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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

RENEE YOUNG and ROXANE TIERNEY,  
Individually and On Behalf of All Others  
Similarly Situated,

Plaintiffs,

v.

L'ORÉAL USA, INC.,

Defendant.

Case No. 4:20-cv-00944-JSW

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR VIOLATIONS OF:**

- (1) California's Consumer Legal Remedies Act, Civ. Code §§ 1750, et seq.;
- (2) California's Unfair Competition Law, Bus. & Prof. Code §§ 17200, et seq.;
- (3) California's Song-Beverly Consumer Warranty Act, Civ. Code §§ 1790, et seq.;
- (4) Breach of Implied Warranty of Merchantability;
- (5) Unjust Enrichment; and
- (6) Declaratory Relief

**DEMAND FOR JURY TRIAL**

1 **INTRODUCTION**

2 1. Plaintiffs Renee Young and Roxanne Tierney (“Plaintiffs”), individually and on  
3 behalf of all others similarly situated, bring this action against Defendant L’Oréal USA, Inc.  
4 (“Defendant” or “L’Oréal”), demanding a trial by jury. Plaintiffs make the following allegations  
5 pursuant to the investigation of counsel and based upon information and belief, except as to the  
6 allegations specifically pertaining to themselves which are based on personal knowledge. On  
7 behalf of themselves and the class or subclasses they seek to represent, Plaintiffs allege as follows:

8 **NATURE OF THE ACTION**

9 “I really like this product, but when I get to the 1/2 way mark, I cant  
10 get it to come out. I have cleaned the dispenser but still i cant get  
11 anymore. I thought I could unscrew the top, but it doesnt work that  
12 way. I enjoy wearing this foundation, but cant afford to lose 1/2 a  
13 bottle everytime. do you have any suggestions?”

14 *L’Oréal Visible Lift; 01/26/2011 L’Oréal website [sic].*<sup>1</sup>

15 2. This is a consumer class action on behalf of consumers seeking redress for L’Oréal’s  
16 deceptive practices in marketing and selling to consumers liquid cosmetic products in defective  
17 manual pumping bottles that fail to dispense significant, material amounts of the liquid products  
18 (“Liquid Cosmetic Products”)<sup>2</sup> in violation of state consumer protection and warranty laws.

19 3. L’Oréal is a manufacturer and seller of cosmetic products including the Liquid  
20 Cosmetic Products at issue in this action. Defendant’s Liquid Cosmetic Products are offered for  
21 sale to consumers throughout the United States through various large retailers and pharmacies  
22 including but not limited to Sephora, Walgreens, Wal-Mart, Target, Ulta, Rite-Aid, and CVS.  
23 They are also offered by these retailers on their e-commerce websites and by other online retailers  
24 such as Amazon.com, Drugstore.com, and Beauty.com.

25 4. L’Oréal’s Liquid Cosmetic Products are generally sold in containers containing one  
26 fluid ounce or less of product. Defendant packages and sells these products in containers made of

27 <sup>1</sup> Customer comments quoted throughout this Class Action Complaint (“Complaint”) have not been  
28 edited for spelling, punctuation or grammar.

<sup>2</sup> Including without limitation “Visible Lift Serum Absolute,” “Age Perfect Eye Renewal Eye  
Cream,” and “Revitalift Bright Reveal Brightening Day Moisturizer,” which are marketed under  
the “L’Oréal” brand, and “Superstay Better Skin Skin-Transforming Foundation,” which is  
marketed under L’Oréal’s “Maybelline” brand.

1 glass that are sealed or otherwise designed to prevent consumers from opening them. L'Oréal  
2 further designed the products to be dispensed through manual pumps inserted into the sealed  
3 containers.

4 5. The Liquid Cosmetic Products utilize substantially similar pumps for substantially  
5 similar liquid cosmetics to dispense product. All of L'Oréal's defective pumps suffer from the  
6 same defect of failing to dispense a significant and material amount of product, and L'Oréal's  
7 misleading acts or omissions that give rise to Plaintiffs' consumer fraud and warranty claims are  
8 substantially similar with respect to all of the products at issue—particularly because Plaintiffs'  
9 claims focus on the functionality of the Liquid Cosmetic Products' defective packaging as opposed  
10 to the efficacy of the contents.

11 6. The Liquid Cosmetic Products violate California law because while the containers  
12 accurately state the total amount of product contained therein, Defendant fails to disclose to  
13 consumers that the pumps are defective for their intended purpose and that they will not be able to  
14 access or use a large percentage—*in some cases more than half*—of the product purchased. This  
15 is because the pumps used to dispense these Liquid Cosmetic Products are defective and cannot  
16 adequately and reasonably dispense viscous liquids, failing to dispense a quarter of the Liquid  
17 Cosmetic Products, and sometimes 50% or more.

18 7. To make matters worse, the containers are often glass bottles, sealed shut and are  
19 designed to *prevent* consumers from opening them, thereby thwarting consumers' access to the  
20 trapped product by any reasonable and safe means. Because some of the containers are made with  
21 opaque materials, or the viscous liquids frequently stick to the sides of the containers, it is also  
22 difficult for consumers to know exactly how much, if any, Liquid Cosmetic Product remains  
23 trapped in the containers. This is further exacerbated by the inherent weight of a small, yet  
24 relatively heavy, glass bottle, which misleadingly leads consumers to believe that the weight of any  
25 stranded product is attributable instead to the bottle weight itself, and not to any product leftover.

26 8. As L'Oréal's products are made with glass bottles and are designed not to be opened,  
27 a reasonable consumer would not be expected to do more than perfunctorily attempt to open the  
28

1 bottle because doing so more aggressively (such as with a saw or knife) could likely be dangerous,  
2 thereby exacerbating the defects in the pumps themselves.

3 9. Results from Plaintiffs' independent laboratory testing of the products at issue,  
4 which utilized standard laboratory practices for measuring the volume of viscous liquids, confirm  
5 that L'Oréal's defective Liquid Cosmetic Product pumps only dispense between as little as 43  
6 percent to 81 percent of the container's advertised contents.

7 10. This low dispensation rate deceives and damages consumers, who typically spend  
8 approximately \$15 for the products, meaning that consumers may lose on the average  
9 approximately \$7 *on each purchase* because of L'Oréal's defective and misleading packaging.

10 11. To compound matters, viscous liquid like the makeup products at issue can be more  
11 easily and completely dispensed from containers that contain removable pumps. In addition to  
12 threaded, removable screw-top pumps, airless pumps are utilized by many other cosmetic  
13 manufacturers to dispense viscous liquid cosmetic products similar to that of L'Oréal's products.  
14 Moreover, L'Oréal itself uses these more efficient packaging types with other of its products, so it  
15 obviously is familiar with their advantages.

16 12. Numerous consumers have complained directly to L'Oréal about (i) their inability  
17 to access the Liquid Cosmetic Product due to the defective pump design, (ii) their frustration that  
18 the containers are sealed which prohibits them from accessing stranded product the pumps won't  
19 dispense, (iii) their unsuccessful attempts to remove the pumps, and (iv) the unsuccessful attempts  
20 they have made to otherwise access the trapped product. In fact, some consumers go to potentially  
21 dangerous lengths to attempt to access the trapped product. For example, according to online  
22 complaints, consumers have tried to saw off the top of pumps, even though the containers are glass.  
23 Others have reported using pliers or other tools not designed for such efforts.

24 13. Many of the consumer complaints are posted on L'Oréal's own website, dating at  
25 least as far back as 2010. L'Oréal often responds directly to these specific complaints, thanking  
26 consumers for sharing their feedback and assuring them their comments will be "shared with our  
27 management team."  
28

1           14. As demonstrated by Plaintiffs' experiences, a national consumer survey, and the  
2 widespread complaints on this issue, no reasonable consumer would expect that the manual pump  
3 would be defective and cease dispensing product while a significant unused portion remains  
4 stranded in the bottle that is sealed and inaccessible by any safe means. And, reasonable consumers  
5 expect that a package will be effectively, safely, and properly designed so consumers can best  
6 utilize and consume the entirety of the product (except perhaps for *de minimis* trace amounts). The  
7 deceptive manner in which these Liquid Cosmetic Products are marketed and sold further precludes  
8 consumers from making useful and accurate value comparisons between these Liquid Cosmetic  
9 Products and other similar products on the market.

10           15. L'Oréal nevertheless continues to sell these Liquid Cosmetic Products in sealed  
11 glass containers, sometimes coated or opaque, with non-removable and ineffective pumps in order  
12 to generate greater revenue and sales. In addition to depriving consumers of the full value of the  
13 product they have purchased, the deceptive and faulty design of these containers causes some  
14 consumers to believe that they have used all of the product and purchase it more frequently than  
15 they otherwise would have if the full quantity of product had been dispensed. This results in greater  
16 sales and increased profits for L'Oréal as consumers purchase more Liquid Cosmetic Products more  
17 frequently. Additionally, L'Oréal receives payment for and profits from the sale of products that  
18 the reasonable consumer can never fully use, and is unjustly enriched in that regard.

19           16. Had Plaintiffs known that a large percentage—*sometimes more than half*—of the  
20 Liquid Cosmetic Products they purchased from L'Oréal could not be reasonably accessed from the  
21 containers in which they were sold, and had Plaintiffs known there was no other reasonable means  
22 of accessing the trapped product, Plaintiffs would not have purchased Defendant's Liquid Cosmetic  
23 Products and/or would have paid less/would not have paid the price premium demanded by  
24 Defendant, or otherwise acted differently.

25           17. Plaintiffs assert putative class action claims on behalf of themselves and all other  
26 consumers who purchased Defendant's Liquid Cosmetic Products. They seek damages, restitution,  
27 and injunctive relief.  
28

**PARTIES**

1  
2 18. Plaintiff Renee Young is a citizen of California who resides in Windsor, California,  
3 and is over the age of 18.

4 19. Plaintiff Roxane Tierney is a resident of California who resides in Apple Valley,  
5 California, and is over the age of 18.

6 20. Defendant L’Oréal is a Delaware corporation with its principal place of business at  
7 575 Fifth Ave, New York, New York 10017. It is a subsidiary of the French cosmetics giant  
8 L’Oréal S.A., the world’s largest cosmetics company.

9 21. L’Oréal is engaged in the manufacturing, packaging, advertising, and distributing of  
10 many consumer products, including the Liquid Cosmetic Products at issue here, throughout the  
11 United States. In addition to manufacturing and distributing products using the “L’Oréal” brand,  
12 L’Oréal also manufactures and distributes products using the “Maybelline” brand, including the  
13 Liquid Cosmetic Products at issue here, throughout the United States.

**JURISDICTION AND VENUE**

14  
15 22. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C.  
16 § 1332(d)(2). The aggregate claims of all members of the proposed class and subclasses are in  
17 excess of \$5 million, exclusive of interest and costs, and there are more than 100 putative class  
18 members. Plaintiffs, as well as members of the proposed class, are citizens of a state different from  
19 Defendant.

20 23. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because  
21 a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this  
22 District where L’Oréal distributed, marketed, advertised, and sold the various Liquid Cosmetic  
23 Products at issue throughout California, which are the subject of the present complaint. Finally,  
24 venue is appropriate in this District pursuant to 28 USC § 1391(b)(2) because Plaintiff Young and  
25 a substantial portion of putative class members are residents of this District and a substantial part  
26 of the acts and omissions that gave rise to this Complaint occurred or emanated from this District.

27 24. This Court has personal jurisdiction over L’Oréal because it is authorized to do  
28 business and does conduct business in California, has specifically marketed, advertised, and made

1 substantial sales in California, and has sufficient minimum contacts with this state and/or  
2 sufficiently avails itself of the markets of this state through its promotion, sales, and marketing  
3 within this state to render the exercise of jurisdiction by this Court permissible.

#### 4 INTRADISTRICT ASSIGNMENT

5 25. Pursuant to Civil Local Rule 3-2(c), an intradistrict assignment to the San  
6 Francisco/Oakland Division is appropriate because a substantial part of the events or omissions  
7 which give rise to the claims asserted herein occurred in this Division, including that Plaintiff  
8 Young resides in and made the purchase at issue in Sonoma County.

#### 9 FACTUAL ALLEGATIONS

##### 10 A. Products At Issue

11 26. There are at least four products at issue in this case manufactured and marketed by  
12 L'Oréal during the class period, which are sold in drug stores, cosmetic stores, and other retail  
13 outlets across the United States, and internationally.

14 27. Two of the products are liquid foundations, "Visible Lift Serum Absolute,"  
15 marketed under the L'Oréal brand, and "Superstay Better Skin Skin-Transforming Foundation,"  
16 marketed under the Maybelline brand. A version of each of the products is pictured here:





1 28. The two other products at issue are “Age Perfect Eye Renewal Eye Cream” and  
 2 “Revitalift Bright Reveal Brightening Day Moisturizer,” both of which are marketed under the  
 3 L’Oréal brand and are pictured here:



15 29. The products are sealed in glass containers. The liquids are dispensed through a  
 16 manual pump which cannot be screwed off or otherwise removed.

17 **B. History Of The Problem: Consumer Complaints**

18 30. L’Oréal has known about the problems with its defective pumps for years.  
 19 Numerous consumers have lodged complaints with L’Oréal dating back at least as far as *ten years*  
 20 *ago*. L’Oréal has sometimes acknowledged these complaints and has even responded to them,  
 21 thanking consumers for their thoughts and promising to share customer feedback with management  
 22 and others within the company.

23 31. Below is a mere sampling of online consumer complaints, most of which were  
 24 directly received by L’Oréal on its websites, involving the Liquid Cosmetic Products:

25 **L’Oréal Visible Lift Serum Absolute Foundation**

26 a. “I have been buying Loreal makeup for many years and I  
 27 don’t have any complaints about the make up-I actually prefer it, The  
 28 complaint I have is with the new bottle for Visible Lift. You can NOT  
 take the top off! When the bottle is close to empty and the makeup is



1 just low enough for the pump not to reach-you cant get anymore  
2 makeup out. If I am going to have to pay \$\$\$ for makeup I would  
like to be able to use it all. = (" 1MadBuyer from San Antonio, TX,  
posted on Defendant's website.

3 b. "This is a fabulous foundation, but all of a sudden - the pump  
4 stops working! How ridiculous. I'd transfer the foundation to an  
5 airless pump, but the foundation is way to thick to get it out of the  
6 bottle. I've read that this happens with this foundation, but just  
thought .. Oh, that person got a bad one. Um, noooooooo - LOREAL  
- FIX THE FOUNDATION PUMP!" MonicaP from San Diego,  
posted on Defendant's website.

7 c. "Love the foundation; dislike the pump. I'd give this five  
8 stars for coverage and texture, but I'll knock it down to four for  
consistently having to wrench off the pump at the 25% level and dig  
9 out the remainder with cotton swabs, making a mess in the process.  
10 Seriously, L'Oréal, if you can produce other products in bottles that  
don't waste so much product, why can't you fix this one? We've been  
11 begging for years; help us out!" Almost57 from Sacramento, CA,  
posted on Defendant's website.

12 d. "I bought the new Loreal Visible Lift Foundation and loved  
it until I got 2/3 through the bottle and the pump top stopped working.  
13 Now I cannot access the remaining makeup from the bottle and the  
cap is not a screw top to [sic] it's impossible to get foundation out of  
14 the bottle even though there's a lot left. It's a very poor design. I liked  
the idea of the pump until it stopped working. I won't buy the product  
15 again with this top. . . ." catessman posted on Complaints Board  
website.

16 e. "Bottle is fitted with a pump dispenser that does not pump  
17 anything out when it gets low. Cap does not skrew off to allow you  
to get to it that way. So, for the amount this costs I expect to be able  
18 to use it ALL! Not three quarters of it." madesjarlais posted on  
MeasuredUp website.

19 f. "Love product.....but 1/3 of it won't pump out. Manufacturer  
20 needs to redesign pump so it will actually pump out. Bottle is  
designed where the top won't come off. If you want to actually use  
21 all the product that you paid for, you have to pry the top off. A lot of  
people just throw it away and buy more which makes more profit for  
22 L'Oréal. Refuse to buy this product until pump actually works." Ms.  
Urban posted on Amazon website.

23 g. "This is a great makeup but the bottle is terrible!! I have  
24 bought 2 and I will try one more but if the pump isn't better I will  
look for a new brand. I've lost half of each of the first ones and can't  
25 afford to pay the price to toss it in the garbage." Trudeeblue posted  
on Defendant's website

26 h. "I really like this product, but when I get to the 1/2 way mark,  
27 I cant get it to come out. I have cleaned the dispenser but still i cant  
get anymore. I thought I could unscrew the top, but it doesnt work  
28 that way. I enjoy wearing this foundation, but cant afford to lose 1/2

1 a bottle everytime. do you have any suggestions?" Anonymous  
2 posted on Defendant's website.

3 **Maybelline Super Stay Better Skin Foundation**

4 a. "GOOD, BUT NEEDS BETTER PACKAGING. I like this  
5 foundation, but it needs a better packaging. I'm the type to finish my  
6 things til the last drop and maybe because the foundation is on the  
7 thicker side, you can't really see when the foundation is about to be  
8 finished, and to top it off, extremely hard to remove the pump."  
9 suheid from Long Beach, CA posted on Defendant's Maybelline  
10 website.

11 b. "the pump stopped working after the third day....threw it out."  
12 Donna M. Coriano posted on Amazon's website.

13 **L'Oréal Revitalift Bright Reveal Brightening Day Moisturizer**

14 a. "Bottle broken. :( I only was able to use the Bright Reveal  
15 moisturizer a few times before the pump stopped working. But the  
16 few times that I did it was nice. I noticed it was slightly pearlized  
17 which is what I'm guessing is supposed to give your skin some  
18 radiance. I don't plan on repurchasing this lotion, disappointed that  
19 the bottle broke so soon and am glad I didn't spend my money on it  
20 or it would have been returned. Seems like a good basic daytime  
21 lotion. I have dry skin and h to use had to use a lot to make my skin  
22 feel comfortable. Also I prefer my daytime lotion to have a higher  
23 SPF. Won't purchase in the future, but I did LOVE some of the other  
24 products in this line." Suzanne posted on Defendant's website.

25 b. "Great formula; needs better packaging. I've pruchased this  
26 twice so far and really like the product. It smells nice, absorbs fast,  
27 and protects from the sun well. My only complaint is the package:  
28 when the pump stops pumping, there is still a lot of product  
remaining in the bottle and it's very hard to get the rest out. This  
seems wasteful, and I want to use every bit of what I've purchased.  
A wider bottle neck or a squeezable tube would make it easier to  
completely empty the package and use all of the product." SDCA  
posted on Defendant's website.

29 **L'Oréal Age Perfect Eye Renewal Eye Cream**

30 a. "The cream in this product is nice but I would never buy it  
31 again because the pump is faulty. It stops working at about half full.  
32 So you waste 50% of product. I want a refund! do not buy this."  
33 Lauraindc posted on Defendant's website.

34 b. "The bottle needs to be redesigned! This is the 2nd time I  
35 have bought this product. And yet again I cannot get the bottle 1/3 of  
36 the product to dispense. The pump stops working. I have had the  
37 bottle turned upside down for 2 days and the lotion will not drop. I  
38 will not buy this product again - you need to change the design."  
Sue952 from Surrey, BC, Canada, posted on Defendant's website.

1  
2 32. Indeed, L'Oréal sometimes specifically responds to complaints on its own website:

3 a. Complaint from "MiamiomFort Lauderdale, FL" and  
4 response from L'Oréal:

5 **Posted:** 07/18/2014 **Reviewing:** Natural Buff

6 Love the product Hate the pump- can't get last 1/4 out of bottle  
7 Bought 3 bottles - same problem Loved the previous bottle with  
8 brush- bring it back Moved on to another brand because of this

9 Response from L'Oréal Paris USA



10 Customer Care, L'Oréal Paris USA 07/21/2014

11 Thank you for taking the time to share your feedback with us. We  
12 are always looking for ways to improve our products and services.  
13 Your comments will be passed along to others in the company. In the  
14 future you may want to try our new product Visible Lift Blur  
15 Foundation: <http://bit.ly/1k8v3qI>

16 b. Complaint from "Vandeven mConroe, TX" and response  
17 from L'Oréal:

18 **Posted:** 09/01/2014 **Reviewing:** Creamy Natural

19 Great product but you can only use 65% or 75% of the product. The  
20 rest is wasted as the pump will not distribute the material that  
21 remains. I guess Loreal can sell more product that way but it's  
22 frustrating to pay top dollar for a good product only to be able to  
23 access a portion of what you bought. Bottom line, good product,  
24 poorly designed dispenser.

25 Response from L'Oréal Paris USA



26 Customer Care, L'Oréal Paris USA 09/08/2014

27 Thank you for sharing your thoughts with us. We are always looking  
28 for ways to improve our products and services. Your comments will  
be shared with our management team.

33. Plaintiffs are also informed that L'Oréal's customer service representatives in Florida received regular complaints on a daily (if not hourly) basis via telephone about the defective pumps' failures and the inaccessibility of material amounts of liquid cosmetics that remained, but

1 that they were trained to feign ignorance of the issue and tell consumers that they had not heard of  
2 similar complaints before. However, the defect was so widely complained about that L'Oréal had  
3 a special category to designate the problem as "tube too short" under the broader category  
4 "dispenser." L'Oréal employees acknowledged these problems but failed to make any  
5 manufacturing changes that could have resolved the defects. Given the multitude of online and  
6 telephonic complaints, L'Oréal is undoubtedly aware of the defective closed pump design's impact  
7 on consumers and the deceptive nature of its conduct.

### 8 **C. Other Packaging Options**

9 34. There is no equitable justification for L'Oréal's products to suffer from these defects  
10 or for L'Oréal to deceive and mislead consumers. Other liquid cosmetic products (including other  
11 products marketed and sold by L'Oréal itself) similar to those at issue here are marketed and sold  
12 in containers that either (a) have threaded, screw-off lids, (b) use removable (not closed) pumps,  
13 (c) use airless pumps, or (d) utilize squeeze tubes—all of which allow most, if not all, of the liquid  
14 cosmetic product to be dispensed. Regarding airless pumps, they typically dispense at least 99%  
15 of liquid cosmetics similar to L'Oréal's Liquid Cosmetic Products. Many cosmetic manufacturers  
16 (including L'Oréal) use airless pumps to dispense liquid foundations and other liquid cosmetic  
17 products. For example, Arbonne uses an airless pump to dispense its "Perfecting Liquid  
18 Foundation," a similar product:



1           35.     The use of airless pumps is in no way limited to expensive cosmetic products. One  
 2 of the least expensive lines of cosmetics sold at Target stores, e.l.f. Cosmetics, also makes use of  
 3 airless pumps to dispense its primer and foundation—both of which are sold for approximately  
 4 \$6.00 each:



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13 **D.     Laboratory Testing**

14           36.     Independent laboratory Exponent tested the dispensing rates of L’Oréal’s products  
 15 at issue, consistent with standard laboratory practices for measuring the volume of viscous liquids.  
 16 Exponent’s testing reflects and confirms what consumers have already reported: L’Oréal’s closed  
 17 pump is defective for its intended purpose and results in significant amounts of the Liquid Cosmetic  
 18 Products remaining in their containers and unavailable for use by the consumer who paid for it.  
 19 For some products, the pump is only capable of dispensing 43% of the product, *stranding well over*  
 20 *half of the product in the container.*

21           37.     The results from the laboratory testing for the Liquid Cosmetic Products at issue  
 22 were as follows:

PRODUCT	PERCENTAGE OF LABELED VOLUME ACTUALLY DISPENSED
L’Oréal Age Perfect Eye Renewal Eye Cream	43%
L’Oréal Revitalift Bright Reveal Brightening Day Moisturizer	62%

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<b>PRODUCT</b>	<b>PERCENTAGE OF LABELED VOLUME ACTUALLY DISPENSED</b>
Maybelline Superstay Better Skin Skin-Transforming Foundation	77%
L'Oréal Visible Lift Serum Absolute	81%

**E. Consumer Survey**

38. Plaintiffs also commissioned a national consumer survey to assess consumers' reasonable expectations regarding the amount of liquid cosmetic product that should be dispensed from closed pump containers for liquid foundations and other products similar to the Liquid Cosmetic Products. Of the more than 750 consumers who were surveyed, 74% expected to receive and use the full labeled amount on the bottle.

39. In addition, consumers were told to assume that only 70% of a liquid cosmetic could be dispensed from a closed pump container and were asked to provide comments in response to that proposition. Nearly three-quarters (72%) of the comments were negative or extremely negative. The hundreds of negative comments included words such as "unethical," "waste," "unfair," "rip-off," "sucks" and "cheat."

40. Given that L'Oréal is aware, yet conceals from unsuspecting consumers, that its Liquid Cosmetic Products are contained in closed, defective pumps and that the consumer will be unable to access and use significant, material amounts of the product they purchased, L'Oréal has run afoul of California's consumer protection and warranty laws.

**PLAINTIFFS' EXPERIENCES**

**A. Plaintiff Renee Young**

41. On or about June 2017, Plaintiff Young purchased L'Oréal Age Perfect Eye Renewal Eye Cream and paid approximately \$18.00 for the product at the CVS store in Windsor, California.

42. Although she attempted to do so, Young was unable to use all of the eye cream purchased because it could not be completely dispensed from its defective container and Young

1 was unable to use any other reasonable means to access the remaining product for use. A significant  
2 amount of product was stranded.

3 43. Because of her experience with the defective pump and stranded product, Young  
4 did not purchase the L'Oréal eye cream again.

5 44. On or about January 2018, Plaintiff Young purchased L'Oréal Visible Lift Serum  
6 Absolute Foundation and paid approximately \$14.00 for the product at the Walmart store in  
7 Windsor, California.

8 45. Although she attempted to do so, Young was unable to use all of the foundation  
9 purchased because it could not be completely dispensed from its defective container and Young  
10 was unable to use any other reasonable means to access the remaining product for use. A significant  
11 amount of product was stranded.

12 46. Because of her experience with the defective pump and stranded product, Young  
13 did not purchase the L'Oréal foundation again.

14 **B. Plaintiff Roxane Tierney**

15 47. On or about March 2017, Plaintiff Tierney purchased L'Oréal Visible Lift Serum  
16 Absolute Foundation and paid approximately \$15.00 for the product at a retail store in Apple  
17 Valley, California. At around the same time, Tierney purchased Maybelline Superstay Better Skin  
18 Skin-Transforming Foundation and paid approximately \$15.00 for the product at a retail store in  
19 Apple Valley.

20 48. Although she attempted to do so, Tierney was unable to use all of the foundation  
21 purchased from the two products because the foundations could not be completely dispensed from  
22 the containers and Tierney was unable to use any other reasonable means to access the remaining  
23 product for use. A significant amount of product was stranded in both containers.

24 49. Because of her experience with the stranded product, Tierney did not purchase the  
25 L'Oréal foundation or the Maybelline foundation again.

26 50. Had Plaintiffs known that the pumps were defective and that they would not be able  
27 to use a material proportion of the Liquid Cosmetic Products they purchased because the product  
28 could not be dispensed from the containers in which they were sold in, and had Plaintiffs known



1 there was no other reasonable means of accessing the trapped product, Plaintiffs would not have  
2 purchased Defendant's Liquid Cosmetic Products and/or would have paid less/would not have paid  
3 the price premium demanded by Defendant, or otherwise acted differently.

4 **CLASS ACTION ALLEGATIONS**

5 51. Plaintiffs bring claims pursuant to Federal Rule of Civil Procedure 23 on behalf of  
6 the following Class, as defined below.

7 All persons who purchased one or more Liquid Cosmetic Products  
8 sold by Defendant in California.<sup>3</sup>

9 52. Excluded from the Class are Defendant and its current employees, counsel for either  
10 party, as well as the Court and its personnel presiding over this action.

11 53. This action has been brought and may properly be maintained as a class action  
12 against L'Oréal pursuant to the provisions of Federal Rule of Civil Procedure 23.

13 54. **Numerosity**: The precise number of members of the proposed class is unknown to  
14 Plaintiffs at this time, but, based on information and belief, Class members are so numerous that  
15 their individual joinder herein is impracticable. Defendant's Liquid Cosmetic Products have been  
16 and are sold throughout the United States through numerous retail outlets including Sephora, Wal-  
17 Mart, Target, Walgreens, Ulta, Rite-Aid, and CVS during the Class Period. Defendant's Liquid  
18 Cosmetic Products also have been offered and are offered online by these retailers and by other  
19 online retailers such as Amazon.com, Drugstore.com and Beauty.com during the Class Period.  
20 Plaintiffs believe, based on information and belief and publicly available sales figures, that Class  
21 members number in the tens or hundreds of thousands. Class members may be notified of the  
22 pendency of this action by published notice, sales records, or by other alternative means and may  
23 be identified through the sale and distribution records of L'Oréal and third-party retailers and  
24 vendors.

25 55. **Commonality**: Numerous questions of law or fact are common to the claims of  
26 Plaintiffs and members of the proposed Class. These common questions of law and fact exist as to

27 <sup>3</sup> The "Class Period" for each claim is provisionally intended to be the respective statute of  
28 limitations for each claim, with Plaintiffs reserving the right to invoke the equitable tolling doctrine  
based on the discovery rule or other bases as discovery and the case progresses.

1 all Class members and predominate over questions affecting only individual Class members. These  
2 common legal and factual questions include, but are not limited to the following:

3 a. Whether the Liquid Cosmetic Products marketed and sold by L'Oréal are  
4 deceptively marketed and sold in defective pumps that are unfit for dispensing viscous liquid  
5 cosmetics and/or are made, constructed, packaged, labeled, and filled so as to mislead, deceive, and  
6 defraud reasonable consumers including Plaintiffs and Class members.

7 b. Whether the Liquid Cosmetic Products marketed and sold by Defendant are  
8 defectively designed and/or manufactured in a manner likely to deceive reasonable consumers  
9 including Plaintiffs and Class members.

10 c. Whether the manner in which these Liquid Cosmetic Products are marketed  
11 and sold prohibits consumers, including Plaintiffs and Class members, from making useful and  
12 accurate value comparisons between Defendant's Liquid Cosmetic Products and other similar  
13 products on the market.

14 d. Whether L'Oréal's conduct violates the relevant California consumer  
15 protection and warranty laws.

16 e. Whether Plaintiffs and the other Class members were injured by L'Oréal's  
17 conduct, and if so, the appropriate class-wide measure of damages, restitution, and other  
18 appropriate relief, including injunctive relief.

19 f. Whether Plaintiffs and the other Class members are entitled to injunctive  
20 relief.

21 56. **Typicality**: The claims of the named Plaintiffs are typical of the claims of the  
22 proposed Class in that the named Plaintiffs purchased one or more of L'Oréal's Liquid Cosmetic  
23 Products during the Class Period in a typical consumer setting and sustained damages as a result of  
24 L'Oréal's wrongful conduct.

25 57. **Adequate Representation**: Plaintiffs will fairly and adequately represent the  
26 interests of the Class in that they are typical consumers of Defendant's Liquid Cosmetic Products  
27 and have no conflicts with any other Class members. Plaintiffs have retained competent counsel  
28 experienced in prosecuting complex class actions, and they will vigorously litigate this class action.

1           58.     **Predominance and Superiority**: There is no plain, speedy, or adequate remedy  
2 other than by maintenance of this class action. A class action is superior to other available means,  
3 if any, for the fair and efficient adjudication of this controversy. Prosecution of separate actions by  
4 individual Class members would create the risk of inconsistent or varying adjudications,  
5 establishing incompatible standards of conduct for the Defendant. Additionally, given the modest  
6 amount of damages sustained by any individual Class member, few, if any, proposed Class  
7 members could or would sustain the economic burden of pursuing individual remedies for  
8 L'Oréal's wrongful conduct. Treatment as a class action will achieve substantial economies of  
9 time, effort, and expense, and provide comprehensive and uniform supervision by a single court.  
10 This class action presents no material difficulties in management.

11           59.     Class action certification is warranted under Fed. R. Civ P. 23(b)(1)(A) because the  
12 prosecution of separate actions by individual members of the proposed Class would create a risk of  
13 inconsistent or varying adjudications with respect to individual Class members, which may produce  
14 incompatible standards of conduct for Defendant.

15           60.     Class action certification is warranted under Fed. R. Civ P. 23(b)(1)(B) because the  
16 prosecution of separate actions by individual members of the proposed Class would create a risk of  
17 adjudications with respect to individual Class members which may, as a practical matter, be  
18 dispositive of the interests of the other members not parties to the adjudications or substantially  
19 impair or impede their ability to protect their interests.

20           61.     The prerequisites to maintaining a class action for injunctive or equitable relief  
21 pursuant to Fed. R. Civ. P. 23(b)(2) are met as L'Oréal has acted or refused to act on grounds  
22 generally applicable to the Class, thereby making final injunctive, declaratory, or equitable relief  
23 appropriate with respect to the Class as a whole.

24           62.     Class action certification is also warranted under Fed. R. Civ P. 23(b)(3) because  
25 questions of law or fact common to the Class members predominate over any questions affecting  
26 only individual members, and a Class action is superior to other available remedies for the fair and  
27 efficient adjudication of this controversy. The amount of damages available to individual plaintiffs  
28 is insufficient to make litigation addressing L'Oréal's conduct economically feasible in the absence

1 of the class action procedure. Individualized litigation also presents a potential for inconsistent or  
2 contradictory judgments, and increases the delay and expense to all parties and the court system  
3 presented by the legal and factual issues of the case. By contrast, the class action device presents  
4 far fewer management difficulties and provides the benefits of a single adjudication, economy of  
5 scale, and comprehensive supervision by a single court.

6 63. Class action certification is also warranted under Fed. R. Civ P. 23(c)(4) because  
7 questions of law or fact common to the Class members may be certified and decided by this Court  
8 on a classwide basis.

9 **CLAIMS FOR RELIEF**

10 **COUNT I**

11 **Violations of California’s Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.***

12 64. Plaintiffs hereby incorporate by reference the factual allegations contained herein.

13 65. The California Consumer Legal Remedies Act (“CLRA”), Civil Code section 1750,  
14 *et seq.*, was designed and enacted to protect consumers from unfair and deceptive business  
15 practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and practices in Civil  
16 Code section 1770.

17 66. The CLRA applies to L’Oréal’s actions and conduct described herein because it  
18 extends to the transactions involving the sale of goods or services for personal, family, or household  
19 use within the meaning of Civil Code section 1761.

20 67. At all relevant times, Plaintiffs and members of the Class were "consumers" as that  
21 term is defined in Civil Code section 1761(d).

22 68. L’Oréal practices in connection with the marketing and sale of its Liquid Cosmetic  
23 Products violate the CLRA in at least (but not limited to) the following respects:

24 a. In violation of section 1770(a)(5), L’Oréal’s Liquid Cosmetic Products  
25 knowingly misrepresented goods;

26 b. In violation of section 1770(a)(7), L’Oréal’s Liquid Cosmetic Products were  
27 represented to be of a particular standard, quality, or grade, but were not; and  
28

1           c.       In violation of section 1770(a)(9), L'Oréal's knowingly advertised its Liquid  
2 Cosmetic Products with the intent not to sell the products as advertised.

3           69.     As set forth above, L'Oréal's Liquid Cosmetic Products are deceptive and  
4 misleading to reasonable consumers in violation of the CLRA because the pumps in which the  
5 Liquid Cosmetic Products are sold are defective and unfit for dispensing viscous cosmetics and fail  
6 to dispense material and significant quantities of the cosmetics while stranding undispensed  
7 cosmetics in sealed glass bottles that cannot be accessed using safe or reasonable means. L'Oréal  
8 has known that its Liquid Cosmetic Products are contained in defective pumps but has chosen not  
9 to disclose that information to consumers in any aspect of its marketing or advertising for the  
10 products and has failed to adequately respond to consumers' complaints and concerns with  
11 compensation or refunds. At all times L'Oréal has had exclusive knowledge of the pumps' defects  
12 and their unfitness for use with the Liquid Cosmetic Products because it designed, tested, marketed  
13 and sold the pumps knowing that they would not be able to dispense material amounts of product  
14 and that consumers would have no way of knowing about the defects until after the point of sale  
15 when they used the products at home. L'Oréal also has exclusive knowledge and was put on notice  
16 of the pumps' defects through consumer complaints. Through L'Oréal's uniform  
17 misrepresentations, concealment and suppression of material facts, L'Oréal engaged in misleading  
18 and deceptive conduct that created a likelihood of confusion or misunderstanding on the part of  
19 Plaintiffs and Class members.

20           70.     L'Oréal's conduct described herein was undertaken in transactions intended to result  
21 in, and which did result in, the purchase of its Liquid Cosmetic Products by consumers, which  
22 caused harm to Plaintiffs and Class members who would not have purchased (or paid as much for)  
23 its L'Oréal's products had they known the truth. Plaintiffs were in fact injured by purchasing or  
24 overpaying for L'Oréal's products.

25           71.     The CLRA is, by its express terms, a cumulative remedy, such that remedies under  
26 its provisions can be awarded in addition to those provided under separate statutory schemes and/or  
27 common law remedies, such as those alleged in the other Counts of this Complaint. *See* Cal. Civ.  
28 Code § 1752.

1           72. In accordance with Civil Code section 1780, Plaintiffs and Class members seek  
2 injunctive and equitable relief for L’Oréal’s violations of the CLRA necessary to bring it in  
3 compliance with the CLRA by, among other things, using non-defective pumps and or adequately  
4 disclosing that the defective pumps will not dispense material and significant portions of the Liquid  
5 Cosmetic Products prior to the point of purchase.

6           73. In accordance with Civil Code section 1780, the Plaintiffs served a notice pursuant  
7 to Civil Code section 1782, via a certified letter, return receipt requested, requesting appropriate  
8 relief on or about February 6, 2020. A copy of Plaintiffs’ CLRA demand letter is attached as  
9 **Exhibit A**. More than 30 days have passed and L’Oréal has failed to respond to Plaintiffs’ CLRA  
10 demand and fully satisfy the requirements therein to bring their conduct into compliance with the  
11 law and provide Plaintiffs and the Class the relief warranted under the CLRA. Accordingly,  
12 Plaintiffs seek injunctive relief, actual and punitive damages, additional damages to senior citizens  
13 and disabled persons of \$5,000 per person, restitution of property, and any other award the Court  
14 deems appropriate, as well as attorneys’ fees and costs of suit.

## **COUNT II**

### **Violation of California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.***

#### **On Behalf of the California Class**

18           74. Plaintiffs hereby incorporate by reference the factual allegations contained herein.

19           75. L’Oréal has engaged in unfair competition within the meaning of California  
20 Business & Professions Code section 17200, *et seq.*, because L’Oréal’s conduct is unlawful, unfair,  
21 and fraudulent as herein alleged.

22           76. Plaintiffs, the members of the Class, and L’Oréal are a “person” or “persons,” within  
23 the meaning of Section 17201 of the California Unfair Competition Law (“UCL”).

24           77. The UCL prohibits any unlawful, unfair, or fraudulent business practices or acts.  
25 L’Oréal’s conduct, as alleged herein, constitutes an unlawful, unfair and fraudulent business  
26 practice that occurred in connection with the marketing, advertisement and sale of its products. As  
27 set forth above, L’Oréal’s Liquid Cosmetic Products are deceptive and misleading to reasonable  
28 consumers in violation of the UCL because the pumps in which the Liquid Cosmetic Products are

1 sold are defective and unfit for dispensing viscous cosmetics and fail to dispense material and  
2 significant quantities of the cosmetics while stranding undispensed cosmetics in sealed glass bottles  
3 that cannot be accessed using safe or reasonable means. L'Oréal has known that its Liquid  
4 Cosmetic Products are contained in defective pump containers but has chosen not to disclose that  
5 information to consumers in any aspect of its marketing or advertising for the products and has  
6 failed to adequately respond to their complaints and concerns with compensation or refunds.  
7 Through L'Oréal's uniform misrepresentations, concealment and suppression of material facts,  
8 L'Oréal engaged in misleading and deceptive conduct that created a likelihood of confusion or  
9 misunderstanding on the part of Plaintiffs and Class members.

10 78. L'Oréal's misleading and deceptive misrepresentations and omissions, concealment  
11 and suppression of material fact, as described within, violated the UCL's unlawful, unfair, and  
12 fraudulent prongs.

13 79. **Unlawful prong:** L'Oréal's conduct, as described within, violated the UCL's  
14 unlawful prong because: (1) it violates the CLRA in connection with the sale of goods and services;  
15 (2) violates California's Sherman Act, Cal. Health and Safety Code section 109875, *et seq.*,  
16 because, among other things, L'Oréal has sold "cosmetics" that are misbranded in defective pumps  
17 that run afoul of the Sherman Act's prohibition on false and misleading labeling and use of  
18 containers that are "made, formed, or filled as to be misleading" (Cal. Health & Saf. Code §§  
19 111740, 111750); (3) it violates California Song-Beverly Consumer Warranty Act, Civ. Code §§  
20 1790, *et seq.* and the implied warranty of merchantability; and (4) has unlawfully and unjustly  
21 enriched L'Oréal. Plaintiffs and the Class have spent money purchasing L'Oréal's products they  
22 would not have otherwise purchased (or paid more for them).

23 80. **Unfair prong:** L'Oréal's conduct, as described within, violated the UCL's unfair  
24 prong because its conduct violates established public policy intended to regulate the fair and ethical  
25 sale of goods and services to consumers as set forth in the CLRA, the Song-Beverly Act, and the  
26 Sherman Act, and because it is immoral, unethical, oppressive, or unscrupulous and has caused  
27 injuries to the Plaintiffs and the Class that outweigh any purported benefit. At all times relevant  
28 herein, L'Oréal's conduct of misrepresenting and concealing material facts regarding its defective



1 pumps from the Plaintiffs and consumers caused them injury by inducing them to purchase  
2 L'Oréal's products they would not have otherwise purchased (or pay more for them). The utility  
3 of L'Oréal's conduct in misrepresenting and concealing material facts from the Plaintiffs and the  
4 Class is far outweighed by the gravity of harm to consumers who have now spent money they would  
5 not have otherwise spent and that has resulted in Defendant being unjustly enriched.

6       81. **Fraudulent prong:** L'Oréal's conduct, as described within, violated the UCL's  
7 fraudulent prong by misrepresenting and concealing material information that caused, or would  
8 likely cause, Plaintiffs and the Class to be deceived into purchasing L'Oréal's Liquid Cosmetic  
9 Products they would not have otherwise purchased (or paid more for them). At all times L'Oréal  
10 has had exclusive knowledge of the pumps' defects and their unfitness for use with the Liquid  
11 Cosmetic Products because it designed, tested, marketed and sold the pumps knowing that they  
12 would not be able to dispense material amounts of product and that consumers would have no way  
13 of knowing about the defects until after the point of sale when they used the products at home.  
14 L'Oréal also has exclusive knowledge and was put on notice of the pumps' defects through  
15 consumer complaints. Plaintiffs and the Class did, in fact, purchase L'Oréal's products they would  
16 not have otherwise purchased (or paid more for them) but for L'Oréal's fraudulent conduct  
17 misrepresenting and concealing material information about its defective pumps. Plaintiffs and the  
18 Class have been harmed and sustained injury as a result of L'Oréal's fraudulent conduct in violation  
19 of the UCL as explained herein.

20       82. Plaintiffs have standing to pursue this claim because they have been injured by  
21 virtue of suffering a loss of money and/or property as a result of the wrongful conduct alleged  
22 herein. Plaintiffs would not have purchased L'Oréal's products (or paid as much for them) had  
23 they known the truth, though they have an interest in purchasing such products in the future should  
24 L'Oréal use non-defective pumps. As a direct result of L'Oréal's actions and omissions of material  
25 facts, Plaintiffs and Class members did not obtain the value of the products for which they paid;  
26 were unlawfully, unfairly, and fraudulently induced to make purchases that they otherwise would  
27 not have made; and lost their ability to make informed and reasoned purchasing decisions.

28

1           83.     The UCL is, by its express terms, a cumulative remedy, such that remedies under its  
 2 provisions can be awarded in addition to those provided under separate statutory schemes and/or  
 3 common law remedies, such as those alleged in the other Counts of this Complaint. *See* Cal. Bus.  
 4 & Prof. Code § 17205.

5           84.     As a direct and proximate cause of L’Oréal’s conduct, which constitutes unlawful,  
 6 unfair, and fraudulent business practices, as herein alleged, Plaintiffs and Class members have been  
 7 damaged and suffered ascertainable losses measured by the cost of their L’Oréal purchases or some  
 8 portion thereof, thereby entitling them to recover restitution and equitable relief, including  
 9 disgorgement or ill-gotten gains, refunds of moneys, interest, reasonable attorneys’ fees, filing fees,  
 10 and the costs of prosecuting this class action, as well as any and all other relief that may be available  
 11 at law or equity.

12   **COUNT III**

13                     **Violation of The Song-Beverly Consumer Warranty Act, Civ. Code §§ 1790 et seq.**

14           85.     Plaintiffs hereby incorporate by reference the factual allegations contained herein.

15           86.     L’Oréal violated the Song-Beverly Consumer Warranty Act by, among other things,  
 16 violating the implied warranties of merchantability by knowingly selling Liquid Cosmetic Products  
 17 in defective pumps that were unsuitable for use with viscous cosmetics because they could not  
 18 adequately dispense the cosmetics contained within in violation of sections 1791.1 and 1791.2, and  
 19 were therefore not fit for the ordinary purpose for which the goods were intended to be sold.

20           87.     L’Oréal’s attempts to disclaim or limit the implied warranty of merchantability *vis-*  
 21 *à-vis* consumers are unconscionable and unenforceable. Specifically, L’Oréal’s warranty  
 22 limitations are unenforceable because L’Oréal knowingly sold defective products without  
 23 informing consumers about the pump dispensing defect. Moreover, Defendant was provided notice  
 24 of these issues by numerous complaints lodged by consumers.

25           88.     Plaintiffs and Class members have complied with all obligations under the warranty  
 26 or otherwise have been excused from performance of said obligations as a result of L’Oréal’s  
 27 conduct described herein.  
 28

1 89. Plaintiff and Class members have been harmed by L'Oréal's violations of the Song-  
2 Beverly Consumer Warranty Act and are entitled pursuant to Civil Code section 1794 to damages  
3 and other equitable relief necessary to bring L'Oréal into compliance with the Song-Beverly  
4 Consumer Warranty Act as well as an award of costs of litigation and reasonably attorneys' fees.

5 **COUNT IV**

6 **Breach of the Implied Warranty of Merchantability**

7 90. Plaintiffs hereby incorporate by reference the factual allegations contained herein.

8 91. L'Oréal impliedly warranted that the Liquid Cosmetic Products were of a  
9 merchantable quality under the Uniform Commercial Code, and California's common laws  
10 requiring consumer products be merchantable and fit for sale.

11 92. L'Oréal breached the implied warranty of merchantability because the Liquid  
12 Cosmetic Products were not of a merchantable quality due to the pump dispenser defect and other  
13 conduct alleged above.

14 93. If necessary, Plaintiffs' and Class members' interactions with L'Oréal suffice to  
15 create privity of contract between Plaintiffs and Class members, on the one hand, and Defendant,  
16 on the other hand. However, privity of contract need not be established nor is it required because  
17 Plaintiffs and Class members are intended third-party beneficiaries of contracts (including implied  
18 warranties) between Defendant and the retailers who sell the Liquid Cosmetic Products. L'Oréal's  
19 warranties were designed for the benefit of consumers who purchased Liquid Cosmetic Products.

20 94. L'Oréal's attempts to disclaim or limit the implied warranty of merchantability *vis-*  
21 *à-vis* consumers are unconscionable and unenforceable. Specifically, L'Oréal's warranty  
22 limitations are unenforceable because L'Oréal knowingly sold defective products without  
23 informing consumers about the pump dispensing defect. Moreover, Defendant was provided notice  
24 of these issues by numerous complaints lodged by consumers.

25 95. Plaintiffs and Class members have complied with all obligations under the warranty  
26 or otherwise have been excused from performance of said obligations as a result of L'Oréal's  
27 conduct described herein.  
28

1 96. As a direct and proximate result of the breach of said warranties, Plaintiffs and Class  
2 members were injured and are entitled to damages. As a result of L’Oréal’s breach of warranties,  
3 Class members have suffered damages because they have purchased Liquid Cosmetic Products they  
4 otherwise would not have purchased and/or would have paid less for, or otherwise acted differently.  
5 Plaintiffs and Class members are entitled to receive damages from Defendant in an amount to be  
6 determined at trial.

7 **COUNT V**

8 **Unjust Enrichment**

9 97. Plaintiffs hereby incorporate by reference the factual allegations contained herein.

10 98. By its wrongful acts and omissions described herein, L’Oréal has obtained a benefit  
11 by unduly taking advantage of Plaintiffs and Class members.

12 99. L’Oréal, prior to and at the time Plaintiffs and the members of the Class decided to  
13 purchase the Liquid Cosmetic Products, knew and had knowledge and information that the  
14 products’ packaging suffered from defects.

15 100. L’Oréal was aware or should have been aware that reasonable consumers would  
16 have wanted to know the facts pertaining to the products’ pump dispenser defect before deciding  
17 whether or not to purchase the Liquid Cosmetic Products. L’Oréal was also aware that if the  
18 products’ packaging defect was disclosed it would negatively affect the demand class members had  
19 to purchase the Liquid Cosmetic Products.

20 101. L’Oréal failed to disclose facts pertaining to the products’ packaging defect before  
21 Plaintiffs and Class members made their decisions to purchase the Liquid Cosmetic Products.  
22 Instead, Defendant suppressed and concealed information related to the products’ packaging defect.  
23 By concealing and suppressing that information, L’Oréal denied consumers in the Class the ability  
24 to make a rational and informed purchasing decision as to the purchase of the Liquid Cosmetic  
25 Products and took undue advantage of Plaintiffs and Class members.

26 102. L’Oréal was unjustly enriched at the expense of Plaintiffs and Class members.  
27 L’Oréal received profits, benefits, and compensation, in part, at the expense of Plaintiffs and Class  
28 members who purchased the Liquid Cosmetic Products. By contrast, Plaintiffs and Class members

1 did not receive the benefit of their bargain because they paid for products they could not reasonably  
2 consume due to L'Oréal's defective pumps.

3 103. Since L'Oréal's profits, benefits, and other compensation were obtained by  
4 improper means, L'Oréal is not legally or equitably entitled to retain any of the benefits,  
5 compensation or profits it realized from the Liquid Cosmetic Products.

6 104. Plaintiffs and Class members seek an order of this Court requiring Defendant to  
7 refund, disgorge, and pay as restitution any profits, benefits, and other compensation obtained by  
8 L'Oréal from its wrongful conduct and/or the establishment of a constructive trust from which  
9 Plaintiff and Class members may seek restitution.

10 **COUNT VI**

11 **Declaratory and Injunctive Relief**

12 105. Plaintiffs hereby incorporate by reference the factual allegations contained herein.

13 106. Under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, this Court is  
14 authorized to enter a judgment declaring the rights and legal relations of the parties and grant further  
15 necessary relief. Furthermore, the Court has broad authority to restrain acts, such as here, which  
16 are tortious and which violate the terms of the federal and state statutes described in this Complaint.

17 107. An actual controversy has arisen. Plaintiffs allege that Defendant's Liquid Cosmetic  
18 Products were and remain defective. Plaintiffs continue to suffer injury as a result of the defect.

19 108. Pursuant to its authority under the Declaratory Judgment Act, this Court should enter  
20 a judgment declaring, among other things, the following:

21 a. L'Oréal owed and continues to owe a legal duty to market and sell its Liquid  
22 Cosmetic Products defect-free or, at the very least, to inform consumers of the defect;

23 b. L'Oréal continues to breach this legal duty by failing to employ reasonable  
24 measures to prevent defects in its products or inform consumers of the defects.

25 109. The Court also should issue corresponding injunctive relief requiring L'Oréal to  
26 employ adequate quality control consistent with industry standards to eliminate the defect.

27 110. If an injunction is not issued, Plaintiffs and Class members will suffer continual  
28 injury, and lack an adequate legal remedy.

1 111. The hardship to Plaintiffs and the Class members if an injunction does not issue  
2 exceeds the hardship to L'Oréal if an injunction is issued.

3 112. Issuance of the requested injunction will not disserve the public interest. To the  
4 contrary, such an injunction would benefit the public by preventing deceptive acts and practices in  
5 the market, thus eliminating the additional injuries that would result to Plaintiffs and the millions  
6 of consumers who use these products.

7 **PRAYER FOR RELIEF**

8 **THEREFORE**, Plaintiffs seeks judgment against L'Oréal, as follows:

9 A. Certifying the Class and naming Plaintiffs as representatives of the Class and  
10 Plaintiffs' attorneys as Class Counsel to represent the Class members;

11 B. Declaring the Defendant's conduct violates the statutes referenced herein;

12 C. Finding in favor of Plaintiffs and the Class on all counts asserted herein;

13 D. Granting damages, restitution, or disgorgement to Plaintiffs and the Class;

14 E. Granting declaratory and injunctive relief to enjoin L'Oréal from engaging in the  
15 unlawful practices described in this Complaint;

16 F. Granting compensatory damages, the amount of which is to be determined at trial;

17 G. Granting punitive damages;

18 H. Granting pre- and post-judgment interest on all amounts awarded;

19 I. Granting restitution and all other forms of equitable monetary relief;

20 J. Granting injunctive relief as pleaded or as the Court may deem proper;

21 K. Awarding Plaintiffs and the Class reasonable attorneys' fees and expenses and costs  
22 of suit; and

23 L. Granting further relief as this Court may deem proper.

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**JURY TRIAL DEMAND**

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted,

DATED: March 12, 2020

**KAPLAN FOX & KILSHEIMER LLP**

By: /s/ Laurence D. King  
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