questions, answers, and conclusions drawn from Question Numbers 13-15 of her consumer survey are inadmissible as well as her critiques of Plaintiffs' experts based on the same flawed premise. Otherwise, her report, survey, and conclusions are admissible and any further flaws in her methodology will be subject to cross-examination.

- **D. Scott Bosworth, CFA**: Mr. Bosworth's opinions that rely on Ms. Butler's opinions without independent evaluation are excluded as unreliable. Further, Mr. Bosworth's critiques of Plaintiffs' survey experts (Forrest Morgeson, Ph.D., and Steven P. Gaskin, M.S.) are excluded because, although a qualified economics expert, Defendant does not explain how or why Mr. Bosworth is qualified in the field of consumer survey research methodology and design. Otherwise, Mr. Bosworth's opinions are admissible and any further flaws in his analysis will be subject to cross-examination.

The Court notes that it almost never grants *Daubert* motions, as they almost always go to the weight, rather than the admissibility of the evidence. However, this action presented an unusual scenario where, rather surprisingly, Defendant's experts adopted Defendant's theory of the facts, which itself fundamentally relies on an unsubstantiated scientific claim.

Defendant wants to make this action about whether "collagen" means "collagen" and what consumers understand "collagen" to mean. The problem for Defendant is that "collagen," standing on its own, is not some undefined, amorphous term — there is a widely-accepted scientific definition describing collagen. Even Defendant's own

expert, when pressed, defines collagen as a protein only found in animals.

Defendant seems to refuse to accept that the action, as defined by the masters of the complaint (i.e., Plaintiffs), is actually about whether consumers understand "C + Collagen" to mean that Defendant's products ***contain*** collagen and whether that representation is material to consumers. Defendant is free to dispute that version of the facts (i.e., that the label does not convey that the products contain collagen and that the presence of collagen is not material to consumers' purchasing decision). But Defendant is not free to offer its own definition of "collagen" unsupported by any reliable science in the record. That alternative, non-scientific theory of the facts is quite literally the whole point of Plaintiffs' action.

In sum, the Court's holdings reflect that much of Defendant's expert reports blindly adopt the notion that "plant based collagen amino acids" exist, but that notion fails at its inception. Therefore, to the extent the experts endorse the unsubstantiated "plant collagen" theory, their opinions are herein excluded.

I. LEGAL STANDARD

Rule 702 provides that a "witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if" all of the following elements are met:

> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
>
> (b) the testimony is based on sufficient facts or data;
>
> (c) the testimony is the product of reliable principles and methods; and
>
> (d) the expert has reliably applied the principles and methods to the facts of the case.

Fed. R. Evid. 702.

The inquiry into the admissibility of an expert opinion under Federal Rule 702 is a "flexible one." *Primiano v. Cook*, 598 F.3d 558, 564 (9th Cir. 2010) (citing *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592-94 (1993)). The Ninth Circuit has explained that "[s]haky but admissible evidence is to be attacked by cross examination, contrary evidence, and attention to the burden of proof, not exclusion." *Id.* at 564. "[T]he test under *Daubert* is not the correctness of the expert's conclusions but the soundness of his methodology." *Id.* at 564 (quotation marks omitted). As such, the role of a district court is that of "a gatekeeper, not a fact finder." *Id.* at 565 (quotation marks omitted); *see also Alaska Rent-A-Car, Inc. v. Avis Budget Grp., Inc.*, 738 F.3d 960, 969-70 (9th Cir. 2013) (same). "An expert can appropriately rely on the opinions of others, however, 'if other evidence supports his opinion and the record demonstrates that the expert conducted an independent evaluation of that evidence.'" *Kim v. Benihana, Inc*, No. CV 19-02196-JWH (KKx), 2022 WL 1601393, at *8 (C.D. Cal. Mar. 25, 2022) (internal citation omitted). And an expert may adopt his party's version of the disputed facts, "unless those factual assumptions are 'indisputably wrong.'" *In re Tesla, Inc. Sec. Litig.*, No. 18-CV-04865-EMC, 2022 WL 7374936, at *7 (N.D. Cal. Oct. 13, 2022) (quoting *Guillory v. Domtar Indus. Inc.*, 95 F.3d 1320, 1331 (5th Cir. 1996) (excluding expert opinion based on a "fictitious set of facts").

"To carry out its gatekeeping role, a district court must find that an expert's testimony is reliable – an inquiry that focuses not on 'what the experts say,' or their qualifications, 'but what basis they have for saying it.'" *United States v. Holguin*, 51 F.4th 841, 854 (9th Cir. 2022) (internal quotation omitted). For some experts, "the relevant reliability concerns may focus upon "personal knowledge or experience," or "whether the expert's experience supports the expert's conclusions," or "whether the expert's reasoning is circular, speculative, or otherwise flawed" or "whether the expert's reasoning is adequately explained." *Id.* (citations omitted).

It is the proponent of the expert who has the burden of proving admissibility. To enforce this burden, the district court can exclude the opinion if the expert fails to

identify and defend the reasons that his conclusions are anomalous. *Lust By & Through Lust v. Merrell Dow Pharms., Inc.*, 89 F.3d 594, 598 (9th Cir. 1996).

II. BACKGROUND

The Court incorporates by reference the factual background contained in the Court's Order Denying in Part and Granting in Part Defendant's Motion to Dismiss (the "MTD Order") as if fully set forth herein. (Docket No. 35). Therefore, the Court limits its recitation of the facts below to those necessary for context.

Plaintiffs have brought a putative class action against a skincare company, Dr. Dennis Gross Skincare, LLC, alleging that Defendant falsely advertises its product line named and labeled "Dr. Dennis Gross C + Collagen" (the "Products"), given the fact that the Products (admittedly) do not actually contain any collagen, as the word is typically and scientifically understood. Rather, the products contain vegetable-derived amino acid molecules, which Defendant claims mimic the structure of "hydrolyzed" collagen. But collagen is a protein found exclusively in the cartilage, bone, and tissues of animals, fish, and humans, and is not found in plants.

Because collagen has been linked to maintaining youthful skin, hair, and nails, there is a booming market of anti-aging skincare products containing collagen in the United States. Therefore, Plaintiffs contend that the "collagen" representations are false, misleading, and deceptive, because a reasonable consumer interprets "C + Collagen" to mean that the Products contain Vitamin C and collagen.

Defendant argues that its labeling is not false for two reasons. First, Defendant contends that consumers understand "C + Collagen" to mean that the products contain Vitamin "C" (which it does), and Vitamin C boosts ("+") the body's natural production of "Collagen." Plaintiffs argue that Defendant's own experts and products reject this theory because the "+" is commonly used in the industry to indicate "and" not "boosts."

Second, Defendant argues that the "collagen" label is not false because the Products actually contain plant-sourced "collagen amino acids," which, according to

Defendant is truthfully represented on the Products' ingredients panel on the packaging. Specifically, what Defendant calls "collagen amino acids" is a solution that consists of amino acids derived from corn, soy, and wheat, not from collagen. Plaintiffs respond arguing that this theory is devoid of any factual or scientifically valid support.

Defendant also argues that the "collagen" representation cannot be material because, the amino acids in Defendant's Products are chemically and functionally identical to hydrolyzed animal collagen. By this, Defendant suggests that it has added glycine, proline, and hydroxyproline (i.e., certain amino acids) to the Products, which are amino acids that can be found in both plants and collagen, and which make the Products effective at achieving its purported goals. Plaintiffs contend that the efficacy of the Products is irrelevant because, regardless of whether the product works, Defendant intentionally chose to capitalize on the buzz around "collagen" products instead of investing in marketing to explain to consumers that plant-based amino acids have similar anti-aging attributes as does collagen. And therefore, because consumers, whether logically or not, attach value to the label "collagen," they have been harmed by Defendant's alleged false advertising because the Products' label distorts the available information in the market, and thereby, inflates the price of the Products.

Each party moves to exclude each of the other parties' experts and their opinions. In sum, there are challenges to seven experts. The Court discusses each challenge in turn.

III. DISCUSSION

A. Product Composition Experts

1. Defendant's Challenge to Plaintiffs' Expert: John C. Fetzer, Ph.D.

Dr. Fetzer has his undergraduate degree in Chemistry from the University of Arkansas and a Ph.D. in Analytical Chemistry from the University of Georgia. The topics of his dissertation related to the separation methods of extraction and chromatography. He worked as a research chemist for over 21 years at the Chevron

Research Center in Richmond, California. He has been a consultant for over 20 years on a variety of scientific areas, including development of analytical methods for liquid chromatography methods for polypeptides and for various product formulations and has assessed data, infrared, mass, and nuclear magnetic resonance spectra that were produced by an outside contract laboratory. (Report of John C. Fetzer ("Fetzer Report") (Docket No. 228-42) at ¶¶ 2-4). Defendant does not challenge Dr. Fetzer's qualifications to opine on matters of chemistry and chemical testing.

Rather, Defendant seeks to exclude Dr. Fetzer's opinion that the the amino acids within Dr. Dennis Gross's C + Collagen Products "are not 'collagen amino acids.'" (*Id.* ¶ 10).

To support this argument, Defendant attacks paragraph 24 of Dr. Fetzer's report, in which he discusses the data on which Defendant relies to claim that its Products are structurally and functionally equivalent to animal collagen. The relevant report was provided to Defendant by a third party company, Active Concepts. Dr. Fetzer opines that the Active Concepts equivalency report (the "AC Equivalency Statement") "reflects a comparison of 'AC Vegetable Collagen PF' [the solution used in Defendant's product] to bovine collagen [naturally occurring animal collagen]." (*Id.* ¶ 24).

Defendant cites to Dr. Fetzer's deposition where he "admits" that the conclusion in paragraph 24 would have to be changed if it were true that the "AC Vegetable Collagen PF" in the data he reviewed was being compared to a vegetable sample (as opposed to an animal bovine sample). (Def. Motion at 37) (citing Deposition of John C. Fetzer ("Fetzer Depo.") 132:3-137:13). Defendant argues that Dr. Fetzer assumed a row of data labeled "Sample 1-Collagen" in the documents referred to bovine collagen "despite there being no clear indication that it was." (Def. Mot. at 36). This entire line of argument is wrong twice over.

First, as Plaintiffs point out, the alleged inaccuracy identified in paragraph 24 of Dr. Fetzer's Report has no bearing on Dr. Fetzer's conclusion that, while the Products contain amino acids, "[i]t is not accurate to name any amino acid as a 'collagen' amino acid or name any solution that may contain some of the same amino acids from

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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Case No. CV 20-2311-MWF (GJSx) **Date: March 15, 2023**
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collagen as collagen." (Pltf. Opp. at 35) (citing Fetzer Report ¶ 64). At no point in his report or deposition did Dr. Fetzer suggest that the conclusion in paragraph 24 informed Dr. Fetzer's separate conclusion that "[t]he amino acids within [the] Products are not "collagen amino acids" – and that they are derived from "corn, soy, and wheat." (*Id.* ¶ 21).

In other words, Dr. Fetzer's opinion that the amino acids "are not derived from collagen," has nothing to do with whether the amino acids are in fact ***equivalent*** to animal collagen. Dr. Fetzer explains that his conclusion is instead based on his understanding of collagen's chemical composition and origin, combined with Defendant's admission that the Products have "never had animal-derived collagen amino acids" and that "native vegetables do not produce the collagen protein that we know from animals." (*Id.*). Therefore, Dr. Fetzer concludes that the Products "contain amino acids from vegetables." (*Id.*). Dr. Fetzer further demonstrates the distinction between his opinion regarding equivalency and his opinion regarding the lack of collagen in Defendant's Products, when he opines that even if there were some similarities between the vegetable amino acids in Defendant's Products and real collagen, calling the amino acid solution within the products as "collagen" or "collagen amino acids" is "analogous to stating that a collection of the 26 letters of the alphabet in approximate proportions to those of Shakespeare's Hamlet mean that those letters must have really been from a text of Hamlet." (*Id.* ¶ 14).

Second, even if the conclusion in paragraph 24 informed Dr. Fetzer's repeated opinion that the Products do not contain "collagen amino acids" (it did not), the record is entirely unclear in regard to whether "Sample-1 Collagen" in the Amino Acid Analysis Service Lab, Inc. data ("AAA" – the company who ran the equivalency tests that Active Concepts reported) refers to bovine collagen (as Plaintiffs argue) or Defendant's "AC Vegetable Collagen PF," (as Defendant argues). So, the Court would not exclude testimony based on this genuine dispute of fact.

Both sides rely on deposition testimony of AC Concepts' Rule 30(b)(6) witness, Erica Batounis. Her testimony was confusing, ambiguous, and contradictory and does not clearly establish much at all. At one point, she confirmed that the "Sample-1

Collagen" was a "bovine collagen." (*See* Deposition of Erica Batounis (Batounis Depo. at 188:19-189:10) (Q. Okay. And within this report . . . what does it compare . . . . A. It's showing, basically, the percent amino acid content in the sample. Q. Okay. And what samples were used to compare? A. This was the AC Vegetable Collagen PF was compared to a bovine collagen."). However, she then quickly backtracked, claiming that the "[t]here's only results for one product here," despite the fact that the document seems to clearly show a comparison of solutions with different amino acid contents. (*Id.* at 190:3). Regardless, the Court need not and does not resolve this factual dispute. But the Court does reject Defendant's characterization of Dr. Fetzer's view of the record as "entirely unfounded." (Def. Motion at 36).

Second, Defendant tries to argue that Dr. Fetzer's opinions are irrelevant because he offers no opinion on the efficacy of the Products and does not discuss the effect of Vitamin C on the skin. This too is a red herring and again demonstrates Defendant's unwillingness to accept the undeniable proposition that Plaintiffs are the masters of their own complaint. Plaintiff retained Dr. Fetzer to opine on the composition of Defendant's Products. That is precisely the opinion he gave and precisely the type of opinion, as an experienced chemist, he is qualified to give.

Accordingly, Defendant's Motion as to Dr. Fetzer's opinion and testimony is **DENIED**.

2. Plaintiffs' Challenge to Defendant's Expert: Sarah Arron. M.D., Ph.D.

Unfortunately, Defendant does not fight Dr. Fetzer's fire with another chemist's fire. Instead, in response to the opinions of Plaintiffs' qualified ***chemist***, Defendant attempts to offer the opinions of a ***dermatologist***, that are not supported by the record.

Dr. Arron is a board-certified dermatologist, with expertise in "clinical dermatology including medical, surgical, and aesthetic skin care," and whose research is primarily in skin cancer. (Report of Sarah Arron ("Arron Report") (Docket. No. 225-13) at 1). Her general dermatology practice involves "surgical dermatology, including micrographic surgery and other procedures," and her aesthetic dermatology

practice involves administering "Botox, fillers, [and] lasers." (Deposition of Dr. Sarah Arron ("Arron Depo") (Docket No. 214-2) at 23:10-16). Dr. Arron has never before worked on, or testified in, a case involving a class action, false advertising, or any consumer products or authored any scientific publications on the use or effect of cosmetic collagen. (*Id.* at 69:6-70:6). Dr. Arron does not claim to be an expert in molecular chemistry, biochemistry, or collagen synthesis. (*Id.* at 39:13-41:19).

Plaintiffs challenge Dr. Arron's opinion and testimony on four grounds: (1) that her opinions as to efficacy are irrelevant; (2) that she is not qualified to opine on the equivalency of collagen and plant-derived amino acids and failed to verify her opinion, but instead formulated her opinion solely for purposes of testifying in this action; (3) her report contains false and misleading information regarding amino acids in collagen; and (4) her endorsements of Defendant's products render her opinion impermissibly biased. The Court addresses each of these arguments in turn.

Efficacy: As to Dr. Arron's opinions regarding the Products efficacy, the parties' conflate several separate issues. One issue is whether Dr. Arron's opinion on the Products' anti-aging or appearance-enhancing abilities is relevant to the issue of whether the label "C + Collagen" is false or misleading. There is also the separate issue of whether Dr. Arron's opinion that Vitamin C boosts a person's internal collagen is relevant to the issue of whether the label "C + Collagen" is false or misleading. Finally, there is the issue, barely addressed by the parties, of whether Dr. Arron's opinion regarding the Products' efficacy is relevant to the issue of damages, even if it is not relevant for liability.

The Court concludes that Dr. Arron's opinion as to the Products' overall efficacy is only relevant to the issue of damages, not falsity or deception. Dr. Arron opines that [redacted] The Court agrees with Plaintiffs that, in a false advertising case challenging the falsity of a product label, whether the

Products nonetheless have value is irrelevant to the issue of deception. *See Kwikset Corp. v. Superior Ct*., 51 Cal. 4th 310, 328, 120 Cal. Rptr. 3d 741 (2011) (collecting cases demonstrating that "[c]onsumer preferences may be heavily influenced by information regarding the manner in which goods are produced" and noting that "[a]lthough the circumstances of production 'generally do not bear on the functioning, performance, or safety of the product, they nevertheless can, and often do, influence the willingness of consumers to purchase the product") (internal citations and quotation marks omitted).

Dr. Arron's testimony regarding her interpretation of what "Collagen + C" means and her opinion that Vitamin C tends to boost collagen are separate issues. As for her interpretation of what "Collagen + C" conveys, Dr. Arron testified as follows:

> I think the C + Collagen describes two things. It describes the fact that this product boosts collagen, and it describes the fact that the ingredients of this product include an ingredient under the umbrella of Vitamin C. It would be referred to as Vitamin C, and an ingredient under the umbrella of collagen that would be collagen amino acids. It's those two ingredients that boost native collagen.

(Arron Depo. 155:24-156:7).

And in response to the question, "what specifically in the phrase C + Collagen communicates boost in your mind?, Dr. Arron responded:

> "I'll have to fall back on my dermatologic expertise that C and collagen are both known to increase internal collagen."

(*Id.* at 156:12-14).

As an initial matter, even if Dr. Arron reads C + Collagen to, in one respect, describe the Products' ability to ***boost*** collagen, the sentence immediately preceding

that testimony demonstrates that even she reads the label as ***also*** suggesting that "collagen" is an ingredient in the Products (which, of course, corroborates Plaintiffs' theory). But, more important, the test for falsity is based on an objectively reasonable average consumer, not a single dermatologist's personal view, and therefore, her understanding of what the label conveys cannot be used as evidence negating falsity.

Dr. Arron also opines that Vitamin C is "used in many skin care products for collagen boosting, along with its capacity to act as a photo protectant and antioxidant." (*Id*. at 3) (citing Al-Niami 2017). Further, she opines that "[t]je increase in collagen with application to topical ascorbic acid has been demonstrated by skin biopsy." (*Id.*) (citing Fitzpatrick, 2002).

With respect to those opinions, to the extent that Defendant can present competent evidence that objectively reasonable, average consumers do interpret C + Collagen as conveying that the Products ***boost*** collagen (as opposed to ***containing*** collagen), Dr. Arron's expert opinion would be admissible to corroborate the truth of the label.

At the hearing, Defendant's counsel drilled down on this "boosting" theory and argued that it is Defendant's main position. The Court does not take issue with this theory from a scientific perspective. If it turns out to be relevant whether vitamin c boosts collagen, Dr. Aaron will be entitled to testify to the fact that vitamin c is capable of boosting collagen, as that appears to be more in her realm of expertise as a dermatologist with knowledge of how products work and interact with the skin.

While, the Court understands that, in opposing Defendant's summary judgment, Plaintiffs argue that no reasonable jury could conclude that "C + Collagen" suggests anything other than the fact that the Products contain collagen, excluding Dr. Arron's expert opinion on the ability of vitamin c to boost collagen before the Court makes a definitive ruling on that issue (or even a ruling as to whether the issue can be determined as a matter of law), would put the cart before the horse. Therefore, the Court will not, at this time, exclude such evidence based on relevance.

Finally, there is the issue of damages. While the Court agrees that the Products' efficacy simply does not bear on liability in this action, Plaintiffs explicitly acknowledge in other parts of the record that the efficacy of the Products ***does*** bear on the issue of damages. (*See* Pltfs. MSJ Opp. at 13) ("Controlling law, however, views liability and damages separately; otherwise, companies could always deceive consumers about a product's contents ***as long as it works***.") (emphasis in original); *see also Colgan v. Leatherman Tool Grp., Inc*., 135 Cal. App. 4th 663, 676-77, 38 Cal. Rptr. 3d 36 (2006), *as modified on denial of reh'g* (Jan. 31, 2006) (reiterating trial court's conclusion that, in the context of damages, "it would be inequitable to return to consumers the entire purchase price paid for the tools or the entire gross profit Leatherman received from the tools because, although the purchasers did not receive entirely what they bargained for, which was a tool made in the USA, Plaintiffs and these Class members did benefit from the quality, usefulness, and safety of these multi-purpose tools.") (internal quotation marks omitted).

At the hearing, Plaintiffs' counsel argued that efficacy is irrelevant even as to damages based on the California Supreme Court's holding in *Kwikset*. However, *Kwikset* discussed what is sufficient to allege economic injury to establish ***standing*** under the UCL, ***not damages***. While, as the Court acknowledged, efficacy is irrelevant to determining whether there is liability, which includes (as an element of the claim) that an economic injury occurred, *Kwikset* does not establish that efficacy is entirely irrelevant in determining the ***amount*** of economic damages. Given the damages in these types of actions are equitable in nature, courts have considered a products efficacy in determining the appropriate amount of restitution. For instance, courts have "held consistently that the full-refund model is an inappropriate measure of damages unless the plaintiff can prove the product conferred no benefits." *Mullins v. Premier Nutrition Corp.,* 178 F. Supp. 3d 867, 898 (N.D. Cal. 2016); *see also Zeiger v. WellPet LLC*, 526 F. Supp. 3d 652, 674–75 (N.D. Cal. 2021) ("[A] 'full refund' (that is, a price premium worth the same or more than the actual price of the product) can only be given if the product is actually worthless to the consumer."). Since Plaintiffs have not yet conducted the damages model, the Court does not know if Plaintiffs will try to put forth a price premium equal to or greater than the average price of the Products.

Therefore, the Court is not willing at this time to rule that the efficacy opinions are entirely irrelevant to damages.

Accordingly, Dr. Arron's generalized efficacy opinions and her testimony regarding the meaning of "C + Collagen," are inadmissible for purposes of rebutting/disproving ***liability***. *See United Food & Com. Workers Loc. 1776 & Participating Emps. Health & Welfare Fund v. Teikoku Pharma USA*, 296 F. Supp. 3d 1142, 1183 (N.D. Cal. 2017) ("[E]xclusion of opinions that are irrelevant as a matter of law or contrary to the law is appropriate through the *Daubert* process."). However, Dr. Arron's opinions regarding the Products' efficacy and the effects of Vitamin C, will be admissible for damages. And, at least for now, Dr. Arron's opinion regarding the effects of Vitamin C will not be excluded as irrelevant, though Plaintiffs may reraise the issue at later time (i.e., a motion in limine).

Equivalency of Vegetable Amino Acids and Collagen: The Court concludes that Dr. Arron's opinions and testimony regarding the presence of collagen in the Products "in the form of AC Collagen Amino Acids" and based on the "equivalency" of Defendant's AC Vegetable Collagen to actual hydrolyzed collagen, must be excluded.

In her report, under a heading titled "Plant-derived Collagen," Dr. Arron opines as follows:

(Arron Report at 5).

Further, under a heading entitled "AC Vegetable Collagen," Dr. Arron opines as follows:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 20-2311-MWF (GJSx) **Date: March 15, 2023**

Title: Mocha Gunaratna v. Dennis Gross Cosmetology LLC et al

(Report at 5).

Dr. Arron testified that she is not a chemist, has not researched equivalency of hydrolyzed solutions or plant protein hydrolysis, has never determined as part of her research what specific proteins could be broken down to purportedly deliver the characteristics of hydrolyzed collagen, and that she does not have expertise in chemical industry standards for equivalency. (*See* Arron Depo. at 202:20-204:3, 218:9-23, 222:11-12). As Plaintiffs point out, although she has published extensively on cancer research, she has no publications whatsoever that relate to chemistry, biochemistry, the nature of collagen, collagen production, or amino acids. (*See* Arron Report, Appendix A at 8-21). Plainly, Dr. Arron has no experience relevant to analyze or verify the results she relies upon to form her opinion that "AC Vegetable Collagen amino acids are also the functional equivalent of animal collagen amino acids." (Arron Report at 5); (*see generally*, Arron Depo.) (acknowledging in several respects that she does not have experience with the testing used in the AC Concepts Equivalency Statement); *see id.* at 229:12-13 ("I am not an expert in infrared spectroscopy[.]"); *see also id.* at 42:2-3,6-8 ("I would not claim to be an expert in all gel electrophoresis[.]").

While the Court does not mean to diminish Dr. Arron's otherwise laudable credentials as they relate to dermatology, the Court fails to understand how she can opine on a report demonstrating chemical equivalency, when she admits she lacks expertise to make an equivalency determination herself. (*See* Arron Depo. at 220:22-25) ("I was not asked to independently demonstrate equivalency or to reproduce any of

the experiments shown there, and that is beyond the scope of my expertise to perform those experiments.")

In response, Defendant counters that a "lack of sub-specialization does not render an expert in the general field unqualified." (Def. Opp. at 11) (citing *Racies v. Quincy Bioscience, LLC*, No. CV 15-00292-HSG, 2016 WL 5725079, at *6 (N.D. Cal. Sept. 30, 2016) (concluding that a nutritional scientist could testify on "protein digestion," despite the fact that none of the scientists publications discussed that specific topic). However, there is a difference between utilizing an expert in a certain field to opine on a ***sub***-specialization in that field, and utilizing an expert in one specialization (i.e., dermatology) to opine on ***an entirely different*** specialization (i.e., chemistry). Here, Defendant does not even attempt to link Dr. Arron's qualifications in dermatology to her ability to independently evaluate the AC Equivalency Statement. Defendant could essentially copy and paste its substantive argument in its Opposition directly into any other brief to urge that a different doctor (in any field) is qualified to assess the lab reports at issue. In other words, Defendant's argument boils down to the logically flawed premise that because Dr. Arron is trained as a scientist, she is therefore qualified to review lab reports in any field of science, regardless of whether she is familiar with the particular subject and methodologies used therein.

Courts regularly find that an expert's qualifications in one field do not automatically translate to qualification to opine in a separate field, even if those fields are related in some general sense. *See, e.g.*, *See Metabolife Int'l, Inc. v. Wornick,* 264 F.3d 832, 841 (9th Cir. 2001) ("[A] very significant fact to be considered is whether the experts are proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation"); *Nelson v. Matrixx Initiatives*, No. C 09-02904 WHA, 2012 WL 3627399, at *11 (N.D. Cal. Aug. 21, 2012), *aff'd sub nom. Nelson v. Matrixx Initiatives, Inc.*, 592 F. App'x 591 (9th Cir. 2015) ("Hwang is an otolaryngologist, and diagnoses ear, nose, and throat conditions. He has no specialized epidemiological or toxicological training or credentials. [] He has performed no independent scientific research on the issue of Zicam's ability to produce smell loss. He has never studied zinc gluconate, the active ingredient in Zicam or Zicam itself."); *In re Zicam Cold Remedy Mktg., Sales Pracs., & Prod. Liab. Litig.*,

No. 09-MD-2096-PHX-FJM, 2011 WL 798898, at *12 (D. Ariz. Feb. 24, 2011) ("Although Rule 702, Fed. R. Evid., classifies experts broadly, at least some relevant background is required. Dr. Davis has no academic training or clinical experience in pharmaceutical efficacy.")

Dr. Arron offered the following testimony in support of her qualifications to form an opinion regarding the veracity of the conclusions in the AC Equivalency Statement as follows:

> I have expertise in biomedical sciences which includes critical analysis of experiments like this and analysis of the data provided. And I have expertise in dermatology, which affords me information about the breakdown of collagen and the unique amino acid makeup. And therefore, I have the expertise to review this particular exhibit [the AC Equivalency Statement] and conclude from it that, yes, I agree with the equivalency presented here and form an opinion on that.

(Arron Depo. at 214:20-215:5).

Even if this Court were to accept that testimony as to her qualifications, this Court would nonetheless exclude her opinions because Dr. Arron does not adequately explain what, if any, methodology she used to independently assess the data in the AC Equivalency Statement. Rather, she testified that she never inquired about or communicated with the testing laboratory; she did not reproduce (or try to reproduce) any of the experiments showing in the AC Equivalency Statement; and she assumed much of the truth of the facts stated in the AC Equivalency Statement based on the very fact that it was within the AC Equivalency Statement. (*See* Arron Depo. at 227:22-25) ("I don't' have the expertise to determine whether they are significant. It is described as a 94.6 percent equivalence, which I interpret as very high equivalence."); *see id.* at 228:4-6 (Q: So you assume the result of the scan and how it was stated in the document? A: Yes."); *see also* at 232:10-25) ("[In your report] you talk about, Ultrasound imaging demonstrate[ing] that AC vegetable collagen PF was capable of increasing skin density . . . Q: And just to be clear you didn't review any ultrasound

imaging raw data. You simply accepted the accuracy of the statements as stated in the document you reviewed? A: Correct.").

Despite repeated questioning by Plaintiffs' counsel as to what steps Dr. Arron took to verify the AC Equivalency Statement, Dr. Arron left much to the imagination. While Defendant cites *In re ConAgra Foods, Inc*., 302 F.R.D. 537, 556 (C.D. Cal. 2014) for the proposition that "an expert can appropriately rely on the opinions of others," the district court expressly conditioned that reliance on a showing of "other evidence" that supports the expert's opinion and only if "the record demonstrates that the expert conducted an independent evaluation of that evidence." *See id.* ("An expert's sole or primary reliance on the opinions of other experts raises serious reliability questions.") (citing *Fosmire v. Progressive Max Ins. Co*., 277 F.R.D. 625, 629 (W.D. Wash. 2011); *American Key Corp. v. Cole National Corp*., 762 F.2d 1569, 1580 (11th Cir. 1985) ("Expert opinions ordinarily cannot be based upon the opinions of others whether those opinions are in evidence or not").

Here, the problem is that Dr. Arron could not in any coherent fashion explain what she did to independently evaluate the evidence, and in many respects admitted that she accepted AC Equivalency Statement at face value (despite the many flaws found by Plaintiffs' expert) because she does not have expertise in much of the techniques and methods used in the AC Equivalency Statement.

Therefore, the Court agrees with Plaintiffs that Dr. Arron lacks the "knowledge, skill, experience, training, [and] education" to opine on the equivalency of the solution in the Products with hydrolyzed collagen and even if she was qualified, her independent evaluation is unreliable given she failed to explain any legitimate and/or reliable method she used to independently evaluate the data. *See* Fed. R. Evid. 702. Therefore, the Court excludes her equivalency opinion.

Inaccurate Information About Collagen: Next, Plaintiffs seek to exclude Dr. Arron's opinions that hydroxyproline "is rarely found in other proteins [besides collagen], and thus serves as a direct molecular marker for collagen content" and that "[i]ntact collagen protein in skin products would not be absorbed." (Arron Report at 4).

Dr. Arron does not provide any explanation as to the basis for those opinions. She does not point to her own or even other peer-reviewed research to make those claims and Plaintiffs cite scientific literature and their own expert to demonstrate that those claims are patently false. (Pltf. Mot. at 13-14). While Defendant characterizes this dispute as merely a "battle of experts," without proffering any basis for her opinions, the Court cannot conclude that Dr. Arron's opinions are reliable or based on sufficient facts and/or data. *See Guidroz-Brault v. Missouri Pac. R. Co.*, 254 F.3d 825, 830 (9th Cir. 2001) (affirming exclusion of portions of expert's opinion based on an "assumption [that found] [] no support in the physical facts as described by the reports and other evidence in the record"). Therefore, the Court will exclude those opinions as well.

Bias: Finally, Plaintiffs argue that Dr. Arron's opinions should be excluded based on bias, because she is an endorser and user of Defendant's products. However, that is not a sufficient ground to exclude an expert on a *Daubert* motion. *See United States v. Abonce–Barrera*, 257 F.3d 959, 965 (9th Cir. 2001) ("Generally, evidence of bias goes toward the credibility of a witness, not his competency to testify, and credibility is an issue for the jury.").

Accordingly, Plaintiffs' Motion as to Dr. Arron's opinions and testimony is **GRANTED *in part*** and **DENIED *in part*** as identified above.

B. Consumer Survey Experts

Because consumer surveys are subject to a certain set of rules and are of particular importance in this action, the Court briefly summarizes the law in this specific area of expert opinion.

Surveys are admissible if they are relevant, conducted according to accepted principles, and set upon a proper foundation for admissibility. *See Clicks Billiards, Inc. v. Sixshooters, Inc.*, 251 F.3d 1252, 1263 (9th Cir. 2001). As long as surveys "'are conducted according to accepted principles,' survey evidence should ordinarily be found sufficiently reliable under [*Daubert*, 509 U.S. 579]." *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1143 n.8 (9th Cir. 1997) (internal quotation omitted).

The proponent bears the burden of showing "that the survey was conducted in accordance with generally accepted survey principles and that the results were used in a statistically correct manner." *Keith v. Volpe*, 858 F.2d 467, 480 (9th Cir. 1988).

"Once the survey is admitted, however, follow-on issues of methodology, survey design, reliability, the experience and reputation of the expert, critique of conclusions, and the like go to the weight of the survey rather than its admissibility." *Clicks,* 251 F.3d at 1263 (citation omitted). The Ninth Circuit has distinguished consumer surveys from other expert opinions, stating "[u]nlike novel scientific theories, a jury should be able to determine whether asserted technical deficiencies undermine a survey's probative value." *Southland*, 108 F.3d at 1143 n.8. "Technical inadequacies in the survey, including the format of the questions or the manner in which it was taken, bear on the weight of the evidence, not its admissibility." *Keith*, 858 F.2d at 480 (citations omitted). So, even surveys with technical problems such as improper participant pools and biased questions are usually admissible. *See Southland*, 108 F.3d at 1143.

Here, both sides offer consumer surveys to establish falsity/deception as well as materiality (and in some respects reliance). Ordinarily, the Court would summarily deny the motions after concluding that the parties' objections were garden variety complaints regarding technical inaccuracies that merely go to the weight of the survey evidence rather than the admissibility. *See Simpson Strong-Tie Co. Inc. v. MiTek Inc*., No. CV 20-06957-VKD, 2023 WL 137478, at *2 (N.D. Cal. Jan. 9, 2023) ("With respect to survey evidence, the Ninth Circuit has set a low bar: 'Survey evidence should be admitted 'as long as it is conducted according to accepted principles and is relevant.'") (citing *Fortune Dynamic, Inc. v. Victoria's Secret Stores Brand Mgmt., Inc*., 618 F.3d 1025, 1035-36 (9th Cir. 2010)).

However, this action presents a particularly difficult consumer-survey issue because Defendant's survey evidence and objections to Plaintiffs' survey evidence are centered on one of its theories of the action. This theory of the action, in turn, stems from Dr. Arron's flawed and excluded opinions regarding the chemical composition of Defendant's Products. Therefore, what would ordinarily present nothing more than a "battle of the experts," is complicated by the fact that, here, Defendant's view of the

facts — that it is accurate to call the solution in its Products "plant-based collagen amino acids" — is explicitly rejected by the only expert who is a qualified chemist and is otherwise unsupported by any admissible, scientifically-sound evidence.

At the hearing, Defendant's counsel argued that in the tentative order provided to counsel, the Court erred in stating that there is no admissible evidence that the product contains "plant-based collagen amino acids," and pointed the Court to the AC Equivalence Statement. Even putting aside whether Defendant will be entitled to admit the Equivalence Statement into evidence, given Defendant does not currently have any qualified expert providing a foundation for its contents or establishing a non-hearsay basis for its admission, even Defendant's counsel admitted at the hearing that the solution tested by AC Concepts is "not collagen, but the chemical equivalent." (Hearing Tr. 2/13/23 at 19: 24-25). Counsel insisted that "if something is chemically the same as something else, we call it that thing regardless of its source." Those statements summarize the Court's entire point.

Defendant (and counsel) would like to make the argument to a jury that it is fair and accurate to say that a product does and can have "plant-based collagen amino acids." But stating a product has "plant-based collagen amino acids" is ***not*** tantamount to saying the Products contain "the equivalent" or a "synthetic" version of collagen, as Defendant's counsel seemed to suggest at the hearing. (*See* Hearing Tr. at 25:3-4) ("[I]f this is a synthetic form of collagen, we win."). In other words, the problem for Defendant is that the label does not claim to contain a ***synthetic*** form of collagen, but rather, it claims to be a plant-based form of collagen – which the experts in this action agree ***does not exist.***

As Plaintiff's counsel pointed out it would be like allowing a company to argue that watches made in Japan can be sold with a label "Made in the USA," just because the watches are just as effective as those made in the USA, despite the fact that the label itself says something precisely ***about the source*** of the watch. By saying amino acids are "collagen" amino acids, Defendant is representing that the amino acids are derived from collagen. Otherwise, what makes the amino acids "collagen amino acids"?

At the hearing, Defendant's counsel appeared to answer that question by claiming that any amino acid that is in collagen is in fact a "collagen amino acid." But that is a scientific claim unsupported by any admissible expert testimony, and, frankly, does not make much sense. One cannot claim something has water in it just because it has some amount of hydrogen. Hydrogen is not itself a "water element" simply because water contains hydrogen, just as glycine is not itself a "collagen amino acid" just because collagen contains glycine, as the only qualified expert in this action clearly explained. (*See* Fetzer Report ¶ 64) ("It is not accurate to name any amino acid as a 'collagen' amino acid or name any solution that may contain some of the same amino acids from collagen as collagen.").

Ultimately, this dynamic has troubled the Court. On the one hand, the Court is of course bound by and respectful of Ninth Circuit precedent repeatedly instructing district courts to admit survey evidence, regardless of glaring flaws in methodology. Indeed, the Court could identify only two situations in which the Ninth Circuit has affirmed exclusion of consumer surveys: (1) where the creators of the survey were not qualified or (2) when the experts introducing the surveys did not actually conduct them. *See, e.g.*, *Elliott v. Google, Inc.*, 860 F.3d 1151, 1160 (9th Cir. 2017) ("[T]he district court properly excluded two of Elliott's consumer surveys because they . . . . were designed and conducted by Elliott's counsel, who is not qualified to design or interpret surveys."); *see also F.T.C. v. Commerce Planet, Inc.*, 642 Fed. App'x. 680, 682 (9th Cir. 2016) (expert offering opinion did not conduct the survey).

On the other hand, the Court does not read the Ninth Circuit precedent as entirely doing away with the central purpose of Rule 702 and *Daubert*, in the context of consumer surveys, which impose a "basic gatekeeping obligation" on district courts to "ensure that any and all scientific testimony"—including testimony based on "technical[ ] or other specialized knowledge"—"is not only relevant, but reliable." *See Fortune*, 618 F.3d at 1035 (quoting *Kumho Tire Co. v. Carmichael,* 526 U.S. 137, 147 (1999) (quotation marks omitted). Indeed, the low bar imposed on consumer surveys has been described in ***contrast*** to ***novel scientific theories***. The Court thus finds itself in the precarious situation where a "novel scientific theory" is being introduced through a consumer survey conducted by an expert qualified to perform surveys (but

unqualified to substantiate the scientific assumptions underlying the survey). *See Southland*, 108 F.3d at 1143 n.8 ("Unlike novel scientific theories, a jury should be able to determine whether asserted technical deficiencies undermine a survey's probative value.").

Here, there is simply no admissible evidence that "plant based collagen amino acids" are a real scientific concept and Ms. Butler's assumption that such a solution exists, and, moreover, that "plant based collagen amino acid" is an actual phrase on the Products (it is not), deeply infects the results of her survey and would confuse the issues for any jury. The survey itself essentially assumes the truth of the advertising, by assuming the truth of unsubstantiated science. Defendant has not shown by admissible evidence that what "collagen" means is up for any real scientific debate. While consumers and laypersons may not have a scientific ***understanding*** of where collagen comes from – the question "what is collagen?" has but one accurate answer, and more importantly, is not the issue in dispute at least on the issue of falsity/deception. Indeed, Defendant's expert admits that collagen is only found in animals and that the Products do not contain collagen from animals.

In sum, despite Defendant's counsel's adherence to its position at the hearing, the Court continues to view the plant-based collagen argument as an unsubstantiated novel scientific theory that may not go to the jury.

With that framework in mind, the Court addresses the arguments concerning the consumer surveys below.

1. Defendant's Challenge to Plaintiffs' Expert: Forrest Morgeson, Ph.D.

Defendant does not challenge Dr. Morgeson's qualification but argues that the Court should exclude his expert report and testimony because (1) it fails to tests the relevant consumer demographic; (2) the survey fails to establish that there is a uniform understanding among the class members as to what message is conveyed by "C + Collagen," because the questions misrepresented that the "Products at issue contain no collagen, but only amino acids;" and (3) the survey fails to determine whether

participants would be more or less likely to purchase the products at issue if they learned that the products did not contain animal-sourced collagen, but instead contain "plant sourced collagen amino acids." (Def. Motion at 10-23).

Dr. Morgeson designed a survey in which California consumers were interviewed regarding one of four different Dr. Dennis Gross Skincare Products. (Declaration of Forrest Morgeson ("Morgeson Decl.") at 4). Data was collected from a panel of consumer respondents using online consumer surveying methods and the Qualtrics survey programming tools. (*Id*. at 7). Only respondents who had purchased personal care and beauty products in the last 6 months were included in the sample to ensure that the consumers had fresh recollections of their most recent purchasing experiences. (*Id*. at 8). Dr. Morgeson presented large, high-resolution images of the randomly assigned Products for each respondent to review. (*Id*. at 8-9). After asking respondents a control question to gauge consumer attention, Dr. Morgeson asked whether respondents understood the product labels to mean that the Products contained collagen. (*Id*. at 9). He then asked whether, they would be more or less satisfied with their purchase after learning that the Products contained no collagen and only contained amino acids. (*Id*.). He also asked the respondents whether, after learning that the product contained no collagen and only contained amino acids, they would be more or less likely to purchase the product again. (*Id*. at 9-11).

Dr. Morgeson statistically analyzed the results and concluded that over 95% of respondents understood the front label to mean that the Products contain collagen. (*Id.* at 11-12). When participants were asked whether they would be more or less likely to be satisfied in learning that the Products contained no collagen, and instead contained amino acids, 51.7% of respondents indicated that they would be "much" or at least "somewhat less satisfied." (*Id*. at 13).

As noted above, the Court rejects Defendant's arguments to the extent they are premised on the idea that Dr. Morgeson's survey is flawed because it characterizes the solution in Defendant's Products as "amino acids" rather than "collagen amino acids." As discussed, that theory is supported by Dr. Fetzer's admissible expert opinion that

the Products do not contain "collagen" or "collagen amino acids." (*See* Fetzer Report ¶ 10).

Defendant also seems to fault Dr. Morgeson for not testing reliance, but Dr. Morgeson does not purport to opine on whether consumers exclusively or primarily relied on the C + Collagen label in making a purchase decision, he merely sought to establish whether the presence of collagen in the Products was material to the average purchaser of beaty products.

Defendant's argument as to the consumer demographic is that Dr. Morgeson's sample population is not representative of purchasers of Defendant's Products because it did not test real purchasers and the screening question used was overly broad as it asked if consumers had recently purchased "personal care or beauty products" generally, which could include people that even bought razors or sunscreen. (Def. Motion at 10). Defendant contends that its consumers are high-end, sophisticated product purchasers and therefore the population was non-representative. (*Id*.).

But even if the population surveyed by Dr. Morgeson was overly broad, it is not clear to the Court that that flaw would even inure to Plaintiffs' given more sophisticated shoppers of Defendant's Products are likely more aware of, and perhaps specifically desire, the benefits of collagen products. Regardless, given the survey at least asked a filtering question to narrow in on potential purchasers of the product, there is likely at least some overlap in the target population and the potential class, and therefore, the issue of an overbroad population goes to the weight, not admissibility, of the survey. *See ThermoLife Int'l, LLC v. Gaspari Nutrition Inc*., 648 F. App'x 609, 613-14 (9th Cir. 2016) (citing *Southland*., 108 F.3d at 1143) (holding that objections as to "leading questions" and an unrepresentative sample "go only to the weight, and not the admissibility, of the survey").

Therefore, none of Defendant's arguments lead the Court to exclude Dr. Morgeson's survey results and opinions derived therefrom. Accordingly, Defendant's Motion is **DENIED** to the extent it seeks exclusion of Dr. Morgeson's opinions.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 20-2311-MWF (GJSx) **Date: March 15, 2023**
Title: Mocha Gunaratna v. Dennis Gross Cosmetology LLC et al

2. Plaintiffs' Challenge to Defendant's Expert: Sarah Butler

Ms. Butler is employed at NERA Economic Consulting in San Francisco, California and has been hired by Defendant to provide expert testimony regarding her consumer perception study assessing the challenged label attribute. Ms. Butler surveyed 400 actual purchasers of the C + Collagen products. (*See* Report of Sarah Butler ("Butler Report") (Docket No 225-17) ¶ 69).

Plaintiffs argue that Ms. Butler's survey is fundamentally flawed because it adopts the following unsubstantiated propositions about "plant-based collagen amino acids:" (1) that they exist; (2) are a "type" of collagen; (3) a lay person would understand this; and (4) is a phrase that appears on the Product labels. (Pltfs. Motion at 4). There are three key questions in Ms. Butler's survey that Defendant relies upon and that Plaintiffs challenge.

First, the central question gauging consumers' perception of the meaning "C + Collagen" is depicted below:

Q13. Based on your understanding of the product, which of the following, if any, describes what C + Collagen means? **[RANDOMIZE 1-3]**
(Select all that apply)
1. Product contains Vitamin C which increases collagen
2. Product contains animal collagen
3. Product contains plant-based collagen amino acids
4. Something else (***Please specify***):_____ **[ANCHOR; TEXT BOX; DO NOT ALLOW BLANK IF SELECTED]**
5. None of these **[ANCHOR; EXCLUSIVE]**
6. Don't know / unsure **[ANCHOR; EXCLUSIVE]**

Based on the answers to the above question, Ms. Butler forms the following conclusions: "the majority of purchasers [surveyed] understand that C + Collagen means the product contains Vitamin C" (49.7% selected "Product contains Vitamin C which increases collagen). (Butler Report ¶ 114). And the "next most common interpretation of C + Collagen was that the product contains "plant-based collagen amino acids" (37.2%), while only 26.4% indicated that C + Collagen meant that "the

product contains animal collagen." (*Id.* ¶ 114). Therefore, Ms. Butler concludes that purchasers are more likely to believe "C + Collagen means something other than what Plaintiffs have asserted." (*Id.* ¶ 115).

The next two key (and equally problematic) questions that Ms. Butler asked are depicted as follows:

> Q14. If you were told that these products contained only plant-based collagen amino acids and not animal-based collagen, would this affect your purchase decision? **[RANDOMIZE 1 AND 2]**
> 1. Yes
> 2. No **[SKIP TO Q16]**
> 3. Don't know / unsure **[SKIP TO Q16]**
>
> Q15. Which of the following best describes how your decision would be affected if you knew this product contained only plant-based collagen amino acids and not animal-based collagen? **[RANDOMIZE 1 AND 2]**
> 1. I would be more likely to purchase the C + Collagen product
> 2. I would be less likely to purchase the C + Collagen product
> 3. I would want more information about the products before purchasing
> 4. Don't know / unsure **[ANCHOR; SKIP TO END]**

Based on the responses to the above questions, Ms. Butler concludes that the majority of respondents (58.5%) stated that knowing whether products contained plant-based collagen amino acids and not animal-based collagen "would have no effect" on their purchasing decision. (*Id.* ¶ 116). And for those that said it would have an effect, only 3% would be less likely to purchase the product, whereas respondents "overwhelmingly indicated" that they would be more likely to purchase the product if they understood it contained plant-based collagen amino acids as opposed to animal collagen. (*Id.* ¶ 117).

There are two clear problems with these questions. First, there is no response that actually tests Plaintiffs' theory of the case regarding falsity/deception, (i.e., that the Products' label conveys that the Products contain Vitamin C ***and*** collagen). So, the fact that most individuals picked the answer choice indicating that they interpreted the label to mean Vitamin C boosts collagen is unsurprising given it is the only answer that contains both Vitamin C and collagen. However, if that were the only flaw, the Court

would likely chalk it up to biased questioning and conclude that that flaw went to the weight of the survey.

But the second flaw is the real issue because it comes directly in tension with this Court's gate-keeping role of keeping junk science out of the courtroom. The issue is the questions introduce a substance that does not exist in the real world or even appear as a phrase on the Products' packaging (i.e., "plant-based collagen amino acids,"). This fatally undermines the reliability of the survey.

This type of flaw appears to go beyond just methodology but appears to violate accepted practices in the field of survey research. *See National Academies of Sciences, Engineering, and Medicine*, Reference Manual on Scientific Evidence 388 (3d ed. 2011) ("When unclear questions are included in a survey, they may threaten the validity of the survey by systematically distorting responses if respondents are misled in a particular direction, or by inflating random error if respondents guess because they do not understand the question."); *see id*. ("If the crucial question is sufficiently ambiguous or unclear, it may be the basis for rejecting the survey."); *see also Townsend v. Monster Beverage Corp.,* 303 F. Supp. 3d 1010, 1021–24 (C.D. Cal. 2018) (finding expert's unjustifiable abbreviation, alteration, and embellishment of the challenged false statements "render[ed] his survey as it relates to these statements irrelevant, and any conclusions drawn from it and extrapolated to the actual alleged misrepresentations unreliable").

Here, the Court recognizes that this action does not fall into the "unqualified" survey exclusion cases affirmed by the Ninth Circuit because Ms. Butler is certainly a qualified survey design expert, and her surveys, and the conclusions drawn from them, have been admitted in several cases. Nonetheless, it is worth noting that many litigants have challenged her opinions on similar bases (though no other case concerned a flawed scientific theory as is the case here). *See, e.g.*, *Maeda v. Kennedy Endeavors, Inc*., No. CV 18-00459 JAO-WRP, 2021 WL 2582574, at *7 (D. Haw. June 23, 2021) (denying *Daubert* motion as moot and declining to rely on Ms. Butler's survey where the plaintiffs sought "to exclude Butler's testimony as irrelevant in that it is inconsistent with their theory of liability and does not answer the applicable test for

materiality"); *Bailey v. Rite Aid Corp.*, 338 F.R.D. 390, 401–02 (N.D. Cal. 2021) (declining to rely on Ms. Butler's opinion because, "after carefully reviewing the Butler survey, . . . it suffers from significant flaws that detract from its persuasiveness" where the survey failed to list the challenged attribute "among twenty-three reasons for why [consumers] purchased the product"); *In re Marriott Int'l, Inc., Customer Data Sec. Breach Litig.*, 602 F. Supp. 3d 767, 777 (D. Md. 2022) (collecting cases where litigants have sought to exclude Ms. Butler's opinions based on flawed methodology and results but noting that courts have generally determined those flaws go to the weight and not admissibility of her surveys); *but see ClearPlay, Inc. v. Dish Network, LLC*, No. 2:14-CV-00191-DN-CMR, 2023 WL 121278, at *2 (D. Utah Jan. 6, 2023) (excluding portions of Ms. Butler's critiques of the other party's damages expert because "[Ms.] Butler is not an economist, and is not qualified to offer expert opinions and testimony on valuation methodologies or value calculations, including criticisms of Dr. Sullivan's use of survey data in his valuation methodologies and value calculations"); *see also Chen-Oster v. Goldman, Sachs & Co.*, No. CV 10-6950-ATR-WL, 2022 WL 814074, at *6 (S.D.N.Y. Mar. 17, 2022), *on reconsideration in part*, 2022 WL 3586460 (S.D.N.Y. Aug. 22, 2022) (excluding Ms. Butler's analysis of survey responses because she "did not provide a sufficient explanation as to how she decided on the terms used" and "why she classified the terms into the different categories," and therefore it was "not clear if the data supports her conclusions").

Simply put, Ms. Butler's survey did not test whether the actual ***label,*** which states "C + Collagen," was material to consumers. Instead, it tested whether consumers understand where collagen comes from, and Defendant, at least thus far, has failed to coherently articulate how or why that is relevant to rebutting ***Plaintiffs'*** theory of the case, which is that, in naming its Products, Defendant understood that consumers value the word "collagen" itself – whether consumers understand the science or not – and that Defendant intentionally used the word "collagen" to induce purchases and inflate prices.

Therefore, whether framed as a relevance, *Daubert*, or Rule 403 issue, the Court concludes that Ms. Butler's opinion and conclusions relating to Questions Numbers 13-15 in her consumer survey will be excluded to the extent they are offered to

disprove deception/falsity and/or materiality. Likewise, her critiques as to the other experts based on the fact that Plaintiffs' experts have not (or do not intend) to test the concept of "plant based collagen amino acids," are also excluded.

All other issues raised by Plaintiffs as to Ms. Butler's report go to the weight and not admissibility of the survey results, and therefore, the remaining aspects of the report (such as the reliance questions/answers) are admissible.

Accordingly, Plaintiffs' Motion as to Ms. Butler is **GRANTED *in part*** and **DENIED *in part***.

The Court notes, however, that a review of the docket suggests the expert discovery deadline has not yet been set. Therefore, it appears that Defendant still has time to try to introduce a new consumer survey. That survey could test what Defendant's counsel has suggested is their primary theory of the case – whether consumers understood the label on the Products to mean vitamin c boosts collagen. What Defendant may not do, however, is introduce into a consumer survey any notion that plant-based collagen or plant-based collagen amino acids exist.

C. Damages Experts

1. Defendant's Challenge to Plaintiffs' Experts: Steven P. Gaskin, M.S., and Colin B. Weir, M.B.A

Plaintiffs retained experts Steven P. Gaskin and Colin B. Weir to do the following: (1) design and conduct a large-scale consumer survey on Defendant's Products listed as "C + Collagen;" (2) determine, based on the survey results, whether the "Collagen" claim on the Products' label is a source of consumer confusion and/or deception due to the lack of collagen in the Products; (3) determine whether consumers consider the "Collagen" label attribute material to their purchase decisions; (4) determine whether consumers pay a price premium for the "Collagen" label attribute; and (5) quantify any price premium attributable to the "Collagen" label claim for computation of restitution damages. (Pltfs. Opp. at 1) (citing Declaration of Colin B.

Weir ("Weir Decl.") and Declaration of Steven P. Gaskin ("Gaskin Decl.") (Docket Nos. 218-30,31)).

Mr. Gaskin has designed the survey and will execute and analyze the data and Weir assisted in the design of the survey and will be responsible for the economic analysis and price premium calculation based on the survey results. This proposed damages model is known as a "conjoint analysis." While the conjoint analysis has been fully designed, it has not yet actually been conducted.

Conjoint analyses are "widely studied and applied form of quantitative market value measurement" that provides "valid and reliable measures of consumer choices" and "estimates of relevant market value." (Gaskin Decl. ¶ 16). "They are now a 'well-recognized economic method used to study and quantify consumer preferences." *Johnson v. Nissan N. Am., Inc.*, No. 3:17-CV-00517-WHO, 2022 WL 2869528, at *5 (N.D. Cal. July 21, 2022) (citing *In re: MacBook Keyboard Litigation*, No. CV 18-02813-EJD, 2021 WL 1250378, at *5 (N.D. Cal. Apr. 5, 2021)).

In essence, "the survey works by asking consumers questions that cause them to make tradeoffs between different features in a product, or with different information about the product." *Id*. "Then, using statistical comparisons, the value of a particular feature (or lack thereof) can be derived." *Id.* Several courts have accepted Gaskin's and Weir's conjoint analyses in class action consumer protection cases involving product misrepresentations. *See, e.g.*, *Krommenhock v. Post Foods, LLC*, 334 F.R.D. 552, 573-77 (N.D. Cal. 2020); *Hadley v. Kellogg Sales Co.*, 324 F. Supp. 3d 1084, 1103-07 (N.D. Cal. 2018).

Defendant makes a host of arguments as to why the Court should exclude the damages model offered by Gaskin and Weir. Many again revolve around the fact that Plaintiffs' expert test Plaintiffs' (supported) theory of the case – that consumers believe C + Collagen means the product contains collagen, which, as confirmed by the only qualified expert in this action, is false. The Court again rejects Defendant's arguments to the extent they are premised on the idea that there is not a uniform understanding of "collagen."

The Court agrees with Plaintiffs that this action is distinguishable from the case principally relied on by Defendant. (Def. Motion at 26) (citing *ConAgra Foods*, 302 F.R.D at 578). In *ConAgra*, the plaintiffs' theory of the case was that a "100% Natural" label was false because the product contained genetically-modified-organism ("GMO") ingredients. There, the court rejected Mr. Weir's conjoint damages model because it was designed to "calculate the price premium attributable to use of the term 100% Natural," but Mr. Weir conceded that 100% Natural was not equivalent to non-GMO, but rather the word "natural" has many implications. *See id*.

But this action is not akin to *ConAgra*, or other cases, where the challenged label is not susceptible to a discernable meaning. *See Allegra v. Luxottica Retail N. Am*., 341 F.R.D. 373, 441 (E.D.N.Y. 2022) (noting the difference between damages model in false advertising cases involving amorphous labels that are not "objective term[s] that carr[y] a single definition or refer[] to a specific product feature," as opposed to representations in cases that have "discernable meaning[s]" such as "flushable" wipes, "50% thicker" fertilizer product, and "100% Pure Olive Oil"). Here, "collagen" is a scientific term that carries a single definition and therefore, the Court rejects the notion that the damages model does not directly relate to the Plaintiffs' theory of the case – that the Products do not contain collagen as it is scientifically defined.

Most of the other challenges raised by Defendant speak to alleged flaws in Mr. Gaskin's survey design (i.e., improper survey population, focalism bias, failure to use product images or include other product attributes, etc.), which again, go only to the weight of the evidence and not the admissibility. (*See* Def. Mot. at 31); *but see Clicks,* 251 F.3d at 1263) ("[I]ssues of methodology, survey design, reliability, the experience and reputation of the expert, critique of conclusions, and the like go to the weight of the survey rather than its admissibility").

Next, Defendant argues that Mr. Weir's damages analysis fails to demonstrate any concrete injury to establish Article III standing. While Plaintiffs will ultimately have to prove standing, and the Court will consider Defendant's standing arguments in the Class Certification and Summary Judgment Motions, the issue is inappropriately

raised in a *Daubert* motion. Even if Mr. Weir's theory did not support standing, that would not in itself be a basis for excluding his testimony or opinions.

Finally, Defendant also takes issue with the fact that Plaintiffs' experts have not actually conducted the conjoint analysis. While it is unclear to the Court why Plaintiffs' experts have not yet conducted the analysis, failure to have conducted a damages model is not grounds for excluding it. Unlike in the cases cited by Defendant, the proposed methodology is fully detailed and laid out and the Court is capable of assessing whether that methodology is sound and adheres to scientifically accepted principles. Therefore, while the failure to conduct the model may prove relevant to other pending motions (i.e., Defendant's Motion for Summary Judgment), it is not dispositive on a *Daubert* motion.

Accordingly, Defendant's Motion is **DENIED** to the extent it seeks to exclude Mr. Gaskin and Mr. Weir's opinions and/or damages model.

2. Plaintiffs' Challenge to Defendant's Expert: D. Scott Bosworth, CFA

Defendant offers the opinion of an expert economist, Mr. Bosworth, as a rebuttal damages expert, who opines that Plaintiffs' proposed methods relating to a price premium caused by the false and misleading label attribute are likely to be unreliable. (Report of Scott Bosworth ("Bosworth Report") at ¶ 8).

Plaintiffs challenge Mr. Bosworth's opinions on the following four grounds: (1) he impermissibly recites Ms. Butler's unreliable report and adopts her conclusions without independent evaluation; (2) he fails to analyze available retailer sales data to form the basis of his opinions; (3) his criticism of Dr. Gaskin's survey contradicts the Federal Judicial Center's Reference Manual for Scientific Evidence; and (4) he is unqualified to opine on Dr. Morgeson's survey and Dr. Gaskin's proposed survey because he is not an expert in consumer behavior, survey methodology, or conjoint analyses.

The Court views the second and third arguments as garden variety critiques regarding an expert's methodology and application of the facts to those methods, which are best dealt in cross-examination. In other words, those challenges ultimately go to the weight not the admissibility of Mr. Bosworth's opinions.

However, the other two concerns are more fairly the subject of a *Daubert* challenge.

Reliance on Ms. Butler's Opinions: The Court agrees that in several paragraphs of his report, Mr. Bosworth impermissibly relies on Ms. Butler's conclusions without independently evaluating (or having the expertise necessary to independently evaluate) her report. As the Court has noted with respect to Dr. Arron, an expert may not adopt another expert's opinions and recite them as their own unless they have conducted and independent analysis and have explained to the Court how the steps taken to evaluate the data. *See ConAgra*, 302 F.R.D at 556 ("[A]n expert can appropriately rely on the opinions of others if other evidence supports his opinion, and the record demonstrates that the expert conducted an independent evaluation of that evidence[.]"). But an "expert's sole or primary reliance on the opinions of other experts raises serious reliability questions." *Id.* Here, Mr. Bosworth failed to adequately evaluate Ms. Butler's survey as he testified in his deposition that reading her report "was the extent of [his] examination of her findings." (*See* Deposition of Scott Bosworth ("Bosworth Depo.") at 72:22-25).

The only argument Defendant offers in response is that "[w]hile Mr. Bosworth's report contains numerous references to Ms. Butler's Report . . ., he ultimately concludes that 'there are economic reasons that indicate Dr. Morgeson's survey is unreliable and not relevant to the products-at-issue or Plaintiff's claims beyond what Ms. Butler identifies in her report." (Def. Opp. at 24) (citing Bosworth Report ¶ 27). That certain of Mr. Bosworth's opinions are independent of Mr. Butler's opinions does not save the opinions that ***are*** reliant on her report. Therefore, Defendant has failed to establish that Mr. Bosworth's opinions that do rely on Ms. Butler's opinions are sufficiently reliable.

Accordingly, to the extent Mr. Bosworth has adopted Ms. Butler's opinions in his report, particularly those that have been excluded by this Court above, his opinions are excluded.

Qualifications to Opine of Survey Design, Methods, Results: Plaintiffs argue that Mr. Bosworth is not qualified to opine on matters outside of his economic expertise, including on matters such as conjoint surveys, consumer surveys, and consumer behavior.

Defendant's Opposition on this point again is non-responsive. Defendant merely recites Mr. Bosworth's qualifications that certainly make him suitable to opine on economics, but Defendant does not attempt to explain how those qualifications have any bearing on many of the issues he opines on such as survey questions, survey population, and survey results. While Mr. Bosworth self-characterizes his critiques as economic in nature, many of his opinions have no clear connection to economics. For example, a section of Mr. Bosworth's report is dedicated to critiquing the screening question used in Dr. Morgeson's survey. (*See* Bosworth Report ¶¶ 28-35). At no point in that section does it appear that Mr. Bosworth is bringing to bear his economic expertise – and if he is, he fails to adequately explain how that is so, further rendering the report unreliable for his failure to adequately explain his methodology and foundation.

Given the Court's review of Mr. Bosworth's report, and Defendant's failure to meaningfully respond to Plaintiffs' arguments regarding Mr. Bosworth's qualifications, the Court agrees that Mr. Bosworth steers outside of his lane when offering critiques of Dr. Morgeson's and Mr. Gaskin's surveys.

Accordingly, Plaintiffs' Motion is **GRANTED *in part*** and **DENIED *in part*.** It is granted to the extent it seeks to exclude portions of Mr. Bosworth's Report that improperly relies on Ms. Butler's report without independent evaluation and to the extent it critiques Plaintiffs' experts' survey methods, designs, or conclusions. Otherwise, the Motion is denied with respect to Mr. Bosworth.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 20-2311-MWF (GJSx) **Date: March 15, 2023**
Title: Mocha Gunaratna v. Dennis Gross Cosmetology LLC et al

IV. CONCLUSION

In sum, Defendant's Motion is **DENIED** in its entirety. Plaintiffs' Motion is **GRANTED *in part*** and **DENIED *in part***.

This Order has been redacted pursuant to this Court's Sealing Order (Docket No. 142).

IT IS SO ORDERED.

EXHIBIT C

Order Granting Plaintiffs' Motion for Class Certification and Denying Defendant's Motion for Summary Judgment

Gunaratna, et al. v. Dr. Dennis Gross Skincare, LLC,
Case No. 2:20-cv-02311-MWF-GJS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 20-2311-MWF (GJSx) **Date: April 4, 2023**
Title: Mocha Gunaratna v. Dennis Gross Cosmetology LLC et al

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): **[REDACTED] AMENDED** ORDER (CORRECTING DOCKET NO. 247) GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION [104, 218]; DENYING DEFENDANT'S MOTION TO STRIKE PLAINTIFFS' DEPOSITION ERRATA AND PORTIONS OF DEPOSITION TESTIMONY [116, 219]; DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [117, 225]

Before the Court are three Motions:

First is Plaintiffs' Mocha Gunaratna and Renee Camenforte Motion for Class Certification and Appointment of Class Counsel (the "Class Motion"), filed on April 7, 2022. (Docket Nos. 104, 218). Defendant Dr. Dennis Gross Skincare, LLC filed an Opposition on July 14, 2022. (Docket Nos. 128, 227). Plaintiffs filed a Reply on October 21, 2022. (Docket Nos. 165, 224).

Second is Defendant's Motion to Strike Plaintiff Camenforte's Deposition Errata and Portions of Deposition Testimony of Plaintiff Gunaratna (the "MTS"), filed on July 14, 2022. (Docket Nos. 116, 219). Plaintiffs filed an Opposition on October 22, 2022. (Docket Nos. 168, 217). Defendant filed a Reply on January 30, 2023. (Docket Nos. 205, 220).

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 20-2311-MWF (GJSx) **Date: April 4, 2023**
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Third is Defendant's Motion for Summary Judgment (the "MSJ"), filed on July 14, 2022. (Docket Nos. 117, 225). Plaintiffs filed an Opposition on October 21, 2022. (Docket Nos. 167, 228). Defendant filed a Reply on January 30, 2023. (Docket Nos. 208, 226).

In this Order, the Court relies on the complete, unsealed versions of each brief, which were filed pursuant to this Court's Order Requiring Parties to File Complete Unredacted Versions of Briefs (Docket No. 212).

The Court has read and considered the papers filed in connection with the Motions and held a hearing on March 6, 2023.

The Court rules as follows:

- The MTS is **DENIED**. The Court does not view the testimony and/or deposition errata that Defendant seeks to strike as "sham" testimony created for the purpose of defeating summary judgment. Rather, the testimony and errata are fair clarifications that were necessary as a result of confusing questioning.

- The Class Motion is **GRANTED**. The Court concludes that the proposed class meets each of the Rule 23 criteria with respect to the UCL, FAL, CLRA, and express warranty claims. The uniform nature of the labels placed on Defendant's products creates a presumption of class-wide exposure and reliance. And because deception and materiality under California's consumer protection and express warranty laws are based on an objective standard, common questions predominate the litigation. Any issues regarding damages calculations or ascertainability are not reasons to deny certification. Moreover, the Court concludes that Plaintiffs have sufficiently established standing at this stage of the litigation, but Defendant is free to challenge Plaintiffs' credibility at trial.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 20-2311-MWF (GJSx) **Date: April 4, 2023**
Title: Mocha Gunaratna v. Dennis Gross Cosmetology LLC et al

- The MSJ is **DENIED** because there are triable issues of fact as to deception, reliance, materiality, and damages. Defendant's arguments largely rely on an unsubstantiated scientific theory that "plant-based collagen" or "plant-based collagen amino acids" exist. When that theory is properly disregarded, it becomes clear that, based on the evidence, a reasonable jury could find that the Plaintiffs purchased Defendant's skincare products under the mistaken belief that they contained collagen due to the products false or misleading label and suffered damages in the form of a price premium associated with the "collagen" claim.

I. BACKGROUND

The Court summarizes the facts of this action in the light most favorable to Plaintiffs as the non-moving party on the MSJ.

A. The Products and the Challenged Claim

Defendant is a skincare company that sells a line of products with the brand name "C + Collagen" (the "Products"). There are four Products within the product line and every advertisement Defendant maintained for the Products at issue reflects the "C + Collagen" product name. (*See* Plaintiff's Statement of Undisputed Facts ("PSUF") ¶ 13). The "C + Collagen" label is printed directly on the Products' with bold font and contrasting colors. (*Id.* ¶ 14).

On the back of the Products, in small print, there is an ingredient list that states "collagen amino acids" are in each Product. (*Id.* ¶ 15). On the side of the Products, in small print, there is also language describing the Products as follows: "[a] luxurious cream powered by 3-O C technology, collagen amino acids, and our proprietary energy complex…." (Defendant's Statement of Undisputed Facts ("DSUF") ¶ 3). On the back of the Products' packaging (as opposed to directly on the Product bottles/containers), there is also a small vegan symbol, but it is not visible from the front of the packaging or Product bottles. (PSUF ¶ 16).

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 20-2311-MWF (GJSx) **Date: April 4, 2023**
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Below is a visual representation of the Products:

B. Plaintiffs and their Purchasing Decisions

Plaintiff Gunaratna purchased the C + Collagen Deep Cream Product at a Sephora store in Los Angeles, California in 2018 for approximately $75. (Declaration of Mocha Gunaratna iso Class Motion ("Class Gunaratna Decl.") ¶ 4). Gunaratna paid cash for the Product and did not maintain a receipt or the original packaging. (DSUF ¶ 7). Plaintiff Camenforte purchased the C+ Collagen Mist on the Dr. Dennis Gross Skincare website in 2020 for approximately $30. (Declaration of Renee Camenforte iso Class Motion ("Class Camenforte Decl.") ¶ 4).

In deciding to purchase the Products, Plaintiffs testify that they relied upon Defendant's labeling, packaging, and advertising claims, including the bold front label that stated "C + Collagen," which they understood as a claim that the Products contained collagen (the "Collagen Claim" or the "Claim"). (PSUF ¶¶ 43-45). Plaintiffs testified that they associated collagen with anti-aging effects, which is why

they sought a product that specifically contained that ingredient. Gunaratna testified that she believed collagen was a "protein that we as humans produce, but sometimes through aging we lose[.]" (Deposition of Mocha Gunaratna ("Gunaratna Depo.") 96:5-12). Camenforte testified that she understand collagen to be "good for anti-aging, for wrinkles, and for keeping your face smooth and firm." (Deposition of Renee Camenforte ("Camenforte Depo.") 66:2-5).

However, the Products do not actually contain collagen, or any amino acids sourced from collagen. (Def. Reply to PSUF ¶ 19); *see also* (Report of John C. Fetzer, Ph.D. ("Fetzer Report") ¶ 21). Rather, Defendant adds a small amount of an amino acid solution (with glycine, proline, and hydroxyproline), derived from corn, wheat, and soy to its Products. (DSUF 24; *see also* PSUF 9). Collagen is a protein consisting of 3 tightly interwoven chains of polypeptides that have very specific sequences of amino acids, including but not limited to glycine, proline, and hydroxyproline. (*Id.* ¶¶ 20, 64). Collagen proteins are found exclusively within the skin and tissues of animals. (PSUF ¶ 2). There has not been any scientifically validated report of collagen derived directly from natural plants. (Fetzer Report ¶ 11). While certain amino acids within collagen can also be found in vegetables, "it is not accurate to name any amino acid as a 'collagen' or name any solution that may contain some of the same amino acids from collagen as collagen." (*Id.* ¶ 64).

Because collagen has been linked to maintaining youthful skin, hair, and nails, there is a booming market of anti-aging skincare products containing collagen in the United States. Therefore, Plaintiffs contend that the "collagen" representations are false, misleading, and deceptive, because a reasonable consumer interprets "C + Collagen" to mean that the Products contain vitamin c and collagen.

Defendant emphasizes certain testimony from the named Plaintiffs indicating that they did not understand that collagen is exclusively sourced from animals and did not purchase the Products because of any belief regarding the source of collagen. (DSUF ¶ 41).

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C. Development of the Product Name

Defendant heavily deliberated the name for the Products. The initial front-runner was "[redacted]" as the Products are internally viewed as a vitamin C product and the company wanted the story to focus on the benefits of vitamin c, especially its ability to stimulate natural collagen production in the body. (Def. Reply to PSUF ¶¶ 32, 34). Given 75% of Defendant's sales are from the sales of third-party retailers (as opposed to direct-to-consumer sales), Defendant discussed potential names with its key retail clients to receive their feedback and approval. (*See* Def. Reply to PSUF 32-37). One retailer did not believe the "[redacted]" name was "strong" or "hard-hitting" enough, and multiple retailers were interested in the collagen-boosting aspect of the Products. (*Id.*). Eventually, Defendant chose the name "C + Collagen," which a corporate representative testified is an implicit indication that [redacted] "definitely liked [the name.]" (*Id.* ¶ 36).

Defendant wanted to use other names that "may have been even more suggestive" of the fact that the Products boost internal collagen but could not use those names because of potential trademark violations. (Deposition of Michele Snyder ("Snyder Depo.") at 117:10-118:3). Defendant therefore used the "+" (i.e., plus sing) between the C and the word Collagen, to indicate that the vitamin c in the Products "boost" internal collagen production. However, it is undisputed that Defendant also has another line of products called "Ferulic + Retinol," which uses the "+" to convey that those products contain both ferulic and retinol as ingredients. (PSUF ¶¶ 49-50). Further, Defendant was on notice of the potential for the name to be misunderstood because the company applied for, but was denied, a trademark on the name "C + Collagen," because the United States Patent and Trademark Office ("USPTO") concluded that the "C + Collagen" was "merely describ[ing] the ingredients in the applicant's goods, namely, collagen and vitamin c." (Declaration of Yana Hart ("Hart Decl."), Ex. 23 at 1680).

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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D. Overview of Arguments and Previous Rulings

Based on the above allegations and evidence, Plaintiffs assert eight claims against Defendant as follows: (1) violation of California's Consumers Legal Remedies Act ("CLRA"); (2) violation of California's False Advertising Law ("FAL"); (3) violation of California's Unfair Competition Law ("UCL"); (4) Breach of Express Warranty; (5) Breach of Implied Warranty; (6) Violation of Written Warranty pursuant to the Magnuson Moss Warranty Act; (7) Violation of Implied Warranty of Merchantability pursuant to the Magnuson Moss Warranty Act; and (8) Unjust Enrichment.

Defendant argues that its labeling is not false for two reasons. First, Defendant contends that consumers understand "C + Collagen" to mean that the products contain Vitamin "C", and Vitamin C boosts ("+") the body's natural production of "Collagen." (MSJ at 2)

Second, Defendant argues that the "collagen" label is not false because the Products actually contain plant-sourced "collagen amino acids," which, according to Defendant is truthfully represented on the Products' ingredients panel on the packaging. (*Id.* at 1). Plaintiffs respond arguing that this theory is devoid of any factual or scientifically valid support. (MSJ Opp. at 2).

Defendant also argues that the "collagen" representation cannot be false or material because, the amino acids in Defendant's Products are chemically and functionally identical to hydrolyzed animal collagen. By this, Defendant suggests that it has added glycine, proline, and hydroxyproline (i.e., certain amino acids) to the Products, which are amino acids that can be found in both plants and collagen, and which make the Products effective at achieving its purported goals. (MSJ at 6-10). Plaintiffs contend that the efficacy of the Products is irrelevant because, regardless of whether the product works, Defendant intentionally chose to capitalize on the buzz around "collagen" products instead of investing in marketing to explain to consumers that plant-based amino acids have similar anti-aging attributes as collagen. And therefore, because consumers attach value to the label "collagen," they have been

harmed by Defendant's alleged false advertising because the Products' label distorts the available information in the market, and thereby, inflates the price of the Products. (MSJ Opp. 12-14).

Each party previously moved to exclude each of the other parties' experts and their opinions. In a comprehensive order, the Court denied Defendant's Motion concluding that all of the challenges went to the weight, not admissibility, of the evidence. (*Daubert* Order (Docket No. 246 (redacted version)). However, the Court granted in part Plaintiffs' motion.

Specifically, the Court excluded certain opinions of Dr. Sarah Aaron, M.D., Ph.D., Defendant's dermatologist expert, regarding the equivalency of the vegetable amino acid solution in the Products with hydrolyzed animal collagen, as the Court determined that, unlike Plaintiffs' expert, Dr. Aaron did not have an adequate background in molecular chemistry, and therefore, was unqualified to offer the equivalency opinion. The Court also excluded her opinions to the extent she opined that there is such a thing as "vegetable collagen" or "collagen amino acids" derived from plants for similar reasons.

Further, the Court excluded portions of Defendant's consumer survey, designed and conducted by Defendant's consumer survey expert, Ms. Sarah Butler, which sought to determine what previous purchasers of the Products believed "C + Collagen" conveyed because it again improperly suggested to consumers that there is such a thing as "plant-based collagen amino acids," rendering that aspect of the survey irrelevant, unreliable, and unduly prejudicial under 403.

In sum, the Court's general takeaway was that portions of Defendant's expert's reports blindly adopted the notion that "plant-based collagen amino acids" exist, but the Court concluded that such a notion was unsupported by science, and therefore, will not be presented to the jury. Therefore, to the extent the experts endorsed the unsubstantiated "plant collagen" theory, their opinions were excluded. The Court continues to reject that line of argument herein and the rulings again tend to reflect Defendant's unflagging reliance on that theory.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 20-2311-MWF (GJSx) **Date: April 4, 2023**
Title: Mocha Gunaratna v. Dennis Gross Cosmetology LLC et al

II. MOTION TO STRIKE

Defendant moves to strike (under Rule 12(f)) Plaintiff Camenforte's Deposition Errata and Portions of Deposition Testimony of Plaintiff Mocha Gunaratna, arguing that such testimony is "sham" testimony that should not be considered by the Court.

A. Legal Standard

The Court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. Fed. R. Civ. P. 12(f). Courts may strike testimony that is determined to be a sham. *See, e.g., Hambleton Bros. Lumber Co. v. Balkin Enterprises, Inc*., 397 F.3d 1217, 1226 (9th Cir. 2005) ("We hold that the district court did not abuse its discretion in striking the deposition errata[.]").

Under the sham affidavit rule, "a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony." *Kennedy v. Allied Mut. Ins. Co*., 952 F. 2d 262, 266 (9th Cir. 1991). The Ninth Circuit has extended this rule to Rule 30(3) deposition corrections. *See Hambleton*, 397 F.3d at 1225–26. Rule 30(e) allows a deponent to make changes to their testimony "in form or substance" after a deposition. Fed. R. Civ. P. 30(e). However, "Rule 30(e) is to be used for corrective, and not contradictory, changes." *Id.* at 1226. In other words, a party cannot make "changes offered solely to create a material factual dispute in a tactical attempt to evade an unfavorable summary judgment." *Id.* at 1225. "[T]his type of 'sham' correction is akin to a 'sham' affidavit" that the court may strike. *Id.*

Rule 30(e) requires a reason for any changes to a deposition. Fed. R. Civ. P. 30(e) ("If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days ... to review the transcript or recording and, if there are changes in form or substance, to sign a statement such changes and the reasons given by the deponent for making them.") (emphasis added). As the Ninth Circuit explained, "[a] statement of reasons explaining corrections is an important component of an errata submitted pursuant to FRCP 30(e), because the statement permits an assessment

concerning whether the alterations have a legitimate purpose." *Hambleton*, 397 F.3d at 1225.

There are two requirements for a district court to strike a deposition correction, later-given deposition testimony, or post-deposition affidavit under the sham rule. *See Van Asdale v. Int'l Game Tech*., 577 F.3d 989, 998 (9th Cir. 2009). First, "the inconsistency between a party's deposition testimony and subsequent affidavit [or testimony or correction] must be clear and unambiguous." *Id.* at 998–99. Second, before striking a correction, a "district court must first make a factual determination that the contradiction was actually a sham." *Id.* at 998. To determine "whether a deposition errata constitutes a sham, courts consider circumstances including the number of corrections, whether the corrections fundamentally change the prior testimony, the impact of the corrections on the cases (including whether they pertain to dispositive issues), the timing of the submission of corrections, and the witness's qualifications to testify." *Greer v. Pac. Gas & Elec. Co*., No. CV 15-01066-EPG, 2017 WL 2389567, at *4 (E.D. Cal. June 1, 2017) (internal citations omitted).

While courts must not allow parties to simply rewrite testimony that was given under oath, courts must also recognize "that the sham affidavit rule is in tension with the principle that a court's role in deciding a summary judgment motion is not to make credibility determinations or weigh conflicting evidence." *Van Asdale*, 577 F.3d at 998. "Aggressive invocation of the rule also threatens to ensnare parties who may have simply been confused during their deposition testimony and may encourage gamesmanship by opposing attorneys." *Id*. The Ninth Circuit has thus recognized that the sham affidavit rule "should be applied with caution." *Id.* (citations omitted). The non-moving party is "not precluded from elaborating upon, explaining or clarifying prior testimony elicited by opposing counsel on deposition [and] minor inconsistencies that result from an honest discrepancy, a mistake, or newly discovered evidence afford no basis for excluding an opposition affidavit." *Id.* at 999.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 20-2311-MWF (GJSx) **Date: April 4, 2023**
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B. Analysis

The MTS is an unavailing attempt by Defendant to hold the named Plaintiffs to deposition testimony that can only be understood as the result of aggressive, confusing, and largely irrelevant questioning.

Plaintiff Gunaratna: Defendant argues that Plaintiff Gunaratna testified that "she would not have purchased the Products if she believed they contained animal collagen." (MTS at 1). As an initial matter, a review of the transcript reveals Gunaratna never actually testified to those exact words. Rather, during Gunaratna's deposition, Defendant's counsel asked Gunaratna misleading (and arguably disturbing) questions. Specifically, Defendant's counsel asked her a series of 11 questions regarding whether she would be interested in putting "***animal tendons***," "***animal ligaments***," "***animal corneas***," "***cartilage***," "***bones***, "***guts***," "***blood vessels***," and ***"hide from a cow"*** on her skin — to which, she reasonably responded: "No." (Gunaratna Depo. at 101:25-104:14; 107:2-22; 111:2-8). The questioning culminated into a question in which Defendant's counsel asked the following question: "And you wouldn't have purchased a product, would you, if you thought that collagen was animal guts?", to which Gunaratna again responded: "No." (*Id.* at 104:5-8). Defendant asks the Court to conclude that such testimony unequivocally establishes that Gunaratna must not desire collagen given it is derived from the tissue of the above-mentioned animal parts.

After a break in the deposition, where counsel spoke with her client, Plaintiffs' counsel questioned Gunaratna and asked her whether "she would have purchased products that contain antiaging benefits even if they contained some animal byproducts," to which Gunaratna answered: "Yes." (*Id.* 172:7-13). Defendant moves to strike that testimony as "sham" testimony.

Gunaratna also submitted a declaration in support of the MTS and Class Motion, clarifying her testimony. Although it is not entirely clear, the Court assumes Defendant moves to strike the declaration as a "sham" as well.

In the declaration, Gunaratna clarified that she would purchase the Products even if they contained animal byproducts because her desire for collagen products is separate and distinct from an aversion to putting raw, bloody guts on her skin. (Declaration of Mocha Gunaratna iso Opp. to MTS ("MTS Gunaratna Decl.") ¶¶ 15-16). Gunaratna clarifies that she understood the Products to have "real collagen" and because she "associate[s] collagen with antiaging benefits, [she] specifically wanted collagen in the Products." (*Id.* ¶ 8). She also explained that she would not have bought the Product otherwise, and instead, "would have purchased another product that did contain collagen." (*Id.* ¶ 10). Gunaratna further explained that she does not "even know if it is accurate to say that collagen is an animal byproduct." (*Id.* ¶ 11). Gunaratna further testified as follows:

> "[t]he way Defense counsel phrased these questions made me imagine putting raw animal parts on my skin. I clarified that I would not make a conscious decision to put animal products on my face, as in my opinion, no reasonable person would agree to rub raw, bloody animal guts, animal corneas, or animal cartilage on their face. The repeated nature of these disturbing and gruesome questions made me feel confused, uncomfortable, and pressured me into answering the questions in a particular way.
>
> I do, however, feel there is a difference between putting raw, gruesome animal guts on my face the way Defense counsel portrayed and using a skincare product with real collagen that may have originally come from an animal. I do not think that wanting collagen in a product is the same as wanting animal corneas or ligaments in a product. Thus, Defendant mischaracterizes my testimony to mean that I did not want the collagen product, when I did. Therefore, when I answered 'Yes' when I was asked 'Would you have purchased products that contain antiaging benefits even if they contained some animal byproducts?' this was not a "direct contradiction" of my prior testimony because not wanting to purchase "animal guts" to put on my skin does not mean I do not want a product with collagen.

(*Id.* ¶¶ 14-15).

The Court agrees with Gunaratna. The inconsistencies (if any) between her deposition testimony given in response to Defendant's line of questioning compared to her deposition testimony in response to her counsel's question (and later-filed declaration clarifying her answers) cannot be understood as "clear and unambiguous." The only thing that is clear is that Gunaratna understandably does not want to rub raw animal parts on her face. Her clarification that such testimony does not mean she is averse to using any products that are derived from animals is a fair explanation regarding her responses to confusing and misleading questions that require huge leaps in logic to even begin to understand.

Moreover, even if Gunaratna's testimony is "contradictory," the Court would not conclude the later testimony and/or declaration are a "sham" as the testimony is consistent with her testimony prior to Defendant's counsel's "animal-parts" line of questioning.

For example, Gunaratna also testified earlier in the deposition that she understood collagen to be an antiaging protein that humans produce. (Gunaratna Depo. at 96:3-12). Given humans are (of course) animals, this testimony demonstrates that Gunaratna was fully aware that collagen is a protein found in animals. Furthermore, she testified in the deposition that she is not a vegan and tried to explain that she did not have a fundamental aversion to animal-derived products. (*Id.* at 110:22-111:2) (Q: "[I]f 'collagen' means 'animal parts,' you wouldn't have bought the product at all, right? A: Well, I have to tell you, I'm not vegan. So I think that – Q: Well, that's not an answer to the question.").

Viewing Gunaratna's testimony as a whole, the Court also disagrees that the testimony in response to the animal-parts questioning is as "case-defeating" as Defendant avers. Given the factors outlined in *Greer*, the tangential nature of the testimony militates against striking the testimony, since Gunaratna's clarifications are not the only testimony saving Plaintiffs from an adverse ruling.

Simply put, that Gunaratna did not associate collagen with the animal parts from which it is derived does not say much of anything about her desire to purchase collagen. While many people would be happy to purchase a hamburger from a restaurant, those same people might very well say no if repeatedly asked if they would like to eat a cow's intestines, groins, or guts. To suggest that an aversion to raw animal parts is the same as an aversion to a finished, processed product derived from animal sources is illogical and unpersuasive.

Defendant's argument again stems from a desire to convince the Court (and apparently consumers) that there are two sources of collagen, when, in fact, there is only one. The Products prominently say "Collagen," ***in the Product name***, so Defendant cannot legitimately argue that consumers purchasing the Products could have had some deep aversion to collagen itself. But Defendant resorts to claiming that Gunaratna did not desire "***animal*** collagen," apparently, as opposed to a nonexistent plant collagen. (*See* MSJ at 10). That consumers do not understand the chemistry is precisely why accuracy in labels matters. Consumers are trusting that when a skincare company says their product contains a particular ingredient, such as "collagen," the product will actually contain that ingredient as it is understood by the relevant scientific-community.

At the hearing, Defendant's counsel argued that if Gunaratna actually wanted plant-based collagen she could not have been deceived because, in that case, she got exactly what she wanted. The logical fallacy inherent in that argument is that even if Gunaratna wanted plant-based collagen (a fact that is not actually in the record), plant-based collagen is ***not*** exactly what she received — because there is ***no such thing*** as plant-based collagen.

Defendant compares this situation to a case in which the theory of liability was that the label "No Sugar Added" on a juice product mislead the plaintiff into believing that the juice was a "low calorie" option. *Major v. Ocean Spray Cranberries, Inc*., No. CV 12-03067-EJD, 2015 WL 859491, at *3 (N.D. Cal. Feb. 26, 2015), *aff'd*, 690 F. App'x 564 (9th Cir. 2017). There, during the plaintiff's deposition, when asked whether she purchased the defendant's juice because she thought it was a reduced-

calorie product, she answered "no." *Id.* The plaintiff then tried to argue that the defendant's motion for judgment on the pleadings should not hinge on that testimony because she still relied on the "No Sugar Added" label because she thought it meant the juice was healthier than other products. However, the court rejected that argument because it differed from the theory alleged in the complaint. *See id.*

By contrast, here the theory of falsity is that "C + Collagen" conveys that the Products contain collagen. For this action to be similar to *Major*, Gunaratna would have had to testify that she did not believe the Products contained collagen. Instead, consistent with the allegations in the SAC, she testified that she saw the word "collagen" on the Product, "which lured [her] to it" and that the reason she bought the Product was because she thought it had collagen in it. (Gunaratna Depo. at 78: 19-20; 141: 14-17). Despite Defendant's contrary arguments, the theory of Plaintiffs' action is not that consumers wanted animal products; the theory is that consumers wanted real collagen. The SAC's reference to "animal parts" is merely a proxy/shortcut for proving falsity, but it is now being used by Defendant as a red herring regarding consumers' beliefs. But the SAC could say nothing about "animal parts" and still have plausible claims for relief.

Therefore, the Court will not strike Gunaratna's deposition testimony or post-deposition declaration as her testimony is neither unambiguously inconsistent nor a sham to create a dispute of fact.

Plaintiff Camenforte: Similarly, Defendant seeks to strike Plaintiff Camenforte's Deposition Errata under Rule 30(e), which clarified that Camenforte would not repurchase the Product "***if it doesn't contain any collagen***." (MTS Opp., Ex. C (Camenforte Depo. Errata) (emphasis added). Instead, Defendant contends that her original testimony, stating that she would not repurchase the Products, should stand. Defendant believes the testimony without the clarification provided by the Deposition Errata proves that she lacks standing to pursue injunctive relief.

The Court concludes that the Deposition Errata is a fair clarification because Camenforte's testimony that she would not purchase the Product was directly preceded

by a question by Defendant's counsel, asking: "You've alleged that C Plus Collagen product… does not contain collagen. Do you know that? Do you understand that?" (Camenforte Depo. at 84:12-2). After indicating she understood that there was no collagen in the Products, counsel asked: "So would it be fair to say that you would not purchase the C Plus Collagen products ever again?;" to which Camenforte answered: "Yes." (*Id.* at 84:17-22).

The Deposition Errata adds a "clarification" that she would not purchase the Products again if they do not "contain collagen" as the label claims. The Court does not view the testimony as a clear contradiction, but rather, it is a fair qualification to a vague question. Moreover, the testimony is consistent with Camenforte's repeated testimony that she wants to purchase products with collagen. Therefore, the Court will not strike the Deposition Errata. *See, e.g., Mullins v. Premier Nutrition Corp.*, 178 F. Supp. 3d 867, 903 (N.D. Cal. 2016) (declining to strike errata that did not fundamentally alter testimony in light of the testimony in other parts of the deposition).

In the Reply, Defendant seems to argue that generally deposition errata testimony is judged under a stricter standard than sham affidavits. While Defendant cites to a case discussing a split among the district courts as to the correct standard to be applied to deposition erratas following the Ninth Circuit's opinion in *Hambleton*, the Court reads *Hambleton* as unambiguously holding that in the Ninth Circuit the standard for sham affidavits and deposition erratas is the same. (*See* Reply at 14) (citing *Alvarez v. XPO Logistics Cartage, LLC*, No. CV 18-3736-RGK (Ex), 2020 WL 11563057, at *2 (C.D. Cal. Aug. 17, 2020) ("Subsequent to *Hambleton*, district courts in the Ninth Circuit have disagreed regarding the circumstances in which procedurally compliant deposition errata nevertheless should be stricken as improper."); *but see Hambleton*, 397 F.3d at 1225 (noting the panel agreed with the Tenth Circuit, which has concluded that "attempt[s] to amend [] deposition testimony must be evaluated under the sham affidavit doctrine") (internal citations and corrections omitted). Therefore, contradictory changes made through deposition erratas must be stricken ***if they are a sham***. *See id.* at 1224-1225 (explaining that a statement of reasons for the correction is necessary for the court to assess "whether the alterations have a legitimate purpose").

Moreover, the Court notes that the clarification is not nearly as significant as Defendant claims. Even if the Court were to grant the MTS as to the Deposition Errata and were to further conclude that without that testimony Camenforte lacks standing for injunctive relief (which is also unlikely given the testimony in her declaration, that Defendant has not moved to strike), Plaintiffs could still pursue class-wide injunctive relief based on Gunaratna's testimony because "the Supreme Court has long recognized that in cases seeking injunctive or declaratory relief, only one plaintiff need demonstrate standing to satisfy Article III." *See Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 682 (9th Cir. 2022) (internal citations omitted). This further counsels against striking the Deposition Errata, given one of the main factors that Defendant argues as supporting the MTS is the dispositive nature of the change to the deposition.

Accordingly, Defendant's MTS is **DENIED**. The Court will not strike Gunaratna's deposition testimony or Camenforte's Deposition Errata. Defendant remains free to challenge Plaintiffs' credibility through cross-examination.

III. PLAINTIFFS' ARTICLE III AND STATUTORY STANDING

Defendant appears to argue that Plaintiffs must prove that each class member has standing at the class certification stage under *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208 (2021), in which, the Supreme Court held that "[e]very class member must have Article III standing in order to recover individual damages." However, as the Ninth Circuit has recognized, the Supreme Court expressly held open the question " 'whether every class member must demonstrate standing before a court certifies a class.' " *Olean Wholesale*, 31 F.4th at 668 (discussing *TransUnion*, 141 S.Ct. at 2208 n.4). Accordingly, the Ninth Circuit has suggested that in light of *TransUnion*, "Rule 23 also requires a district court to determine whether individualized inquiries into th[e] standing issue would predominate over common questions." *Id.* Therefore, the Court addresses the ***class*** standing arguments in its assessment of the predominance of common issues below.

However, it is clear that ***named*** plaintiffs must have standing at all stages of the litigation, including class certification. *See Lewis v. Casey*, 518 U.S. 343, 357 (1996) (internal quotation marks omitted) ("[N]amed plaintiffs who represent a class must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.").

Additionally, California state court opinions make clear that to satisfy standing under California consumer protection laws, at least one plaintiff in a class must establish statutory standing, which requires allegations of actual exposure and reliance on the misleading or false statement. *See In re Tobacco II Cases*, 46 Cal. 4th 298, 324-327, 93 Cal. Rptr. 3d 559 (2009).

Therefore, the Court addresses the named Plaintiffs' individual standing herein.

A. Legal Standards

Article III Standing: To establish the jurisdictional element of standing, "a plaintiff must show an injury that is concrete, particularized and actual or imminent (the "injury-in-fact" requirement); traceable to the defendant's complained-of activity (the "traceability" requirement); and likely to be redressed by a decision favorable to plaintiff (the "redressability" requirement). *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). "In a class action, the plaintiff class bears the burden of showing that Article III standing exists." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 978 (9th Cir. 2011). "Plaintiffs must show standing with respect to each form of relief sought." *Id.* At least at the class certification stage, "[s]tanding exists if at least one named plaintiff meets the requirements." *Id.*

To establish standing to seek injunctive relief under Article III in a false advertising action, the Ninth Circuit has explained that "the threat of future harm may be the consumer's plausible allegations that she will be unable to rely on the product's advertising or labeling in the future, and so will not purchase the product although she

would like to." *Davidson v. Kimberly-Clark Corp*., 889 F.3d 956, 969–70 (9th Cir. 2018).

Statutory Standing: The California Supreme Court has made clear that for claims under the UCL's fraudulent prong, a plaintiff must allege "actual reliance" upon a defendant's misrepresentation or omission in order to establish standing. *See In re Actimmune Mktg. Litig*., No. C 08–02376 MHP, 2009 WL 3740648, at *8 (N.D. Cal. Nov. 6, 2009); *In re Tobacco II Cases*, 46 Cal. 4th 298, 326, 93 Cal. Rptr. 3d 559 (2009) (holding that the "as a result of language" in the UCL "imposes an actual reliance requirement on plaintiffs prosecuting a private enforcement action under the UCL's fraud prong.").

Reliance can be established by showing that but-for the defendant's fraudulent conduct, "the plaintiff 'in all reasonable probability' would not have engaged in the injury-producing conduct." *Actimmune*, 2009 WL 3740648, at *8 (internal citation omitted). That requirement, however, "does not apply to absent class members." *Johnson v. Gen. Mills, Inc*., 275 F.R.D. 282, 287 (C.D. Cal. 2011) (internal citation omitted). The standing requirements under the FAL are identical to those under the UCL. *See Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 321–22, 120 Cal. Rptr. 3d 741 (2011). Once a plaintiff has shown individual reliance, class-wide reliance is presumed. *See Cartwright v. Viking Indus., Inc.*, No. V 07-2159-FCD-EFB, 2009 WL 2982887, at *11 (E.D. Cal. Sept. 14, 2009) ("Furthermore, with respect to claims brought under the CLRA or that sound in fraud, a presumption of reliance overcomes the individual nature of the reliance inquiry.").

B. Analysis

Defendant does not make a clear standing argument with respect to Plaintiffs' standing to seek monetary damages under Article III or statutory standing under the California laws. The Court is satisfied that if Plaintiffs' prevail at trial on the merits, they will also prove standing for damages under both standards.

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Plaintiffs have testified that they were misled into believing that the "C + Collagen" Products contained collagen; purchased those Products because of that mistaken belief; and have suffered an economic injury in the form of a price premium associated with the misrepresentation. (Class Gunaratna Decl. ¶ 5; *see also* Class Camenforte Decl. ¶ 5). To the extent Defendant's standing arguments are premised on the idea that the named Plaintiffs' deposition testimony contradicts their allegations of reliance, the Court rejects that argument and concludes that their credibility is an issue for trial (as discussed more fully in Part V of this Order addressing the MSJ).

The issue of Article III standing for injunctive relief is a closer call and courts have often struggled with injunctive-relief standing in the context of false advertising cases given the fact that once the named plaintiff becomes aware of the falsity of a claim, it is unlikely that the plaintiff will be fooled again (and any admission that the plaintiffs would purchase the products despite the misrepresentation tends to undermine materiality).

However, the Ninth Circuit has addressed this difficulty and clarified that the "imminent injury" in false advertising actions seeking injunctive relief is the fact that the plaintiff cannot trust that the Defendant's labels are truthful despite a genuine desire to repurchase the Products (assuming the labels have been corrected). *See Davidson*, 889 F.3d at 970–71 (concluding that the named plaintiff had standing in a false advertising action where she alleged that she faces an imminent or actual threat of future harm because she "continue[d] to desire to purchase wipes that are suitable for disposal in a household toilet"; "would purchase truly flushable wipes manufactured by [the defendant] if it were possible"; "regularly visits stores . . . where [defendant's] 'flushable' wipes are sold"; and is continually presented with Kimberly–Clark's flushable wipes packaging but has "no way of determining whether the representation 'flushable' is in fact true").

Since *Davidson*, many (though not all) district courts have concluded that testimony and/or allegations regarding the plaintiffs inability to trust a label on the front of a product that a plaintiff desires to purchase is sufficient for a plaintiff to establish standing to seek injunctive relief. *See, e.g.*, *Shank v. Presidio Brands, Inc.*,

No. CV 17-00232-DMR, 2018 WL 1948830, at *3-*5 (N.D. Cal. Apr. 25, 2018) (concluding that the plaintiff's "ability to read the products' ingredients does not render [the defendant's] allegedly false advertising that the products contain "only naturally-derived" ingredients "any more truthful"); *Tucker v. Post Consumer Brands, LLC*, No. CV 19-03993-YGR, 2020 WL 1929368, at * 15 (N.D. Cal. Apr. 21, 2020) (holding that the burden is not on the plaintiff to consult the ingredient list to try to discern if the ingredients match the labels on the front of the box); *Moore v. Glaxosmithkline Consumer Healthcare Holdings (US) LLC, et. al*., No. CV 20-09077-JSW, 2021 WL 3524047, at *5 (N.D. Cal. Aug. 6, 2021) ("[The p]laintiff alleges that she continues to desire to purchase the [p]roducts if they were actually natural and would be unable to trust Defendant's label representations absent injunctive relief. Moreover, even if Plaintiff is now aware of some synthetic ingredients, it is plausible that she would still be unable to rely on the Products' labeling in the future given her allegations that she cannot differentiate between synthetic and natural ingredients."); *but see, e.g., Stewart v. Kodiak Cakes*, LLC, 537 F. Supp. 3d 1103, 1127 (S.D. Cal. 2021) (concluding the plaintiffs lacked standing for injunctive relief because the plaintiffs "could check the nutrition facts or ingredient labeling to assess if the products still contain preservatives").

The Court finds *Moore*, *Tucker*, and *Shank* persuasive. The Court has little difficulty concluding that absent injunctive relief Plaintiffs will be deterred from purchasing the Products due to their inability to trust the label. Such a standard can be closely analogized to the "presently deterred" standard utilized in the ADA context. *Cf. Civil Rights Educ. & Enf't Ctr. v. Hospitality Props. Tr. ("CREEC")*, 867 F.3d 1093, 1101 (9th Cir. 2017) ("An allegation that the plaintiff is currently deterred from visiting a facility because he is aware of discriminatory conditions there suffices to demonstrate an imminent injury[.]").

Defendant cites to *Davidson* in the Class Opposition but does not engage with its holding. Instead, Defendant exclusively analogizes to *pre-Davidson* cases, none of which remain persuasive.

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Here, both Plaintiffs testified that they are interested in purchasing the Products again if the labeling is accurate but that they are presently deterred from purchasing the Products because they cannot trust the labeling and do not have a sufficient scientific background to verify the ingredients Defendant uses. Both Plaintiffs also testified that they often frequent stores or online websites, which sell Defendant's products and would be inclined to purchase the Products if they could be sure the labeling was accurate. This testimony is precisely the type of testimony that the Ninth Circuit held was sufficient to demonstrate an imminent injury in *Davidson*. (*See* Class Gunaratna Decl. ¶ 6; *see also* Class Camenforte Decl. ¶ 6).

Accordingly, the Court concludes that Plaintiffs have standing to seek damages and injunctive relief. Any inconsistencies in Plaintiffs' testimony may be probed at trial as an issue of credibility. *Accord Krommenhock v. Post Foods, LLC*, 334 F.R.D. 552, 572-73 (N.D. Cal. 2020) (concluding that at least one named plaintiff made a sufficient showing for purposes of standing to seek injunctive relief on summary judgment, despite testimony that he "didn't know" if he would buy the cereal again given the products high added sugar content, concluding that the plaintiff's "future intent [to purchase products] can be explored at trial").

IV. CLASS CERTIFICATION

Plaintiffs move to certify a Class defined as follows:

> All persons who purchased the Products in the State of California, for personal use and not for resale during the time period of four years prior to the filing of the complaint through the date of court order approving or granting class certification (the "Class").

(Class Motion at 7).

Defendant contends that Plaintiffs have failed to satisfy numerous Rule 23 requirements, but namely, predominance and superiority.

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Title: Mocha Gunaratna v. Dennis Gross Cosmetology LLC et al

A. Class Certification Legal Standard

"Federal Rule of Civil Procedure 23 governs the maintenance of class actions in federal court." *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1124 (9th Cir. 2017). To obtain class certification, the putative lead plaintiffs must "satisfy each of the four requirements of Rule 23(a) — numerosity, commonality, typicality, and adequacy — and at least one of the requirements of Rule 23(b)." *Id.* (citing *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 979–80 (9th Cir. 2011).

The party seeking class certification bears the burden of establishing by a preponderance of the evidence that the requirements of Rules 23(a) and 23(b) have been met. *Olean Wholesale*, 31 F.4th at 665; *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 268 F.R.D. 604, 609 (N.D. Cal. 2010) (citing, *inter alia*, *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1188 (9th Cir. 2001), *amended by* 273 F.3d 1266 (9th Cir. 2001)). "Courts must perform a 'rigorous analysis'" of Rule 23(a)'s requirements before concluding that class certification is appropriate. *Alcantar v. Hobart Serv.*, 800 F.3d 1047, 1052 (9th Cir. 2015) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–51 (2011)) (noting that "sometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question").

B. ANALYSIS

1. Rule 23(a) Factors

a. Numerosity, Typicality, and Adequacy

Defendant does not appear to dispute numerosity and typicality. As for adequacy, Defendant's argument is that Plaintiffs do not adequately represent the class because of the testimony that Defendant argues is inconsistent with the testimony it moves to strike. In other words, Defendant argues that Plaintiff Gunaratna is not an adequate representative because she is uninterested in putting animal parts on her face and Plaintiff Camenforte is inadequate because she does not desire to purchase the Products in the future. Further, Defendant points to testimony of Camenforte, which

Defendant characterizes as demonstrating that "she did not care what was in the product, as long as it made her look younger." (Class Opp. at 29) (citing Camenforte Depo. at 66:2-5).

When determining Plaintiffs' adequacy, the Court "must consider two questions: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015 (9th Cir. 2012) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

Defendant's argument appears to be that Plaintiffs are inadequate representatives because their credibility has been called into question. But Defendant does not cite to a single case for the proposition that arguably inconsistent testimony renders named plaintiffs inadequate to represent a class. While the Court is independently aware of case law that does consider a Plaintiffs' credibility in determining adequacy, the Court will not attempt to analogize to those cases without any guidance from the parties. Moreover, in light of Defendant's questioning style, it is unclear to the Court whether any other possible named plaintiffs would respond any differently to the questions.

Accordingly, the Court concludes that Plaintiffs have satisfied numerosity, typicality, and adequacy.

b. Commonality

Defendant argues that Plaintiffs cannot show commonality, as required by Rule 23(a)(2). Relying on *Wal-Mart*, Defendant devotes a single paragraph to arguing that commonality is not met because "Plaintiffs have not met their burden of providing evidence that there is a "common question that can resolve all of the claims in 'one stroke.'" (Opposition at 14) (citing *Wal-Mart*, 564 U.S. at 350). Defendant mischaracterizes the *Wal-Mart* holding. *Wal-Mart* does not require the resolution of all claims in one stroke (and the Court does not understand how that could be so given

essentially all claims have several elements). The language Defendant relies on actually states as follows:

> "[A purported class's] claims must depend upon a common contention[.] . . . That common contention, moreover, must be of such a nature that it is capable of class[-]wide resolution—which means that determination of its truth or falsity will resolve ***an issue*** that is central to the validity of each one of the claims in one stroke.

Wal-Mart, 564 U.S. at 350 (emphasis added).

Here, Plaintiffs argue that "determination of whether the uniform 'C + Collagen' representation deceived the public will resolve the issues that are central to the validity of the putative class's CLRA, UCL and FAL claims in one stroke." (*See* Class Reply at 7). Because the CLRA, UCL, and FAL apply an objective reasonable consumer test, the Court agrees. *See Broomfield v. Craft Brew All., Inc*., No. CV 17-01027-BLF, 2018 WL 4952519, at *5 (N.D. Cal. Sept. 25, 2018) ("Numerous courts have recognized that a claim concerning alleged misrepresentations on packaging to which all consumers were exposed is sufficient to satisfy the commonality requirement because it raises the common question of whether the packaging would mislead a reasonable consumer."); *Prescott v. Reckitt Benckiser LLC*, No. 20-cv-02101-BLF, 2022 WL 3018145, at *4 (N.D. Cal. July 29, 2022) (same); *Lytle v. Nutramax Lab'ys*, Inc., No. ED CV 19-0835-FMO (SPx), 2022 WL 1600047, at *23-24 (C.D. Cal. May 6, 2022) (same); *cf. Amgen Inc. v. Connecticut Retirement Plans & Trust Funds*, 568 U.S. 455, 359 (2013) (the Supreme Court noting, in a securities fraud action, that "[b]ecause materiality is judged according to an objective standard, the materiality of Amgen's alleged misrepresentations and omissions is a question common to all members of the class Connecticut Retirement would represent"). Therefore, Plaintiffs have established commonality with respect to the CLRA, UCL, and FAL claims.

Plaintiffs also argue that their express breach of warranty claims (not their implied breach of warranty claims) are also susceptible to common proof. (Class Motion at 22). Defendant does not address the warranty claims at all.

Given Defendant's lack of argument, the Court's assessment of this issue is limited to the cases cited by Plaintiff. The express warranty claims (under the California Commercial Code and the federal Magnuson Moss Warranty Act) appear to be susceptible to common proof because, like the consumer protection statutes, the claims turn on whether Plaintiffs can demonstrate that the misrepresentation would have been material to a reasonable consumer. *See Allen v. Similasan Corp.*, 306 F.R.D. 635, 648 (S.D. Cal. 2015) ("As with California's consumer protection statutes, [ ] class treatment of breach of express warranty claims is only appropriate if plaintiffs can demonstrate that the alleged misrepresentation would have been material to a reasonable consumer.") (internal citations omitted). "Privity is not required for breach of express warranty claims." *Id.* Therefore, the commonality requirement is satisfied for the breach of express warranty claims.

Accordingly, the Court concludes that Plaintiffs have satisfied each of the Rule 23(a) requirements as to the CLRA, UCL, FAL, and the express warranty claims.

2. Rule 23(b)(2)

Rule 23(b)(2) allows the Court to certify a class seeking class-wide injunctive relief if "the party opposing the class acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

Defendant does not appear to dispute that the standard of Rule 23(b)(2) is met beyond challenging Plaintiffs' standing to seek injunctive relief, which the Court rejects, as discussed above.

Accordingly, the Court concludes that Plaintiffs have satisfied each factor in Rule 23(a) and Rule 23(b)(2), and therefore, the Class Motion is **GRANTED** to the extent it seeks certification under Rule 23(b)(2).

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3. Rule 23(b)(3)

Rule 23(b)(3) allows the Court to certify a class seeking class-wide monetary relief but only if the additional requirements of predominance and superiority are satisfied. *See* Fed. R. Civ. P. 23(b)(3); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997) (discussing relevance of "predominance" and "superiority" requirements of Rule 23(b)(3)). Defendant argues that Plaintiff has failed to establish both requirements under Rule 23(b)(3).

a. Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods*, 521 U.S. at 623. It involves similar questions as the commonality analysis, but it "is even more demanding than Rule 23(a)." *Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013). Predominance should be found when "common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication." *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1022 (9th Cir. 1998) (internal citation omitted).

Defendant challenges predominance on the following grounds: (a) that individual issues predominate on the question of falsity, materiality, and reliance because consumers do not have a uniform understanding of the Claim and Plaintiffs' consumer survey evidence is flawed; (b) Plaintiffs' class-wide damages theory is not sufficiently tied to their theory of relief as required under *Comcast*; and (c) under *TransUnion*, individual issues will predominate regarding the issue of class members' standing to obtain monetary relief.

The Court discusses these arguments in turn.

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i. Deception, Materiality, and Reliance

Defendant argues that individual issues predominate because the Court will have to probe each person's understanding of the phrase "C + Collagen." (Class Opp. at 15). Not so.

The Ninth Circuit has noted that it is an error of law and "per se" abuse of discretion to deny class certification for claims under the CLRA and UCL (and implicitly the FAL), based on a lack of "evidence that consumers uniformly interpret the statement in a particular manner." *Bradach v. Pharmavite LLC*, No. CV 14-3218-GHK (AGRx), 2016 WL 7647661, at *5 (C.D. Cal. July 6, 2016), *rev'd and remanded*, 735 F. App'x 251 (9th Cir. 2018). In reversing the district court's order denying class certification in *Bradach*, the Ninth Circuit explained, that "[u]nder California law, class members in CLRA and UCL actions are not required to prove their individual reliance on the allegedly misleading statements . . . [i]nstead, the standard in actions under both the CLRA and UCL is whether 'members of the public are likely to be deceived.'" *Bradach*, 735 F. App'x at 254 (internal citations omitted). "For this reason, courts have explained that CLRA and UCL claims are ideal for class certification because they will not require the court to investigate class members' individual interaction with the product." *Id*. at 254-55 (internal citation and quotation marks omitted).

The main case Defendant relies on to argue that Plaintiffs must establish that the "the challenged statements were ***facially*** uniform," and that "consumers ***understanding*** of those representations" were uniform, appears to be outdated, and is otherwise distinguishable. (*See* Class Opp. at 15) (citing *Jones v. ConAgra Foods, Inc.*, No. CV 12-01633-CRB, 2014 WL 2702726, at *14–15 (N.D. Cal. June 13, 2014)) ("*Jones*") (emphasis in original). In *Jones*, the "only evidence [the p]laintiffs' rel[ied] on in support" of the contention that "a reasonable consumer would attach significance to the challenged label" was an expert declaration based solely on the expert's opinion; the expert "did not survey any customers." (*Id*. at *15). There, the challenged statement was a label on a canned tomato product bearing the statement "100% Natural," although the product contained citric acid and/or calcium chloride. *Id.* at *1.

The court emphasized that the word "natural" did not have a single, controlling definition and it was not even clear that the label was false. *See id.* at 15-16. Beyond that, the court concluded that the expert's testimony alone did not demonstrate that the claim was "material to reasonable consumers." *Id.* at *16. The court reasoned that the plaintiffs "need[ed] to point to some type of common proof," but failed to do so. *Id.*

Here, Plaintiffs ***do*** point to common proof through the survey conducted by Plaintiffs' consumer survey expert, Dr. Forrest Morgeson, Ph.D., as discussed in the *Daubert* Order. (*See* Report of Forrest Morgeson, Ph.D. ("Morgeson Report"), Appendix C ("Morgeson Survey"); *accord ConAgra II*, 90 F. Supp. 3d at 1020–21 (distinguishing from *Jones* on the basis that the plaintiffs adduced survey evidence that reasonable consumers associated the claim "100% Natural" with the fact that the products contained no genetically modified organisms and that the claim was material).

At the hearing, Defendant's counsel argued that the Morgeson Survey does not distinguish this action from *Jones* because the Morgeson Survey does not establish a uniform understanding of "collagen," just like the plaintiffs in *Jones* failed to establish a uniform understanding of the term "natural." But as this Court explained in the *Daubert* Order, the ambiguity (if any) here can only be about what the "+" in "C + Collagen" conveys, because the meaning of "collagen" itself is not up for debate. Unlike the word "natural," collagen does have a single, controlling definition. Indeed, while Merriam-Webster lists ***20*** different definitions for "natural," Merriam-Webster unsurprisingly, lists ***just 1*** definition for collagen (a definition, which, of course, specifies that collagen is a protein found in vertebrates). *Compare Natural,* MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/natural (last visited Mar. 3, 2023) *with Collagen,* MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/collagen (last visited Mar. 3, 2023); *see also Allegra v. Luxottica Retail N. Am.*, 341 F.R.D. 373, 441 (E.D.N.Y. 2022) (noting the difference between false advertising cases involving amorphous labels that are not "objective term[s] that carr[y] a single definition or refer[] to a specific product feature," as opposed to representations in cases that do have "discernable meaning[s]" such as "flushable" wipes, "50% thicker" fertilizer product, and "100% Pure Olive Oil").

Here, the Morgeson Survey is sufficient evidence to not only show that the issues of deception and materiality (i.e., whether reasonable consumers were misled to believe, based on the "C + Collagen" label, that the Products contained collagen and purchased the Products based in part on that mistaken belief) are susceptible to common proof, but as discussed in Part V of this Order, that there are genuine issues of fact as to both of those elements. Specifically, the Morgeson Survey demonstrated that, of those participants that provided an opinion (i.e., answered yes or no), ***95.2%*** believed that the Products ***contained*** collagen after viewing images of the Products. (Morgeson Report at 12). Furthermore, 51.7% of participants indicated they would be at least somewhat less satisfied if they learned that the Products contained amino acids as opposed to collagen. (*Id.* at 12-13). And 49.2% of the sample indicated they would be at least somewhat less likely to purchase the Products again after learning the Products do not contain collagen. (*Id.* at 13). Dr. Morgeson concluded that each of these results are statistically significant. (*Id.* at 12-13).

At the hearing, Defendant's counsel stressed that even taking the Morgeson Survey at face value (despite what was characterized as biased questioning), less than half of the sample population indicated that collagen was material. However, that statistic can be easily flipped on Defendant as Plaintiffs' counsel pointed out. That 1 in 2 of the participants were misled on a characteristic of the Product they viewed as material, does not suggest to the Court a lack of materiality.

Though the case law does not establish any uniform percentage that allows a court to conclude that the evidence shows that deception and materiality are susceptible to common proof (or sufficient to create genuine issues of fact), it would seem to the Court, that any percentage that a qualified expert determines is statistically significant should be sufficient for both certification and summary judgment.

Indeed, several courts have recognized that percentages lower than those demonstrated by the Morgeson Survey were sufficient to show common proof on a motion for class certification, especially where there is no question that all potential class members were exposed to the message because it was on all relevant products sold to the class. *See, e.g*, *In re NJOY, Inc. Consumer Class Action Litig*., 120 F. Supp.

3d 1050, 1112-13 (C.D. Cal. 2015) (presuming materiality where 37.1% and separately 41.5% of respondents believed the challenged statement conveyed an overall implied safety message but finding insufficient evidence of class-wide exposure where challenged statements aired on radio and television rather than on the product itself); *Oshana v. Coca–Cola Co*., No. 04 C 3596, 2005 WL 1661999, *9 (N.D. Ill. July 13, 2005) (presumption of materiality applied where 24% of consumers indicated they "would behave differently" without the misrepresentation); *Fitzhenry-Russell v. Dr. Pepper Snapple Grp., Inc*., 326 F.R.D. 592, 613 (N.D. Cal. 2018) ("[T]he standard [under California law] requires only that the [c]ourt find there is a probability that reasonable consumers could be misled, not that they all believed 'Made From Real Ginger' means the same thing. Plaintiffs have done that through the consumer understanding survey, which found that 78.5% of respondents believed 'Made From Real Ginger' meant made from ginger root" and where 25% indicated that the claim was a significant factor in their purchasing decision).

Defendant argues that the report of Dr. Morgeson "fails to provide evidence in support of uniformity" because the survey suffered from the following flaws: 1) the survey asked only about the word "collagen", omitting the entire phrase "C + Collagen" from the dispositive question; 2) the survey did not ask what the word "collagen" means; 3) the survey did not use a representative population; and 4) the survey did not determine whether actual purchasers rely only upon [the] "C + Collagen" message, as opposed to other relevant factors, when purchasing the products. (Class Opp. at 15).

Defendant's arguments repeat many of the arguments rejected in the *Daubert* Order. The Morgeson Survey showed participants six images of the frontside of the various Product bottles, each of which included the "C + Collagen" Claim. (*See* Morgeson Report, Appendix C (Morgeson Survey)). The Morgeson Survey then asked the following question: "Based on your review of these images, do you think this product contains collagen?" (*Id*). Participants were then given the option to choose one of the following answers: "Yes," "No," or "I don't know." (*Id*.).

It is ironic that Defendant takes issue with the fact that the Morgeson Survey did not specifically ask what "C + Collagen" means given Defendant has otherwise argued that "C + Collagen" cannot be considered in isolation but must be viewed in light of the other words on the bottles and packaging. As Defendant pointed out at the *Daubert* hearing, certain of the packaging (which was shown to the survey participants) focuses primarily on the vitamin c ingredient, referring to the Product as a "Vitamin C Serum." (*See id*.). Moreover, on each image shown to the participants the only place on the Product that the word "collagen" appears is within the brand name "C + Collagen." (*See id*.). Therefore, for participants to conclude based on viewing any of the images that the Products contain collagen, the participants ***necessarily*** had to conclude that "C + Collagen" conveys that the Products contain collagen.

As for Defendant's second argument, it does not matter that consumers were not asked what collagen means because, as the Court has explained numerous times, collagen ***only has one meaning.***

As for the demographics of the survey participants and how the participants were chosen, though Defendant raises legitimate critiques, as discussed in the *Daubert* Order, those critiques go to the weight, not the admissibility, of the evidence. *See ThermoLife Int'l, LLC v. Gaspari Nutrition Inc*., 648 F. App'x 609, 613-14 (9th Cir. 2016) (internal citation omitted) (holding that objections as to an unrepresentative sample "go only to the weight, and not the admissibility, of the survey"). The demographics of the survey population were not so divorced from the potential class as to render the survey irrelevant or inadmissible. And even if a jury were to reject the Morgeson Survey because of its design flaws, that would not be a basis for rejecting class certification because, as the Supreme Court has explained, "Rule 23(b)(3) requires a showing that questions common to the class predominate, not that those questions will be answered, on the merits, in favor of the class." *See Amgen*, 568 U.S. at 459.

As for Defendant's final critique — that the survey "did not determine whether actual purchasers rely ***only*** upon [the] C + Collagen message" — Defendant is again wrong on the law. *See In re Tobacco II Cases*, 46 Cal. 4th at 326 ("'It is not necessary

that [the plaintiff's] reliance upon the truth of the fraudulent misrepresentation be the sole or even the predominant or decisive factor influencing his conduct.").

And contrary to Defendant's argument, Ms. Sarah Butler's survey does not disprove that deception or materiality is incapable of class-wide proof. Moreover, as Plaintiffs point out, if anything, certain of the non-excluded portions of Ms. Butler's survey actually help demonstrate materiality. Ms. Butler's survey asked participants (who were previous purchasers of Defendant's C + Collagen Products), to select the most important characteristic that "made [participants] purchase the [P]roducts the first time." (*See* Report of Sarah Butler ("Butler Report"), Ex. E. ("Butler Survey")). Out of the 19 possible "product characteristics," the characteristic selected by ***the largest proportion of respondents*** (46.7%) was "C + Collagen." (*Id.*). In other words, participants selected the Products' label more than any other characteristic as the reason for their purchase. (Rebuttal Report of Forrest Morgeson, Ph.D. ("Morgeson Rebuttal") at 5); *see also Fitzhenry-Russell*, 326 F.R.D. at 614 ("Clearly, if a quarter of Canada Dry consumers were listing the ginger claim as a top five reason why they bought the product, the claim is material.").

Therefore, the Court concludes that Plaintiffs have shown that deception and materiality are susceptible to class-wide proof (and that there are genuine issues of fact as to both issues), and therefore, Plaintiffs need not show individual reliance because reliance is presumed upon a showing of class-wide exposure and materiality. Here, class-wide exposure can easily be presumed given it is undisputed that every advertisement Defendant maintained for the Products reflects the "C + Collagen" product name and the "C + Collagen" label is printed directly on the frontside of the Product bottles in bold font and contrasting color. (*See* Def. Reply to PSUF ¶¶ 13-14); *see also Stearns v. Ticketmaster Corp*., 655 F.3d 1013, 1022 (9th Cir. 2011) (citing *In re Vioxx Class Cases*, 180 Cal. App. 4th 116, 129, 103 Cal. Rptr. 3d 83 (2009)) ("If the trial court finds that material misrepresentations have been made to the entire class, an inference of reliance arises as to the class."); *see also Ehret v. Uber Techs., Inc.*, 148 F. Supp. 3d 884, 895 (N.D. Cal. 2015) ("[I]n numerous cases involving claims of false-advertising, class-wide exposure has been inferred because the alleged misrepresentation is on the packaging of the item being sold.").

Accordingly, the issues of deception, materiality, and reliance do not require individualized inquires that would predominate over common issues.

ii. *Comcast*: Is the Class-Wide Damages Model Tied to Plaintiffs' Theory of Liability?

As part of the predominance inquiry, the Supreme Court has held that plaintiffs must present a damages model that measures damages resulting from the particular injury on which the defendant's liability is premised. *Comcast*, 569 U.S. at 36; *see also Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 514 (9th Cir. 2013) ("[P]laintiffs must be able to show that their damages stemmed from the defendant's actions that created the legal liability.").

Defendant argues that Plaintiffs have not satisfied *Comcast* because their damages model is not tied to their theory of liability, and therefore they have not demonstrated that individualized damages issues will not predominate over common issues.

The Ninth Circuit has held that *Comcast* did not change the established law that "the presence of individualized damages cannot, by itself, defeat class certification under Rule 23(b)(3)." *Leyva*, 716 F.3d at 514. In addition, under the California statutes, "[e]ntitlement to restitution is a separate inquiry from the amount of restitution owed." *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 985 (9th Cir. 2015). "Thus, a court need not make individual determinations regarding entitlement to restitution. . . . Instead, restitution is available on a class[-]wide basis once the class representative makes the threshold showing of liability under the UCL and FAL." *Id.*

But Plaintiffs must put forth a method that "attempt[s]" to calculate damages that are limited only to those caused by the allegedly unlawful conduct, and not some other conduct. *Comcast*, 569 U.S. at 35. The problem in *Comcast* was that the plaintiffs' alleged four theories of antitrust injury but the district court only allowed one theory of liability to proceed to class certification. The damages model, however, "did not isolate damages resulting from [that] one theory of antitrust impact," instead,

the "model assumed the validity of all four theories of antitrust impact initially advanced by respondents." *Id.* at 36. Therefore, to satisfy *Comcast*, the but-for world advanced by a damages model must only assume the absence of the particular wrongful conduct upon which the plaintiffs' theory of liability is premised.

But *Comcast* does not demand calculation of damages with perfection. In calculating restitution damages under the California statutes, the law "requires only that some reasonable basis of computation of damages be used, and the damages may be computed even if the result reached is an approximation." *Marsu, B.V. v. Walt Disney Co*., 185 F.3d 932, 938–39 (9th Cir. 1999). "[T]he fact that the amount of damage may not be susceptible of exact proof or may be uncertain, contingent or difficult of ascertainment does not bar recovery." *Id*. at 939.

In the *Daubert* Order, the Court detailed the damages model proposed by Plaintiffs' damages and economic experts, Steven P. Gaskin, M.S., and Colin B. Weir, M.B.A. The model is known as a "conjoint analysis" and, as explained in the *Daubert* Order, such analyses are regularly used in false advertising class actions. Indeed, Plaintiffs' experts' have themselves proffered conjoint analyses in numerous class actions and courts have accepted their analyses with few exceptions.

A conjoint analysis "works by asking consumers questions that cause them to make tradeoffs between different features in a product, or with different information about the product." *Johnson v. Nissan N. Am., Inc.*, No. CV 17-00517-WHO, 2022 WL 2869528, at *5 (N.D. Cal. July 21, 2022). "Then, using statistical comparisons, the value of a particular feature (or lack thereof) can be derived." *Id*

In the Class Opposition, Defendant first takes issue with the fact that Plaintiffs' experts have not yet actually conducted the damages model that they propose in their reports. Several courts have rejected that the damages model must be conducted prior to class certification. *See, e.g.*, *Lytle*, 2022 WL 1600047, at *18 (collecting cases for the proposition that "[a] plaintiff is not required to actually execute a proposed conjoint analysis to show that damages are capable of determination on a class-wide basis with common proof. . . . A plaintiff need only show that 'damages are capable of

measurement' on a class-wide basis.") (internal citations omitted). The cases Defendant cites are inapposite, because in those cases, courts took issue with the sufficiency of the model itself, not the absence of conclusions produced from the model. *See, e.g.*, *Randolph v. J.M. Smucker Co*., 303 F.R.D. 679, 697 (S.D. Fla. 2014) (concluding that the plaintiff's "bald, unsupported assertion" that a "hedonic regression and/or conjoint analysis" could establish a price premium for the label "All Natural" was insufficient to satisfy *Comcast* because the "plaintiff [] made no attempt to present the [c]ourt with an example or summary of the model to be applied," but explicitly acknowledging that *Comcast* does not require the plaintiff "to prove the exact amount of damages suffered").

Next, Defendant provides 16 bullet points of reasons why the damages model is insufficient. The bullet points are essentially copied-and-pasted excerpts from Defendant's experts' reports. (*See* Opposition at 23-24). Defendant leaves to the Court the work of elaborating on and assessing the import of the experts' opinions. The Court only addresses the issues that have been adequately addressed by Defendant.

Defendant contends, based on the opinion of Ms. Butler and D. Scott Bosworth, CFA, that due to the design of the survey proposed by Mr. Gaskin, there "is no way to determine the extent that [Mr.] Gaskin's proposed conjoint analysis is measuring a price premium, or simply measuring an accurate and understood benefit of the product." (Class Opp. at 23) (citing Butler Report ¶¶ 29, 43; Report of D. Scott Bosworth ("Bosworth Report") at ¶¶ 61, 69-80).

While Defendant is free to make this critique as a matter of cross-examination, Defendant has failed to convince the Court that this criticism is fatal to the damages model. From a substantive perspective, the Court does not necessarily agree with the contention (at least without additional explanation), given the packaging shown to consumers in Mr. Gaskin's proposed survey tests the "collagen" claim as compared to the importance attached to labels describing the desired ***effects*** of collagen, such as "anti-wrinkle;" "Leaves skin plump with moisture;" "anti-aging;" and "You want: Supple skin, intense hydration," (Report of Steven P. Gaskin ("Gaskin Report") ¶ 18, Figure 1). By comparing these attributes (among others) to the Collagen Claim, the

conjoint analysis directly tests how consumers value the effects of collagen as compared to the Collagen Claim itself. And perhaps even more importantly, from a procedural perspective, the Court views the argument as going to the weight not admissibility of the model.

Perhaps the most substantial and briefed issue is that this action is like that of *ConAgra I*, where the court rejected a version of Mr. Weir's damages model for failure to satisfy *Comcast* because it did not test the plaintiffs' specific theory of liability. *See In re ConAgra Foods*, 302 F.R.D. 537, 578 (C.D. Cal. 2014) (*ConAgra I*). In *ConAgra I*, the plaintiffs' theory of the case was that a "100% Natural" label was false because the product contained genetically-modified-organism ("GMO") ingredients. There, the court rejected Mr. Weir's conjoint damages model because it was designed to "calculate the price premium attributable to use of the term 100% Natural," but Mr. Weir conceded that 100% Natural was not equivalent to the phrase "non-GMO," but rather, Mr. Weir stated that the word "natural" has many implications. *See id*. Further, the plaintiffs had not put forth any consumer surveys showing that reasonable consumers interpret the phrase 100% Natural as equivalent to non-GMO. *See id*. at 577 ("[The] plaintiffs adduce no survey evidence concerning the actual reaction of consumers to the "100% Natural" label[.]")

However, Defendant fails to acknowledge that in a subsequent order, the court ultimately approved Mr. Weir's damages model that combined hedonic regression and a conjoint analysis, where it was informed by consumer surveys that established a non-GMO interpretation of the phrase "100% Natural." *See ConAgra II*, 90 F. Supp. at 1019-20, 1025.

Moreover, to the extent *ConAgra I* can be said to stand for the proposition that the damages model ***itself*** needs to establish a uniform understanding of a specific misrepresentation, it is out-of-step with several other cases and seems to take *Comcast* at least one step too far in requiring Plaintiffs to prove liability twice over. *See, e.g*, *McMorrow v. Mondelez Int'l, Inc*., No. CV 17-2327-BAS-JLB, 2021 WL 859137, at *15 (S.D. Cal. Mar. 8, 2021) ("[The [p]laintiffs' damages model need not isolate and test the various possible interpretations of the term 'nutritious'" but may "assume[]

that [the plaintiff's theory of liability] is true" at the class certification stage); *see also Krommenhock*, 334 F.R.D. at 575 (noting that the plaintiffs' damages model "assume[d]" that that the challenged statements were false or misleading to reasonable consumers, "which is an appropriate starting point for a damages model (especially one in support of class certification).").

Therefore, the better reading of *ConAgra I* is that the court rejected a class-wide damages model that assumed the plaintiffs' theory of liability, where the plaintiffs had not yet shown that the theory of liability itself was susceptible to class-wide proof. This aligns with *Comcast*, given there, the plaintiffs' damages model also assumed theories of liability that the lower court had concluded were not susceptible to class-wide proof.

This action is dissimilar because here Plaintiffs ***have*** demonstrated that deception and materiality are susceptible to class-wide proof as already explained. Instead, the Court views the case as much more analogous to others in which district courts accepted conjoint analyses as class-wide proof of damages for false advertising claims, such as in *Fitzhenry-Russell*. There, the district court accepted a damages model that calculated the price premium of the challenged label "Made From Real Ginger." *Fitzhenry-Russell*, 326 F.R.D. at 598. The plaintiffs' theory was that the claim "Made from Real Ginger" deceived consumers into believing the product contained ginger root, rather than ginger extract. *Id.* at 612. The plaintiffs submitted a consumer survey revealing that 78.5% of consumers believed that "Made with Real Ginger" meant the products contained ginger root, sufficiently demonstrating that the question of deception was susceptible to class-wide proof. *Id.* at 613. There was also evidence of materiality, namely that 25% of purchasers had indicated that the made with real ginger claim was the reason they purchased the product.

Given the deception and materiality evidence, the district court concluded that the damages model, which calculated the price premium associated with the claim "Made with Real Ginger," was consistent with the plaintiffs' theory of liability. The court rejected the defendant's argument that plaintiffs' damages model did not match plaintiffs' theory of liability because it "calculate[d] the premium associated with all

possible meanings of the claim," rather than just the ginger-root meaning. *Id.* at 614-615. The court reasoned that "the worth of the 'Made From Real Ginger' claim will only matter in the future if a jury does find that the claim is misleading" (i.e., that reasonable consumers understand the challenged claim to mean that the product contains ginger root when in fact the product contains ginger extract). *Id.* at 615. Therefore, the "damages model fit[] the theory of the case" and "the price premium survey is able to calculate damages on a class-wide basis." *Id.*; *see also Broomfield*, 2018 WL 4952519, at *17-18 (concluding that once survey evidence establishes that reasonable consumers are misled, then "the only question that remains [for the damages model] is how purchases based on that belief have injured consumers;" the actual claim and packaging becomes "irrelevant" at that stage).

Here too, the worth of the "C + Collagen" label will only matter if a jury finds that the Claim is false or misleading (i.e., that the Claim implies the Products ***contain*** collagen despite the absence of actual collagen). Therefore, the damages model need not ***again*** test the understanding of the label but may assume that consumers understand it to mean the Products contain collagen. Indeed, because the damages model assumes Plaintiffs' only theory of liability, it inevitably tests the price premium of ***Plaintiffs'*** theory. In sum, Defendant's argument amounts to a contention that the damages model does not test ***Defendant's*** theory of the case – but *Comcast* requires no such thing.

Accordingly, the Court concludes that Plaintiffs' damages model satisfies *Comcast*, and therefore the issue of damages is susceptible to class-wide proof and will not lead to the predominance of individual issues.

iii. *TransUnion*: Can Plaintiffs Prove Class-Wide Standing for Damages?

Defendant's argument regarding class members' standing is hard to follow but, as the Court understands it, Defendant contends that Plaintiffs' "abstract" theory of damages runs afoul of the Supreme Court's ruling in *TransUnion* and the Court will be

required to conduct individual inquiries to determine each class members' standing. (*See* Class Opp. at 12). Defendant is mistaken.

In *TransUnion*, the Supreme Court concluded that damages could not be awarded to members of a class with alerts in their credit files maintained by a credit reporting agency, indicating that the consumer's name was a potential match to a name on a list of terrorists. *TransUnion*, 141 S. Ct. at 2201-2202. The class contained 8,185 members, each of whom had such an incorrect alert in their file, but only 1,853 class members had their incorrect credit reports ***disseminated*** to potential creditors by the TransUnion. *Id.* at 2202. The Court concluded that class members whose information was disseminated to potential creditors suffered a concrete harm in the form of a reputational injury that was sufficient to establish Article III standing to seek monetary damages. *Id.* at 2208-2209. But the Court concluded that for the other 6,332 class members, "[t]he mere presence of an inaccuracy in an internal credit file, if it is not disclosed to a third party, causes no concrete harm." *Id.* at 2210. *TransUnion*, therefore, stands for the proposition that "[e]very class member must have Article III standing in order to recover individual damages." *Id.* at 2208.

As an initial matter, the Court clarifies that *TransUnion* does not require that Plaintiffs' ***prove*** standing as to all members of the class in order to certify the class. Indeed, the Ninth Circuit recently rejected the argument that a class may not be certified if it "potentially includes more than a de minimis number of uninjured class members." *See Olean Wholesale*, 31 F.4th at 669. Nonetheless, the Ninth Circuit has indicated that district courts should consider if the class is defined in a manner that will lead to the predominance of individualized issues regarding standing in light of *TransUnion*. *See id.* at 668 n.12.

Here the class is defined to include "[a]ll persons who purchased the Products in the State of California, for personal use and not for resale" during the relevant time period. (See Class Motion at 7). Contrary to Defendant's argument, the class is defined in a way that ensures that all members will have suffered a concrete economic injury in the form of a price premium, if Plaintiffs succeed on the merits. In other words, if Plaintiffs' evidence shows that Defendant charged an inflated price to

consumers based on the Collagen Claim, that premium will have injured ***all*** consumers who purchased the Product(s) because they will have paid more than the fair market price.

The Ninth Circuit has recognized that where plaintiffs are "deceived by misrepresentations into making a purchase, the economic harm is the same: the consumer has purchased a product that he or she ***paid more for*** than he or she otherwise would have had it been labeled accurately; thus, where a violation of the UCL is found, the consumer may recover restitution which is based on what a purchaser would have paid at the time of purchase if the purchaser received all the information." *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 989 (9th Cir. 2015) (citing *Kwikset*, 51 Cal. 4th at 329) (emphasis in original).

This concept is not only supported legally, but economically. As Plaintiffs' economics expert explains, "[c]alculating a price premium does not depend on individual behaviors or uses of the Products . . . . If the market price for the Products was higher as a result of the Claim, then ALL consumers will have paid a higher price[.]" (Report of Colin Weir iso Class Motion ("Weir Report") ¶ 63). "The results of the [conjoint analysis] will reveal whether or not a sufficient number of people care about the [C]ollagen [C]laim for the market price to adjust." (Rebuttal Report of Colin Weir iso Class Motion ("Weir Rebuttal") ¶ 35).

Defendant appears to reject this argument based on the notion that the class will include consumers who did not rely on the Collagen Claim and/or consumers who were satisfied with the Product(s).

However, as the Court noted, reliance is presumed under the UCL, where there is class-wide exposure to the message because the message was prominently featured on the packaging, and under the CLRA, reliance/causation is presumed, where there is class-wide exposure and a showing of materiality. *See Ehret*, 148 F. Supp. 3d at 901–02; *see also Astiana v. Kashi Co.*, 291 F.R.D. 493, 500 (S.D. Cal. 2013) ("Because the alleged misrepresentations appeared on the actual packages of the products purchased,

there is no concern that the class includes individuals who were not exposed to the misrepresentation.").

And Defendant's "satisfaction" argument misunderstands the economic theory of harm. Plaintiffs do not argue that they were harmed because the Product did not make them look younger. Plaintiffs' theory is that the Collagen Claim itself is valued by consumers, and therefore, by claiming its Products contained collagen, Defendant was able to charge a higher price. Accepting a "satisfaction" argument in this context would mean a company may claim their product includes any ingredient so long as the product works as desired. Several courts have rejected this precise argument. *See, e.g., Mullins v. Premier Nutrition Corp*., No. CV 13-01271-RS, 2016 WL 1535057, at *7 (N.D. Cal. Apr. 15, 2016) ("[Defendant's] advertising messages are the focus of the claims, not customer satisfaction, and therefore consumer satisfaction is irrelevant . . . . There is [ ] no need to examine whether consumers were satisfied with the product to find an injury."); *Ries v. Arizona Beverages USA LLC*, 287 F.R.D. 523, 536 (N.D. Cal. 2012) (concluding that because "[a]ll of the proposed class members would have purchased the product bearing the alleged misrepresentations[,]" they had a "concrete injury under [California consumer protection laws] sufficient to establish Article III standing") (internal quotation marks omitted); *Lytle*, WL 1600047, at *18 (same).

At the hearing, Defendant's counsel continued to argue that the class definition is overly broad because it will inevitably include people that understood "C + Collagen" to mean that the vitamin c in the Products boosts internal collagen and consumers who were satisfied with the Products. However, this argument again fundamentally misunderstands the ***economic*** nature of the injury. If anticompetitive behavior distorted the market – ***all*** consumers overpaid. Defendant does not get to price discriminate between those who understood the label and those who did not. The market price is set by supply and demand, and it is always the case that there are likely consumers who ***would*** pay more than the fair market price, but that does not mean those consumers should ***have to*** pay supra-competitive prices. A price-fixing cartel cannot claim that their inflated prices are not illegal as to the consumers who are satisfied with the value of the overpriced products. It is the distortion of the fair market value that results in injury to all purchasers of the relevant products.

Defendant's counsel also reiterated several times at the hearing that there is no price premium in the market when you compare a product that ***boosts*** collagen to a product that ***contains*** collagen. However, that is precisely what the damages model proposed by Plaintiffs' experts is designed to test as it will show the survey participants products containing just the "C" part of the label verses products that contain just the "Collagen" part of the label; and it will further compare those labels with several effects-based messages such as "anti-aging" or "anti-wrinkle." The model will then compare the participants' willingness to pay for each of those attributes. By isolating the attributes in such a manner, the model should be able to determine whether Defendant truly did charge a premium due to the Collagen Claim. If there was a premium, all who purchased the Products were economically harmed.

Therefore, the Court concludes that the class is defined in a manner that, if Plaintiffs prove liability and damages, all class members will have suffered a concrete economic injury sufficient to satisfy *TransUnion*, and therefore individual standing issues will not predominate over common issues.

Accordingly, Plaintiffs have established that individual issues will not predominate over common issues.

b. Superiority

Rule 23(b)(3) also requires that a class action be a superior method for resolving Plaintiffs' claims. A class action may be superior "[w]here class[-]wide litigation of common issues will reduce litigation costs and promote greater efficiency." *Valentino v. Carter–Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). It is also superior when "no realistic alternative" to a class action exists. *Id*. at 1234–35. In deciding whether a class action would be a superior method for resolving the controversy, the Court considers factors including: (1) the class members' interest in individually controlling the prosecution or defense of separate actions, (2) the extent and nature of any litigation concerning the controversy already begun by or against class members, (3) the desirability or undesirability of concentrating the litigation of the claims in the

particular forum, and (4) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3)(A)–(D).

Defendant's only superiority argument appears to be that the class, as defined, is not ascertainable. Defendant argues that many class members, like Plaintiff Gunaratna, may have purchased the product at a third-party retailer with cash and failed to keep a receipt, packaging, or other proof that she or he actually bought the Product(s). (Class Opp. at 8). Defendant contends this is particularly problematic given 75% of the sales of the Products sold in California were sold through third-party retailers, whose records may or may not be complete. (*Id.*).

The Ninth Circuit has explained that ascertainability is not a dispositive requirement under Rule 23. *Briseno*, 844 F.3d at 1125. And the fact that data does not exist that might list every customer who ever purchased the Products and when is not a reason to deny certification. *See Kumar v. Salov N. Am. Corp.*, No. CV 14-2411-YGR, 2016 WL 3844334, at *6 (N.D. Cal. July 15, 2016) (concluding class members ascertainable despite defendant's arguments that class members would have to self-identify and show "what they paid, where they purchased it, and how many times, plus whether they saw and were deceived" by a product's label)). "Post-judgment claims forms and other tools can be used to allow defendants to test a class member's purported entitlement to damages and to apportion damages appropriately between class members." *Id.*; *see also Briseno*, 844 F.3d at 1131 ("[At] the claims administration stage, parties have long relied on 'claim administrators, various auditing processes, sampling for fraud detection, follow-up notices to explain the claims process, and other techniques tailored by the parties and the court' to validate claims.").

Therefore, the Court agrees with Plaintiffs that each factor in Rule 23(a) and Rule 23(b)(3) is met, and that the class is appropriate for certification.

Accordingly, the Class Motion is **GRANTED**. The class is **CERTIFIED** under Rule 23(b)(2) and Rule 23(b)(3) for the UCL, FAL, CLRA, and express warranty claims.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 20-2311-MWF (GJSx) **Date: April 4, 2023**
Title: Mocha Gunaratna v. Dennis Gross Cosmetology LLC et al

C. Appointment of Class Counsel

"Unless a statute provides otherwise, a court that certifies a class must appoint class counsel." Fed. R. Civ. P. 23(g)(1)(A). In evaluating the adequacy of counsel, the Court examines the following factors: (1) "the work counsel has done in identifying or investigating potential claims in the action"; (2) "counsel's experience in handling class actions"; (3) "counsel's knowledge of the applicable law"; and (4) "the resources counsel will commit to represent the class[.]" *Id.*

Defendant does not appear to contest the appointment of Plaintiffs' current counsel, which includes lawyers Ryan J. Clarkson, Yana Hart, and Zach Chrzan, from Clarkson Law Firm, P.C. Further, it is clear to the Court that the Clarkson lawyers are experienced, knowledgeable, and competent; that they will zealously advocate on behalf of the class; and that they will dedicate substantial time and resources to litigating this action.

Accordingly, the Class Motion is **GRANTED** to the extent it seeks appointment of the Clarkson Law Firm as class counsel.

V. MOTION FOR SUMMARY JUDGMENT

At the outset, the Court notes that Defendant's MSJ fails to identify which of Plaintiffs' claims over which Defendant seeks summary adjudication and does not make any distinctions in its arguments according to claim. *See* Fed. R. Civ. P. 56(a) ("A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought.") (emphasis added). However, given that Defendant on occasion cites to the CLRA, UCL, and FAL statutes, Plaintiffs presumed in their Opposition that Defendant seeks partial summary judgment on those claims only. (MSJ Opp. at 3 n.3). In the Reply, Defendant did not further clarify the claims for which it sought adjudication, so the Court, like Plaintiffs, also assumes that Defendant seeks summary adjudication of the CLRA, UCL, and FAL claims.

At the hearing, Defendant's counsel did not provide further clarification on this issue.

A. Summary Judgment Legal Standard

In deciding a motion for summary judgment under Federal Rule of Civil Procedure 56, the Court applies *Anderson*, *Celotex*, and their Ninth Circuit progeny. *Anderson*, 477 U.S. at 242; *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

The Ninth Circuit has defined the shifting burden of proof governing motions for summary judgment where the non-moving party bears the burden of proof at trial:

> The moving party initially bears the burden of proving the absence of a genuine issue of material fact. Where the non-moving party bears the burden of proof at trial, the moving party need only prove that there is an absence of evidence to support the non-moving party's case. Where the moving party meets that burden, the burden then shifts to the non-moving party to designate specific facts demonstrating the existence of genuine issues for trial. This burden is not a light one. The non-moving party must show more than the mere existence of a scintilla of evidence. The non-moving party must do more than show there is some "metaphysical doubt" as to the material facts at issue. In fact, the non-moving party must come forth with evidence from which a jury could reasonably render a verdict in the non-moving party's favor.

Coomes v. Edmonds Sch. Dist. No. 15, 816 F.3d 1255, 1259 n.2 (9th Cir. 2016) (quoting *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010)). Under the prevailing California substantive law, Plaintiffs fail to meet their burden.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 20-2311-MWF (GJSx) **Date: April 4, 2023**
Title: Mocha Gunaratna v. Dennis Gross Cosmetology LLC et al

B. Standards Governing Plaintiffs' Claims

1. CLRA

The CLRA prohibits unfair methods of competition and unfair or deceptive acts or practices in connection with transactions for the sale or lease of goods to consumers. *See* Cal. Civ. Code §§ 1750 *et seq.* The purpose of the Act is to "protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection." Cal. Civ. Code § 1760. Among the proscribed practices are:

> Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have,

and

> Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

Id. § 1770(a)(5), (a)(7).

2. UCL

The UCL prohibits "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the false advertising law]." Cal. Bus. & Prof. Code § 17200. Conduct is "fraudulent" under the UCL if the conduct is "likely to deceive." *Morgan v. AT & T Wireless Servs., Inc.*, 177 Cal. App. 4th 1235, 1254, 99 Cal. Rptr. 3d 768 (2009). A claim under the "fraudulent" prong of the UCL is governed by the "reasonable consumer" standard, which requires the plaintiff to "show that members of the public are likely to be

deceived." *Williams v. Gerber Prods. Co*., 552 F.3d 934, 938 (9th Cir. 2008). "A true representation can mislead a reasonable consumer if it is actually misleading or has the capacity, likelihood or tendency to deceive or confuse members of the public." *Anderson v. The Hain Celestial Grp., Inc*., 87 F. Supp. 3d 1226, 1236 (N.D. Cal. 2015).

3. FAL

The FAL makes it unlawful for a business to "disseminate any statement 'which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading . . . .'" Cal. Bus. & Prof. Code § 17500. "The law encompasses not just false statements but those statements 'which may be accurate on some level, but will nonetheless tend to mislead or deceive . . . . A perfectly true statement couched in such a manner that it is likely to mislead or deceive the consumer, such as by failure to disclose other relevant information, is actionable under these sections.'" *Arizona Cartridge Remanufacturers Ass'n, Inc. v. Lexmark Int'l, Inc.*, 421 F.3d 981, 985 (9th Cir. 2005) (internal citation omitted).

C. Analysis

Defendant argues that Plaintiffs fail to establish a genuine dispute of material fact as to each of the following issues: (1) whether reasonable consumers were misled or deceived by the "C + Collagen" Claim; (2) whether the named Plaintiffs' relied on the Collagen Claim in making their purchasing decisions; (3) whether the C + Collagen claim is material to reasonable consumers; and (4) whether Plaintiffs' suffered any damages attributable to the Collagen Claim.

While, at this point, it should be clear that the Court believes there are genuine disputes of fact as to each of the above issues, the Court discusses Defendant's arguments to the extent they substantively differ from previous arguments.

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UNITED STATES DISTRICT COURT
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CIVIL MINUTES—GENERAL

Case No. CV 20-2311-MWF (GJSx) **Date: April 4, 2023**
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1. Deception/Falsity

Defendant's argument that Plaintiffs have not adduced evidence creating a dispute of fact as to whether reasonable consumers were misled hinges once more on Defendant's insistence that this action involves consumers' understanding of what "collagen" means and that "plant-sourced collagen amino acids" exist. The Court again rejects both premises.

In the Opposition, Plaintiffs argue that the Collagen Claim is false "as a matter of law" and ask the Court to enter summary judgment in their favor (despite being the non-moving party). (MSJ Opp. at 8). Plaintiffs cite to a line of cases acknowledging that in certain circumstances, courts may grant summary judgment sua sponte. (*See id.*, n. 9). The majority of the cited cases, however, granted summary judgment in favor of a ***defendant*** based on a plaintiff's failed summary judgment motion, in which the plaintiff came forth with its best evidence on the merits and fell far short. For obvious reasons, courts are less likely to sua sponte grant summary judgment in favor of a non-moving party who bears the burden of proof at trial. Regardless, while the Court deems it entirely possible (if not likely) that it will grant a later-filed summary judgment motion brought by Plaintiffs on the issue of falsity, for reasons discussed below, the Court concludes that such a holding is premature.

Defendant dances around what the actual falsity issue turns on in this action. Falsity in this action is not about what consumers believe "collagen" means because the only admissible scientific evidence establishes that there is only one scientifically-accepted definition of "collagen." ***Where*** consumers believe "collagen" ***comes from*** is simply irrelevant. Consumers often do not know the sources from which the ingredients in their products are derived. And the Court is troubled, if not exasperated, by the fact that a prominent skincare company has repeatedly taken the position that if reasonable consumers believe, based on the labeling of the Products, that the Products contain a specific ingredient, the falsity of the labeling does not turn on whether the Products actually contain that ingredient, but on whether consumers understand where that ingredient comes from. That position is untenable.

Falsity in this action is also not about whether the Products actually contain collagen or amino acids derived from collagen, as the scientific community understands those terms. It is undisputed that "the 'C + Collagen' line of products has never had amino acids sourced from collagen." (Def. Reply to PSUF No. 19).

At bottom, the falsity of the "C + Collagen" Claim turns on how reasonable consumers interpret the "+" within the Claim.

As discussed, Plaintiffs submit the Morgeson Survey, which more than suffices to create a genuine issue of fact as to whether reasonable consumers interpret the plus sign in the Claim to mean that the Products ***contain*** collagen. After viewing six images of the Products, an overwhelming majority of the participants (95.2% of those who offered an opinion and 88.6% of the total participants) responded that they believed the Products contain collagen. Given the Products do not contain collagen as scientifically defined, there is no question that a reasonable jury could find that the Claim is false or misleading.

Indeed, the much harder question is whether to grant summary judgment in ***Plaintiffs'*** favor on the issue of falsity.

Defendant's original theory of the action (i.e., that consumers believe the "C + Collagen" Claim means that vitamin c ***boosts*** collagen), could potentially create a fact issue for a jury. The problem is there is currently no admissible evidence showing that a statistically significant portion of consumers interpret the plus sign to mean "boost," given the Court excluded the portion of the Butler Survey that attempted, in part, to demonstrate that understanding.

However, the Court declines to grant summary adjudication on the falsity issue in favor of Plaintiffs at this time for two reasons.

First, Plaintiffs' consumer survey did not give survey participants the opportunity, either through a closed- or open-ended question, to express a belief that C + Collagen means that vitamin c ***boosts*** collagen. While Plaintiffs are not required to disprove Defendant's theory to defeat summary judgment, without evidence on that

theory, the Court is at least hesitant to sua sponte decide the issue as a matter of law in Plaintiffs' favor.

Second, as Plaintiffs point out on the issue of damages, discovery on the merits has not yet closed in this action. Indeed, it appears to the Court that neither a non-expert discovery deadline nor an expert-discovery deadline (or even a trial date) have been set in this action. Therefore, Defendant is free to take another bite at a consumer survey that tests solely its "vitamin c boosts collagen" theory (without also testing the "plant-based collagen" theory). If Defendant adduces admissible evidence that reasonable consumers interpret the "+" in the Claim to mean "boosts," there will be an issue of fact for the jury to decide as to falsity. If, at the close of discovery, no such evidence is in the record, Plaintiffs are free to move for summary adjudication on the issue of falsity.

While Plaintiffs point to California state court cases that have decided the issue of deception as a matter of law, the Court concludes that such a holding would be premature at this juncture. However, there is little question that Plaintiffs have at least raised a genuine dispute and therefore Defendant's MSJ is **DENIED** as to the issue of falsity.

2. Reliance

Defendant argues that it "is not enough for a plaintiff to show that she was 'exposed' to the defendant's advertising or purchased an allegedly mislabeled product." (MSJ at 11) (citing *Bronson v. Johnson & Johnson*, Inc., No. C-12-04184-CRB, 2013 WL 1629191, *2-3 (N.D. Cal. Apr. 16, 2013). But the case Defendant cites does not support its position.

In UCL cases based on a television, radio, or web advertising campaign, courts have required evidence that the plaintiffs were actually exposed to the specific allegedly false or misleading statements. However, as previously noted, courts routinely find that reliance is presumed where, as here, the challenged claim is prominently featured on the Product itself. It is undisputed that every advertisement

Defendant maintained for the Products, reflects the C + Collagen label, as it is the ***name*** of the Product line. (Def. Reply to PSUF No. 20).

Defendant again argues that the named Plaintiffs' deposition testimony, however, demonstrates that they did not in fact rely on the Collagen Claim. Specifically, Defendant contends that "[i]n light of [Plaintiffs'] deposition testimony that they did not believe the Products contained animal material or did not care, they cannot meet that essential element [of reliance] and their claim necessarily fails." (MSJ at 11).

The Court again rejects the premise that to show reliance Plaintiffs must have wanted "animal" collagen. Since animals are the ***only*** source of collagen, anyone who desires "collagen" inevitably desires "animal" collagen. Gunaratna's testimony that she does not want to place raw animal parts on her face, does not prove that she did not want collagen in her skin cream, any more than a deponent's testimony that they do not want to consume fish bladder would prove a lack of desire for Guinness beer, as Plaintiffs' cleverly analogize. (MSJ Opp. 17 n. 21).

And further, the Court concludes that a fair reading of Camenforte's deposition testimony does not prove that she did not care what was in the Product she purchased. At best, her testimony is ambiguous; at worst, her testimony demonstrates that she did rely on the Collagen Claim but fell victim to counsel's strongarmed questioning.

Specifically, Defendant relies on the following exchange to argue that there is no dispute of fact as to Camenforte's reliance on the Collagen Claim:

> Q: And you really didn't care what was in the product then so long as it made your skin look younger, right?
>
> [Objection omitted]
>
> THE WITNESS: ***I saw that it had collagen on the label, and I've heard so much about it. That's why I purchased it.***

> Q: (BY MR. KERR) I'm asking you a different question. You don't -- is your testimony that you don't care what's in the product so as long as it makes you look younger?
>
> MS. HART: Objection. Misstates testimony.
>
> THE WITNESS: That's just part of it. If it will improve my skin, yes.
>
> Q: (BY MR. KERR) Okay. So as long as it will improve your skin, you don't care what's in the product? You don't care what is doing that to your skin, you just want -- what the ingredient is causing the skin to look younger, you just want your skin to look younger, right, at regardless of the product?
>
> MS. HART: Objection. Misstates the testimony. But you may answer.
>
> THE WITNESS: Yes.

(Camenforte Depo. at 82:19-83:18).

Again, this exchange does more to establish that Camenforte did rely on the Collagen Claim than it does to refute reliance. And to the extent Camenforte's final "yes" can be characterized as inconsistent with the previous testimony, that is a credibility issue that the jury will decide for itself.

Further, Defendant is free to attack the reasonableness of Plaintiffs' reliance on the "C + Collagen" Claim, given Plaintiffs' stated goals and desires; given Plaintiffs did not fully understand where collagen comes from; given the "collagen amino acids" qualifier in other parts of the product packing; and given the vegan symbol on the back of the Products' outer packaging. But the Court cannot conclude that there is an absence of a genuine dispute regarding reliance based on any ground advanced by Defendant. *See Williams,* 552 F.3d at 939–40 ("We disagree with the district court that reasonable consumers should be expected to look beyond misleading representations on the front of the box ***to discover the truth from the ingredient list in small print on***

the side of the box. . . . Instead, reasonable consumers expect that the ingredient list contains more detailed information about the product that ***confirms*** other representations on the packaging) (emphasis added).

Therefore, the Court concludes that there are genuine issues of fact as to reliance.

3. Materiality

As already discussed at length, both the Morgeson Survey and the Butler Survey not only demonstrate that materiality is susceptible to class-wide proof but that there is a genuine dispute of fact on the issue of materiality. Defendant's own survey reveals that the "C + Collagen" label was the product characteristic selected by the largest proportion of participants as the reason for their purchase of the Product(s). (*See* Butler Survey). Defendant argues that the significance of that statistic is undermined by what the participants believed "C + Collagen" means. However, the results of the Butler Survey regarding participants understanding of the Claim have been excluded for reasons previously discussed. Therefore, Defendant simply cannot overcome their own survey evidence that tends to demonstrate materiality.

Moreover, the internal emails and documents are replete with communications indicating that the "collagen" label was highly important to consumers, and in turn to the retailers and Defendant. (*See, e.g.*, Michele Snyder Deposition I ("Snyder Depo. I") at 16:-19) (Defendant's corporate representative explaining that when the company first showed [redacted] the Products with the names "[redacted]" or "[redacted]," [redacted] felt that those names were not "strong" or "hard-hitting" enough); *see id*. at 266:25-267:16 (the same representative noting that the fact that the Products bear the "C + Collagen" name implicitly means that [redacted] "definitely liked it"); Ex. 26 (Email Thread re: Pre-Market Meeting) (one of Defendant's marketing employees noting that having a name that could be combined with "collagen" or "pro collagen" was "really great for [redacted]").

As another court has noted, "[r]epresentations about specific ingredients' presence or absence in a product are almost self-evidently material in that an advertiser is intending to make a consequential effect on a consumer." *Samet v. Proctor & Gamble Co*., No. CV 12-01891-RS, 2019 WL 13167115, at *7 (N.D. Cal. Jan. 15, 2019) (citing *Chavez v. Nestle USA, Inc*., 511 F. App'x 606, 607 (9th Cir. 2013)) (concluding the appellants stated UCL and FAL claims where, in addition to alleging injury and reliance, "[Appellants] alleg[e] that the product actually contains very small amounts of the touted ingredient, DHA.").

In sum, the Court concludes that there is ample evidence in the record to create a dispute of fact regarding materiality.

4. Damages

Defendant argues that Plaintiffs cannot prove damages because there is evidence indicating that Defendant set the price of its Products before choosing the name. Defendant claims that this shows that Defendant would not have changed the price even if the Products did not contain the Collagen Claim. There are several problems with this argument.

First, as Plaintiffs explain, because the majority of sales of the Products are through retailers, it is the retailers' prices that are most probative on the issue. Mr. Weir's economic conjoint analysis considers retail sales data from various retailers that sell the Products, and that data demonstrates that the retailers do vary the prices they set for the Products. (Weir Rebuttal ¶ 31).

Second, Mr. Weir opines that "if one were to assume, *arguendo*, that Defendant would not have lowered the price in concert with demand (indicating that Defendant priced above the market clearing price), then the economic outcome would be that many or all of the purchases would not have taken place at all." (Weir Report at ¶ 41). "As such, the price premium to be calculated by Mr. Gaskin will be an inherently conservative measure." (*Id.*). Defendant counters that such a conclusion is speculative, however, it is clearly driven by basic supply-and-demand economic theory

within competitive markets, which Mr. Weir is qualified to opine about. And both Plaintiffs' and Defendant's experts agree that the Products are sold within a competitive market. (Weir Rebuttal ¶ 27) (citing Deposition of D. Scott Bosworth at 188-189). As other courts have recognized the fact that a defendant did not adjust its price based on the misrepresentation does not disprove the existence of a price premium. *See, e.g.*, *McCrary v. Elations Co. LLC*, No. ED CV 13-242J-GB (SPx), 2014 WL 12589137, at *9 (C.D. Cal. Dec. 2, 2014) ("A price premium may exist even though, at some point," the product "was sold at the same price" with and without the alleged misrepresentation); *Schneider v. Chipotle Mexican Grill*, *Inc.*, 328 F.R.D. 520, 531 (N.D. Cal. 2018) ("The fact that the price of the product did not change after the representation does not establish that there is no triable issue as to whether Plaintiffs paid a price premium.").

Further, Defendant argues that given Mr. Weir concedes that the price premium will be "inherently conservative" he admits that it is not a precise measure of damages. However, Plaintiffs need not prove damages with precision to prevail on their claims. *See Marsu*, 185 F.3d at 939 ("[T]he fact that the amount of damage may not be susceptible of exact proof or may be uncertain, contingent or difficult of ascertainment does not bar recovery.").

Therefore, there are genuine issues of fact as to damages in the form of a price premium paid by the class.

Accordingly, the MSJ is **DENIED** because there are triable issues of facts as to Plaintiffs' claims.

VI. CONCLUSION

Defendant's MTS and MSJ are **DENIED**. Plaintiffs' Motion for Class Certification is **GRANTED**.

The Court **CERTIFIES** the following class:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 20-2311-MWF (GJSx) **Date: April 4, 2023**
Title: Mocha Gunaratna v. Dennis Gross Cosmetology LLC et al

All persons who purchased the Products in the State of California, for personal use and not for resale during the time period of four years prior to the filing of the complaint through the date of court order approving or granting class certification (the "Class").

This Order has been redacted pursuant to this Court's Sealing Order (Docket No. 212). An unredacted version of this Order is simultaneously being placed on the docket under seal.

IT IS SO ORDERED.

EXHIBIT D

Clarkson Law Firm, P.C. - Firm Resume

Clarkson is a public interest law firm headquartered in Malibu, California. We represent individuals, groups, small businesses, non-profits, and whistleblowers in state and federal court, at trial and appellate levels, in class action and collective action cases, throughout California, New York, and the United States. Our growth and success is fueled by a culture that attracts brilliantly innovative, diverse attorneys who are driven by a shared purpose. With a long list of wins and high impact settlements— from contested class certification motions and appointments as/ class counsel, to prosecuting extensive and complex false advertising actions — our track record speaks for itself.

#representmore

NOTABLE CASES

Data Breach and Privacy Actions

Baton v. Sas, Case No. 21017036, 2022 U.S. App. LEXIS 33183 (9th Cir. Dec. 1, 2022) (reversal of district court's erroneous dismissal of data breach action on jurisdictional grounds).

In Re: Samsung Customer Data Security Breach Litigation, Civil Action No. 23-md-3055 (CPO)(EAP) MDL No. 3055 (class action against Samsung for data breach of millions of users' sensitive and confidential personally identifiable information, including Social Security numbers and geolocation data).

In Re: Tik Tok Inc., Consumer Privacy Litigation, MDL No. 2948 (represented hundreds of clients in connection with unauthorized transmission of private data, including unpublished private videos and images).

B.K., et al. v. Tenet Healthsystem Medical Inc., Case No. 2:23-cv-5021 (C.D. Cal. June 23, 2023) (class action against medical providers for data privacy violations, including transmission of personally identifiable information and private health information to unauthorized third parties, such as Facebook).

Salgado v. Regal Medical Group, Inc., Case No. 23STCV03393 (Los Angeles Co. Sup. Ct., Feb. 15, 2023) (class action against medical group for data breach of over 3.3 million patients).

Hall, et al. v. Los Angeles Unified School District, Case No. 23STCV04334, (Los Angeles Co. Sup. Ct. Feb. 28, 2023) (class action against LAUSD for data breach compromising highly sensitive information, including minor students' medical and psychological assessments).

Azar v. Housing Authority of the City of Los Angeles, Case No. 23STCV11304, (Los Angeles Co. Sup. Ct. May 18, 2023) (class action against HACLA for data breach of thousands of individuals' passport numbers, financial information, social security numbers, and medical information).

False and Deceptive Advertising Class Actions

Prescott v. Bayer Healthcare, LLC, Case No. 20-cv-00102-NC (N.D. Cal) (false labeling and advertisement of products as "Mineral-based"; Clarkson Law Firm appointed Class Counsel and final approval of $2.25 million nationwide class settlement granted by Hon. Nathanael M. Cousins on December 15, 2021);

Swetz v. GSK Consumer Health, 2021 U.S. Dist. LEXIS 227208 (S.D.N.Y. Nov. 22, 2021) (false labeling and advertisement of products as "100% Natural" and "Clinically proven to curb cravings"; Clarkson appointed Class Counsel and final approval of $6.5 million nationwide class granted by Hon. Nelson S. Roman on November 22, 2021);

O'Brien and Kipikasha v. Sunshine Makers, Inc., San Bernardino Superior Court, Case No. CIVSB2027994 (Sept. 21, 2021) (false labeling and advertisement of products as "Non-Toxic"; Clarkson appointed Class Counsel and final approval of $4.35 million nationwide class granted by Hon. David Cohn on September 21, 2021);

Prescod v. Celsius Holdings, Inc., Los Angeles Superior Court, Case No. 19STCV09321, 2021 Cal. Super. LEXIS 8246 (Aug. 2, 2021) (false labeling and advertisement of products as having "No Preservatives"; class certification granted and appointment of Clarkson as Class Counsel by the Hon. Kenneth Freeman on August 2, 2021);

Mateski, et al. v. Just Born, Inc., San Bernardino Superior Court, Case No. CIVDS1926742 (unlawful and deceptive packaging of movie theater box candy; appointment of Clarkson as Class Counsel and final approval of $3.3 million nationwide class granted by Hon. David Cohn on December 15, 2020);

Thomas v. Nestle USA, Inc., Los Angeles Superior Court, Case No. BC649863, 2020 Cal. Super. LEXIS 45291 (unlawful and deceptive packaging of box candy; class certification granted by Hon. Daniel J. Buckley on April 29, 2020);

Escobar v. Just Born, Inc., Case No. 2:17-cv-01826-BRO-PJW (C.D. Cal.) (unlawful and deceptive packaging of movie theater box candy; class certification granted; appointment of Clarkson Law Firm as Class Counsel

and final approval of $3.3 million nationwide class granted by Hon. Judge Terry J. Hatter, Jr. on December 15, 2020);

Iglesias v. Ferrara Candy Co., Case No. 3:17-cv-00849-VC (N.D. Cal.) (unlawful and deceptive packaging of movie theater box candy products; Clarkson Law Firm appointed Class Counsel and final approval of $2.5 million nationwide class granted by the Hon. Vince Chhabria on October 31, 2018);

Tsuchiyama v. Taste of Nature, Los Angeles Superior Court, Case No. BC651252 (unlawful and deceptive packaging of movie theater box candy; notice of settlement and stipulation of dismissal entered pursuant to final approval of nationwide class in related case *Trentham v. Taste of Nature, Inc.*, Case No. 18PG-CV00751 granted on October 24, 2018);

Amiri, et al. v. My Pillow, Inc., San Bernardino Superior Court, Case No. CIVDS1606479 (Feb. 26, 2018) (United States certified class action settlement against a global direct-to-consumer novelty goods company for false advertising and mislabeling of a pillow product as able to cure ailments before the Hon. Bryan Foster; final approved and Clarkson appointed Class Counsel on February 26, 2018);

Garcia v. Iovate et al., Santa Barbara Superior Court, Case No. 1402915. (false labeling and advertising of the popular "Hydroxycut" weight loss supplement; Clarkson Law Firm successfully intervened, and, along with the efforts of co-counsel, increased the size of the settlement by more than ten-fold to a total settlement value of over $10 million);

Morales, et al. v. Kraft Foods Group, Inc., 2015 U.S. Dist. LEXIS 177918 (C.D. Cal. June 23, 2015) (California class action against the world's second largest food and beverage company for falsely advertising and mislabeling "natural" cheese, before the Hon. John D. Kronstadt; class certification and appointment of Clarkson as Class Counsel granted on June 23, 2015);

Skinner v. Ken's Foods, Inc., Santa Barbara Superior Court Case No. 18CV01618 (June 28, 2019) (unlawful and deceptive packaging of salad dressing labels; $403,364 in attorneys' fee and expense awarded to Clarkson because lawsuit deemed catalyst for Ken's label changes).

Other Notable Cases

Fluoroquinolone Antibiotic Cases – Mr. Clarkson was the first plaintiff attorney in the country to represent clients in connection with claims involving permanent and disabling nerve damage caused by Levaquin, Cipro, and Avelox manufactured by Johnson & Johnson and Bayer Pharmaceuticals. Mr. Clarkson represented dozens of clients across the country.

OUR TEAM

Ryan J. Clarkson

Mr. Clarkson is Managing Partner of Clarkson. Mr. Clarkson focuses his practice on public interest class and collective actions involving privacy, data misuse, unfair competition, false advertising, defective products, and illegal employment practices. Prior to founding Clarkson, Mr. Clarkson practiced consumer class action law at a prominent firm in Los Angeles, where he exclusively litigated consumer class actions against pharmaceutical companies, insurance carriers, food manufacturers, and other consumer goods manufacturers. Prior to that, Mr. Clarkson worked for over five years as an associate, summer associate, and law clerk at Dykema Gossett, PLLC.

Mr. Clarkson is admitted to the State Bars of California, Michigan, and New York. He is also a member of the bars of the United States District Courts for the Central, Northern, Southern, and Eastern Districts of California, the Eastern and Western Districts of Michigan, the Southern and Eastern Districts of New York, as well as the United States Courts of Appeals for the Ninth, Sixth, and Second Circuits, and the Supreme Court of the United States.

Mr. Clarkson graduated from Michigan State University School of Law, summa cum laude in 2005 and graduated from the University of Michigan at Ann Arbor in 1999 with a B.A.

Mr. Clarkson is a member of the Board of Directors (emeritus) of the Los Angeles Trial Lawyers' Charities as well as a member of Consumer Attorneys of California, Consumers Attorneys Association of Los Angeles, American Association for Justice, and Public Justice.

Shireen M. Clarkson

Ms. Clarkson is a Senior Partner at Clarkson. Ms. Clarkson focuses her practice on consumer class actions in the areas of food labeling, pharmaceutical drugs, cosmetics, exercise gear, supplements, and other consumer products. Prior to joining Clarkson, Ms. Clarkson practiced law at a prominent Southern California class action firm where she exclusively litigated consumer class actions and mass torts cases against pharmaceutical companies, insurance carriers, food manufacturers, and other consumer goods manufacturers.

Ms. Clarkson is admitted to the State Bar of California, the bars of the United States District Courts for the Central, Northern, Eastern, and Southern Districts of California, and the Ninth Circuit Court of Appeals.

Ms. Clarkson graduated from the University of California Hastings College of the Law in 2004. In 2000, Ms. Clarkson graduated with honors from University of

California, Santa Barbara where she earned a B.A.

Glenn A. Danas

Mr. Danas is a Partner at Clarkson Law Firm. Mr. Danas concentrates on appellate, class action and PAGA litigation. Prior to joining Clarkson, Mr. Danas was a partner at Robins Kaplan LLP in Los Angeles, where he worked on a range of appellate litigation matters across the country, mostly on the plaintiff's side. Prior to that, Mr. Danas was partner at one of the largest wage and hour plaintiff's class action firms in California, where he became well known for having argued and won multiple cases in the California Supreme Court and the Ninth Circuit, including *Iskanian v. CLS Transportation*, 59 Cal. 4th 348 (2014), *McGill v. Citibank, N.A.,* 2 Cal. 5th 945 (2017), *Williams v, Super. Ct. (Marshalls of CA, LLC)*, 3 Cal. 5th 531 (2017), *Gerard v. Orange Coast Memorial Medical Center*, 6 Cal. 5th 443 (2018), *Brown v. Cinemark USA, Inc.*, 705 F. App'x 644 (9th Cir. Dec. 7, 2017), and *Baumann v. Chase Investment Services Corp*, 747 F.3d 1117 (9th Cir. 2014).

Mr. Danas has received numerous awards, including having been named as one of the Top 20 Lawyers Under 40 in California (Daily Journal), one of the Top 100 Lawyers in California (Daily Journal), received the California Lawyer Attorney of the Year (CLAY) award, and one of the Top 500 Civil Rights Lawyers in the country (Law Dragon, 2021 and 2022).

Mr. Danas is admitted to practice in California, and is also a member of the bars of the United States Supreme Court, the United States Courts of Appeals for the Second, Third, Eighth and Ninth Circuits, and the United States District Courts for the Central, Northern, Southern, and Eastern Districts of California.

Mr. Danas graduated from Emory University School of Law, *with honors* in 2001, and was a board member of the Emory Law Journal. Mr. Danas also graduated from Cornell University in 1998 with a B.S. in Industrial and Labor Relations. Following law school, Mr. Danas was a law clerk to the Hon. U.W. Clemon, Chief Judge of the Northern District of Alabama. Mr. Danas entered private practice as an associate at Shearman & Sterling LLP in New York City, where he worked primarily on antitrust and securities litigation.

Mr. Danas is a bar-certified specialist in Appellate Law. He is also a member of the Executive Committee for the CLA Labor and Employment Section; on the CLA Committee on Appellate Courts; one of the members of Law360's Editorial Advisory Panel for Appellate Litigation, and a member of LACBA's State Appellate Judicial Evaluation Committee, helping evaluate new appellate judicial appointments for the Governor.

Christina M. Le

Christina M. Le is a Partner at Clarkson Law Firm, and a seasoned legal practitioner focused on championing the rights of employees and

individuals in employment and class action matters. Ms. Le specializes in handling a wide range of employment claims in state and federal courts, including wrongful termination, pay and overtime, workplace retaliation, discrimination and harassment, accommodations, leaves of absence, separation, severance, and more. Ms. Le is also experienced in handling class action claims involving employment, wage and hour, consumer, product liability, and business fraud issues.

Since she started practicing law in 2005, Ms. Le has been a powerful advocate for her clients. Ms. Le first started her career as a defense attorney, working for several prominent local and national firms. Ms. Le later transitioned to plaintiff-side work, where she found her true calling as an advocate for employees and individuals, as she was representing the same kinds of people she grew up with. Ms. Le is now focused solely on helping her clients fight the same big companies she used to represent. Her knowledge from working on the defense side gives her special insight that she uses to her clients' strategic advantage. With a track record of success and a commitment to empowering those in need, Ms. Le brings results to the table, obtaining multi-million dollars in recovery for her clients in employment and other plaintiff side matters.

Ms. Le graduated from Loyola Law School in 2004 and the University of California, Berkeley, in 1999. Ms. Le is admitted to the State Bar of California, the United States District Courts for the Central, Northern, Southern, and Eastern Districts of California, as well as the United States Courts of Appeals for the Ninth Circuit.

Ms. Le is a member of the National Employment Lawyer's Association, California Employment Lawyer's Association, Consumer Attorneys Association of Los Angeles, Los Angeles County Bar Association, and Vietnamese Bar Association of Southern California. Ms. Le is often called upon by these organizations to speak as an expert in employment and class action topics. Ms. Le is also a Board Member of the West Los Angeles Chapter of the Red Cross.

Timothy K. Giordano

Mr. Giordano is Partner at Clarkson. Mr. Giordano focusing his practice on consumer and other class and collective actions in securities, antitrust, civil rights, and employment law. Prior to joining Clarkson, Mr. Giordano worked at prominent defense firm Skadden, Arps, Slate, Meagher & Flom LLP, as well as leading media, technology, and financial data company, Bloomberg L.P., in New York City.

Mr. Giordano also served as a law clerk for the Honorable Frank M. Hull on the U.S. Court of Appeals for the Eleventh Circuit, counseling on a wide range of federal appellate matters.

Mr. Giordano is admitted to the State Bars of New York and New Jersey. He

is also a member of the bars of the United States District Courts for the Southern and Eastern Districts of New York, and the District of New Jersey.

Mr. Giordano received his law degree from Emory University School of Law, where he graduated first in his class.

Mr. Giordano has taught communication and persuasion as an adjunct professor and has served on various fiduciary and advisory boards, including as a member of the executive committee of the American Conference on Diversity, a nonprofit dedicated to building more just and inclusive schools, communities, and workplaces. Additionally, he is chairman of the board at the College of Communication and Information at Florida State University.

Tracey Cowan

Ms. Cowan is a Partner at Clarkson. Ms. Cowan is head of the Sexual Assault practice area. She has managed hundred of cases involving sexual assault, harassment, and exploitation across the country. Her experience ranges from rider and driver cases in the rideshare space, to cases against celebrities, to child sexual assault matters against major institutions and religious organizations. She feels passionately about amplifying voices of survivors and achieving justice for the most marginalized members of our society.

Outside of the sexual assault practice, Ms. Cowan works on matters involving fertility negligence and fraud, civil rights issues, financial crimes disputes, and complex civil litigation. Ms. Cowan was previously a Partner at Peiffer Wolf in San Francisco, where she helped pioneer the embryo loss practice group, a burgeoning area of the law. She served as counsel on many of the most publicized cases in this practice area, working closely with plaintiffs, witnesses, and experts to vindicate her clients' rights. Her work in this sphere spans the gamut of IVF clinic misconduct, from switched embryo cases to embryo loss and destruction. Prior to working at Peiffer Wolf, Ms. Cowan was an associate in the San Francisco office of one of the largest international corporate law firms. There, her practice focused on complex civil litigation, competition matters, and civil rights issues.

Ms. Cowan graduated from Northwestern University School of Law with honors and on the Dean's List. She was the Submissions Editor for the *Northwestern Journal of Technology and Intellectual Property.* While at Northwestern, she worked as a volunteer mediator, certified through the Center for Conflict Resolution, for the Cook County Court System. A passionate advocate for prisoner's rights, Ms. Cowan also successfully petitioned for the release of a parolee under the Illinois C-Number Program. Prior to that, Ms. Cowan graduated with honors form New York University, where she was the recipient of the Hillary Citrin Award for an Honors Thesis of Outstanding Excellence. She also worked at New York University in the Psychology department as a research scientist and lab manager and has been published multiple for her work in the field of visual perception.

As an experienced litigator, Ms. Cowan has been quoted in dozens of national and international publications, including CNN.com and Sing Tao USA. She has also made multiple television appearances including on FOX, ABX, and CBS. In 2019, Ms. Cowan receive the Unity Award from the Minority Bar Coalition for her work with the Jewish Bar Association of San Francisco.

Ms. Cowan is admitted to the State Bar of California. She is also a member of the United States District Courts for the Central, Northern, Southern, and Eastern Districts of California and the Ninth Circuit Court of Appeals.

Ashley Boulton

Ms. Boulton is Counsel at Clarkson specializing in appellate litigation. She draws on her experience as a former Ninth Circuit judicial law clerk and as a civil litigation partner with nearly a decade of experience to effectively navigate the complexities of appellate litigation in both state and federal court.

Prior to joining Clarkson, Ms. Boulton was a Partner at Downey Brand LLP, the Sacramento region's largest law firm. There, her practice focused on complex business and food and agriculture litigation. She also served as a law clerk for the Honorable Consuelo M. Callahan on the U.S. Court of Appeals for the Ninth Circuit for two years.

Ms. Boulton graduated from University of the Pacific, McGeorge School of Law, with great distinction, in 2012. While there, she was an editor of the *McGeorge Law Review* and on the Moot Court Honors Board. Prior to that, Ms. Boulton graduated from University of California, Santa Barbara with honors in 2008 with a B.A. in Law and Society, and a minor in English.

Ms. Boulton is admitted to practice in California and is also a member of the bars of the United States Court of Appeals for the Ninth Circuit, and the United States District Courts for the Central, Northern, and Eastern Districts of California.

Bahar Sodaify

Ms. Sodaify is a Partner at Clarkson Law. Ms. Sodaify focuses her practice on consumer class actions in the areas of food labeling, cosmetics, and other consumer products. Prior to joining Clarkson. Ms. Sodaify was a litigation associate at a Southern California personal injury firm. Ms. Sodaify was actively involved at all stages of litigation and fought vigorously against insurance companies, multimillion-dollar corporations, and government entities, and helped recover millions of dollars for her clients. Ms. Sodaify dedicated a majority of her practice to preparing and attending hearings for minors who had been injured in an accident.

Ms. Sodaify is admitted to the State Bar of California, the bars of the United States District Courts for the Central, Northern, and Southern Districts of California, and the Ninth Circuit Court of Appeals.

Ms. Sodaify graduated from Southwestern Law School in 2012, where she was a member of Southwestern's Journal of International Law and The Children's Rights Clinic. In 2009, Ms. Sodaify graduated from University of California, Los Angeles, summa cum laude where she earned a B.A.

Yana Hart

Ms. Hart is a Partner at Clarkson. Ms. Hart has always had a passion for helping individuals to access the justice system. After graduating with a J.D. as the Valedictorian of her class in 2015, Ms. Hart volunteered countless hours with various legal clinics, including the San Diego Small Claims Legal Advisory, El Cajon Legal Clinic, and San Diego Appellate Clinic.

Prior to joining Clarkson, Ms. Hart worked for a prominent class action law firm in San Diego. During that time, Ms. Hart has litigated over 300 consumer cases (inclusive of class actions and complex individual cases), focusing on the Fair Debt Collection Practices Act, Fair Credit Reporting Act, California Invasion of Privacy Act, Telephone Consumer Protection Act, and many other federal and California consumer statutes. Ms. Hart was able to obtain numerous favorable decisions, published on Lexis and/or Westlaw.

Several of Ms. Hart's legal articles were also published. Ms. Hart's article "*The Impact of Smith v. LoanMe on My Right to Privacy Against Recording Telephone Conversations*" was published in the Gavel magazine by the Orange County Trial Lawyers Association in October 2020. On March 30, 2021, Ms. Hart's article "Stopping Collection Abuses in Medical Debt" was published in Forum Magazine by the Consumer Attorneys of California.

Ms. Hart is admitted to the State Bars of California, Florida, and D.C. Ms. Hart is admitted in every district court in California, and the Ninth Circuit Court of Appeals.

Ms. Hart graduated *summa cum laude* from Cabrini College in 2012, with a Bachelor of Science in Business Administration. Ms. Hart is fluent in Russian.

Celine Cohan

Ms. Cohan is a Senior Associate at Clarkson. Ms. Cohan focuses her practice on consumer class actions in the areas of food labeling, cosmetics, and other consumer products. Prior to joining Clarkson, Ms. Cohan was a litigation associate at a labor and employment firm where she successfully litigated wage and hour cases, discrimination, sexual harassment, and other employment related matters. Ms. Cohan is actively involved at all stages of litigation and

fights vigorously against corporate wrongdoers helping to recover millions of dollars for her clients.

Ms. Cohan is admitted to the State Bar of California and the bars of the United States District Courts for the Central, Northern, and Eastern Districts of California.

Ms. Cohan graduated from Loyola Law School in 2011, where she graduated in the top 25% of her class. In 2008, Ms. Cohan graduated from University of California, Los Angeles, where she earned a B.A. in Political Science and History.

Sara Beller

Sara is a senior associate attorney at Clarkson, and a seasoned trial attorney focused on seeking justice for sexual abuse survivors. Sara works within Clarkson's Sexual Assault practice area and specializes in championing the rights of children and adults who were sexually assaulted in various institutions, including public school districts, detention centers, and religious institutions. She is passionate about the pursuit of justice and giving a voice to communities' most vulnerable.

Sara graduated cum laude from Western State College of Law in 2016. During law school, she was a Dean's Fellow and Editor of the Western State Law Review. After law school, Sara started her career as a Deputy District Attorney with the Riverside County District Attorney's Office, assigned exclusively to the Sexual Assault and Child Abuse Unit. With an unwavering commitment to justice, she stood hand in hand with survivors of sexual abuse and took over 55 trials to verdict to assure that abusers were held accountable. Sara's tenacious trial advocacy resulted in her being named the Countywide Prosecutor of the Year twice throughout her career as a prosecutor. Prior to joining Clarkson, Sara worked at a national firm where she continued to seek justice civilly against sexual abusers and the institutions that house them.

As an experienced litigator, Sara has been requested as a guest speaker on numerous occasions to share her expertise on trial advocacy and sexual assault litigation. She has similarly acted as a guest instructor for various law enforcement departments on numerous occasions, providing instruction in forensic evidence, case investigation, and expert witness testimony.

In her free time, Sara enjoys spending time with her husband and their two pups – a French Bulldog named Bentley and a rescue named Whiskey.

Alan Gudino

Alan Gudino is a Senior Associate Attorney at Clarkson. Mr. Gudino focuses his practice on consumer class actions in the areas of food labeling, cosmetics, and

other consumer products. Before joining Clarkson, Mr. Gudino litigated auto fraud and lemon law cases under the California Consumers Legal Remedies Act and the California Song-Beverly Consumer Warranty Act. Prior to that, Mr. Gudino litigated consumer class actions under the Telephone Consumer Protection Act, Fair Debt Collection Practices Act, Fair Credit Reporting Act, and other federal and California consumer statutes.

Mr. Gudino is admitted to the State Bar of California and the bars of the United States District Courts for the Central, Northern, Eastern, and Southern Districts of California, and the Ninth Circuit Court of Appeals.

Mr. Gudino earned his law degree from the University of San Diego School of Law, and he graduated with a degree in Political Science from the University of California, Santa Barbara. While in law school, Mr. Gudino earned the CALI Excellence for the Future Award in torts and the Witkin Award for Academic Excellence in legal research and writing. He was a member of the *San Diego International Law Journal* and a judicial extern for Associate Justice Terry B. O'Rourke of the California Court of Appeal, Fourth Appellate District, Division One. Following law school, Mr. Gudino worked as a law clerk to Associate Judge Kenneth L. Govendo of the Superior Court for the Northern Mariana Islands. Mr. Gudino is fluent in Spanish.

Zarrina Ozari

Zarrina Ozari is a senior associate attorney at Clarkson. Ms. Ozari has extensive experience in employment law, including single-plaintiff and class action litigation. She has a proven track record of obtaining favorable results for her clients in discrimination, sexual harassment, and retaliation cases. Ms. Ozari also represents employees in wage and hour class action litigation. She handles all aspects of case management, from pre-litigation to trial. With a steadfast dedication to serving clients, Ms. Ozari holds individuals and employers accountable for their actions while ensuring her clients receive the maximum recovery available to them. In 2023, Ms. Ozari was honored as a "Rising Star" for her dedication to defending employees' rights.

Prior to joining Clarkson, Ms. Ozari worked for prominent employment discrimination law firms in California and New York. During that time, she litigated employment discrimination matters and obtained numerous favorable results for her clients.

Ms. Ozari is admitted to the State Bars of California and New York, and the United States District Courts for the Central and Eastern Districts of California and the Eastern, Northern, and Southern Districts of New York.

Ms. Ozari earned her law degree in 2017 from The George Washington University Law School, and she graduated in the top 5 percent of her class from Russian-Tajik University in 2010 with her Bachelor of Arts.

Ms. Ozari is a member of the San Francisco Trial Lawyers Association and the California Women Lawyers Association.

Ms. Ozari is fluent in Russian. She is also currently learning Spanish.

Lauren Anderson

Lauren Anderson is a Senior Associate Attorney at Clarkson. Ms. Anderson focuses her practice on consumer class actions and other multi-party litigations in the areas of deceptive labeling of beauty and wellness products, as well as technology, data usage, and consumer rights.

Ms. Anderson is admitted to the State Bar of California and the bars of the United States District Courts for the Central, Northern, and Eastern Districts of California.

Ms. Anderson earned her law degree in 2019 from the University of Southern California Gould School of Law. During law school, Ms. Anderson served for two years in the Student Bar Association. In 2015, Ms. Anderson earned her Bachelor of Arts degree in English from the University of Pennsylvania.

Kelsey Elling

Kelsey Elling is a Senior Associate Attorney at Clarkson. Ms. Elling focuses her practice on consumer class actions and other multi-party litigations in the areas of deceptive advertising and labeling. Prior to joining Clarkson, Ms. Elling was a litigation associate at a defense firm where her practice focused on employment and local government law.

Ms. Elling is admitted to the State Bar of Virginia and the State Bar of California, as well as the bars of the United States District Courts for the Central, Northern, Eastern, and Southern Districts of California.

Ms. Elling graduated from Michigan State University College of Law in 2019 with her law degree. During law school, she was a member of the school's distinguished Trial Practice Institute, Articles Editor on the Michigan State International Law Review, a member of the Civil Rights Clinic, and a teaching assistant for Constitutional Law. She graduated with her Bachelor of Arts in Social Work from Delta State University in 2015.

Tiara Avaness

Tiara Avaness is an Associate Attorney at Clarkson. Ms. Avaness focuses her litigation practice on consumer class actions in the area of unfair business practices, deceptive marketing, and data breach. Ms. Avaness focuses her mass arbitration practice in the area of consumer privacy.

Ms. Avaness is admitted to the State Bar of California and the bars of the United States District Courts for the Central and Northern Districts of California.

Ms. Avaness earned her law degree in 2021 from the University of Southern California Gould School of Law. While in law school, she was a member of the Hale Moot Court Honors Program, worked in the Medical-Legal Community Partnership Clinic, and secured a business law certificate with an emphasis in real estate. She was also a teaching assistant for Contract Drafting and Strategy, Corporate Governance, Health Law and Policy, and Regulatory Compliance. Ms. Avaness graduated with her Bachelor of Arts in Philosophy, Bachelor of Business in Business Administration, and minor in political science from the University of San Diego in 2018.

Katelyn Leeviraphan

Katelyn Leeviraphan is an Associate Attorney at Clarkson. Ms. Leeviraphan focuses her litigation practice on consumer class actions through appellate advocacy in the area of unfair business practices and deceptive marketing.

Ms. Leeviraphan is admitted to the State Bar of California, the United States Court of Appeals for the Second and Ninth Circuits, and the United States District Court for the Central District of California.

Ms. Leeviraphan earned her Juris Doctor from the Pepperdine Caruso School of Law in 2022. She was a Faculty Scholars member, Editor-in-Chief of the Pepperdine Dispute Resolution Law Journal, and a co-chair and active competitor for the Pepperdine Interschool Moot Court Team. After her 1L year, Katelyn served as a judicial extern in the Central District of California for the Honorable John A. Kronstadt. Prior to law school, Ms. Leeviraphan received her Bachelor of Arts degree in Communication at the University of Oklahoma.

Samuel Gagnon

Samuel Gagnon is an Associate Attorney at Clarkson. Mr. Gagnon focuses his litigation practice on consumer class actions in the areas of false and deceptive advertising and labeling.

Mr. Gagnon is admitted to the State Bar of New York and the United States District Court for the Southern District of New York.

Mr. Gagnon earned his Juris Doctor from the University of Connecticut School of Law in 2023. While at UConn Law, he was a member of the Moot Court Board, served as a Notes and Comments Editor for the Connecticut Law Review, and served as a judicial intern in the District of Connecticut for the Honorable Magistrate Judge S. Dave Vatti. Mr. Gagnon placed first in the William H. Hastie Moot Court Competition and received the CALI Excellence Award in Legal Practice – Interviewing, Counseling, and Advocacy. Mr. Gagnon also completed

the New York Pro Bono Scholars Program through working at the Hartford Public Defender's office. Prior to law school, Mr. Gagnon earned his Bachelor of Science degree in Business Administration at Eastern Connecticut State University where he was a member of the baseball team.

Olivia Davis

Olivia Davis is an Associate Attorney at Clarkson Law Firm. Ms. Davis works within Clarkson's Sexual Assault and Fertility Negligence practice area, which assists a wide range of victims of negligence and abuse. Specifically, Ms. Davis works to vindicate the rights of riders and drivers in the rideshare space, children and adults who were sexually assaulted in various religious and correctional institutions, and families that have had their fertility journeys impacted by wrongdoing.

Ms. Davis is admitted to the State Bar of California and the bar of the United States District Court for the Northern District of California.

Ms. Davis graduated cum laude from the Pepperdine Caruso School of Law in 2023. At Pepperdine Law, she was a member of the Interschool Moot Court team and was an Editor of the Pepperdine Dispute Resolution Law Journal. Prior to Pepperdine, Ms. Davis attended the University of California, Santa Barbara, where she graduated with high honors and earned Bachelor of Arts degrees in both English and Philosophy.

Michael Boelter

Michael Boelter is an Associate Attorney at Clarkson Law Firm. Mr. Boelter's practice is focused primarily on appellate and consumer litigation. Michael's class action experience includes consumer protection and false advertising claims, data breach cases, complex litigation and MDLs, and remedying the abuse of AI in healthcare.

Mr. Boelter is admitted to the State Bar of California.

After receiving his B.A. in Philosophy from UC Berkeley, Mr. Boelter completed his Juris Doctor from Pepperdine Caruso School of Law, graduating cum laude in 2023. While at Pepperdine, Mr. Boelter served as an editor of the Pepperdine Law Review and obtained a certificate in entertainment, media, and sports. After his 1L year, Mr. Boelter joined Clarkson as a law clerk, and has been steadfast in his defense of consumers' rights since.

Meg Berkowitz

Meg Berkowitz is an associate attorney at Clarkson, primarily working on the pre-litigation development of false advertising cases. Equipped with a Juris

Doctor from NYU School of Law and graduating with a B.A. in Global Studies with the highest honors from UCSB, she brings a formidable blend of strong writing, analytical, and oral advocacy skills to her practice. She works directly with clients to investigate claims against corporations that illegally exploit consumers for profit in a variety of industries.

Ms. Berkowitz's commitment to justice extends beyond corporate malfeasance. She is passionate about prisoners' rights and is actively involved in several of Clarkson's pro-bono initiatives, such as Homeboy Industries' mission to expunge records of formerly gang-involved individuals striving to rebuild their lives.

Ms. Berkowitz is admitted to the State Bar of California.

Ms. Berkowitz is fluent in French and loves to learn. She often finds herself deep in a Wikipedia rabbit hole, and she also enjoys hiking with friends, going to art museums, and attending NHL games.

Adam Rosen

Adam Rosen is an Associate Attorney at Clarkson Law firm. Mr. Rosen focuses his litigation practice on consumer protection, mass torts, and personal injury class actions. Specifically, Mr. Rosen has worked to hold Big Tech accountable for deceptive and harmful practices, including perpetuating addiction and lying to users.

Mr. Rosen is admitted to the State Bar of California.

After receiving his B.A. in International Relations and Theology from Tufts University, Mr. Rosen earned his juris doctor from the University of California, Los Angeles School of Law in 2023. While at UCLA, Mr. Rosen served as the Editor in Chief of the Journal of Islamic and Near Eastern Law, worked as a Teaching Assistant for UCLA's Anderson School of Management, and joined Clarkson part time during his 3L year, as a law clerk.

Mr. Rosen is fluent in Hebrew.