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By *CPitts*

1 EDMUND G. BROWN JR.
Attorney General of California
2 J. MATTHEW RODRIQUEZ
Chief Assistant Attorney General
3 KATHLEEN E. FOOTE
Senior Assistant Attorney General
4 JONATHAN M. EISENBERG
Deputy Attorney General
5 State Bar No. 184162
300 South Spring Street, Suite 1702
6 Los Angeles, CA 90013
Telephone: (213) 897-6505
7 Fax: (213) 897-2801
E-mail: Jonathan.Eisenberg@doj.ca.gov
8 *Attorneys for Plaintiff*
THE PEOPLE OF THE STATE OF CALIFORNIA

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

ORIGINAL

13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA,

Plaintiff,

v.

16 DERMAQUEST, INC.,

17 Defendant.

Case No: R G 10497526

COMPLAINT FOR VIOLATION OF
CARTWRIGHT ACT (Bus. & Prof. Code
§ 16720 et seq.) AND UNFAIR
COMPETITION LAW (Bus. & Prof. Code
§ 17200 et seq.)

[Not Subject to Filing Fees Per Gov't Code §
6103]

19 The People of the State of California ("California"), through Edmund G. Brown Jr.,
20 Attorney General of California ("AG Brown"), allege as follows:

21 INTRODUCTION

22 1. California brings this civil antitrust lawsuit against DermaQuest, Inc., dba
23 DermaQuest Skin Therapy ("DermaQuest"), for engaging in vertical price-fixing of DermaQuest
24 cosmeceuticals and related products, in per se violation of the Cartwright Act (Bus. & Prof. Code
25 § 16720 et seq.), as well as the Unfair Competition Law (the "UCL," Bus. & Prof. Code § 17200
26 et seq.). California seeks injunctive relief and the imposition of statutory penalties, as well as
27 other relief, against DermaQuest for engaging in this unlawful business practice.

1 **PARTIES**

2 2. Plaintiff California is represented in this lawsuit by AG Brown.

3 3. As Attorney General of California, under Business & Professions Code section
4 16754, *inter alia*, AG Brown is empowered to initiate and to litigate lawsuits in California
5 superior courts for violations of the Cartwright Act (Bus. & Prof. Code § 16720 et seq.).

6 4. As Attorney General of California, under Business & Professions Code section
7 17204, *inter alia*, AG Brown is empowered to initiate and to litigate lawsuits in courts of
8 competent jurisdiction for violations of the UCL (Bus. & Prof. Code § 17200 et seq.).

9 5. Defendant DermaQuest is a California corporation, with its physical headquarters
10 located in Hayward.

11 **JURISDICTION AND VENUE**

12 6. This Court has original jurisdiction over this matter pursuant to the California
13 Constitution, article VI, section 10, and Business & Professions Code sections 16750, 16754,
14 16754.5, 17203, 17204, and 17206.

15 7. This Court has personal jurisdiction over DermaQuest, because DermaQuest
16 resides in Alameda County, and DermaQuest's physical headquarters (and sole offices) are
17 located in this County.

18 8. Venue is proper in Alameda County under Business & Professions Code section
19 16754 because the offenses complained of were committed in this County, DermaQuest resides in
20 this County, and DermaQuest does business in this County.

21 **FACTUAL ALLEGATIONS**

22 9. DermaQuest makes, packages, and markets a line of human beauty-care products,
23 of the type sometimes called cosmeceuticals, under the brand name DERMAQUEST and other
24 brand names, such as DERMALASH, often including the term "derma."

25 10. Since 2007, DermaQuest has entered into a total of eight written contracts, entitled
26 either "Distribution Agreement" or "Resale Agreement," with third-party companies that
27 distribute and/or sell, retail to the public, DermaQuest products, where such contracts contained
28 resale price maintenance components, as described further immediately below.

1 11. One of these contracts states, in part, that “Distributor may not resell Product in a
2 price structure that yields a Product price at ultimate retail sale below Dermaquest’s Suggested
3 Retail Price (‘DSRP’) in effect at the time of Product purchase by Distributor. Distrubutor [sic]
4 represents and warrants that it [sic] sales by Establishments and Professionals to end
5 users/consumers of Products will not be at a price structure below DSRP. Dermaquest will
6 provide DSRP information with orders shipped or through its website, in Dermaquest’s
7 discretion.”

8 12. The other seven contracts state, in part, that “Reseller may not resell Product in a
9 price structure that yields a Product price at resale below Dermaquest’s Suggested Retail Price
10 (DSRP) in effect at the time of Product purchase by Reseller. Dermaquest will provide DSRP
11 information with orders shipped or through its website, in Dermaquest’s discretion.”

12 **ALLEGED VIOLATIONS OF LAW**

13 **First Count: Violation of the Cartwright Act**

14 13. California realleges paragraphs 1 through 12, above.

15 14. DermaQuest has engaged in vertical price-fixing in per se violation of the
16 Cartwright Act, Business & Professions Code section 16720 et seq. *Harris v. Capitol Records*
17 *Distrib. Corp.*, 64 Cal. 2d 454, 463 (1966); *Mailand v. Burckle*, 20 Cal. 3d 367, 377 (1978);
18 *Chavez v. Whirlpool Corp.*, 93 Cal. App. 4th 363, 369 (2001); *Kunert v. Mission Fin. Servs.*
19 *Corp.*, 110 Cal. App. 4th 242, 263 (2003).

20 15. DermaQuest must immediately and permanently be enjoined from further violation
21 of the Cartwright Act.

22 **Second Count: Violation of the Unfair Competition Law**

23 16. California realleges paragraphs 1 through 12, above.

24 17. DermaQuest has engaged in unfair competition, in violation of the UCL, Business
25 & Professions Code section 17200 et seq., including by vertical price-fixing in violation of the
26 Cartwright Act, Business & Professions Code section 16720 et seq.

27 18. DermaQuest must immediately and permanently be enjoined from further violation
28 of the UCL.

PRAYER FOR RELIEF

California prays for judgment against DermaQuest including the following relief:

1. That the Court declare that DermaQuest's above-described conduct constitutes per se illegal vertical price-fixing under the Cartwright Act, Business & Professions Code section 16720 et seq.

2. That the Court declare that DermaQuest's above-described conduct constitutes unfair competition under the UCL, Business & Professions Code section 17200 et seq.

3. That, under Business & Professions Code sections 16750 and/or 16754.5, the Court immediately enter a permanent injunction against further participation in vertical price-fixing by DermaQuest and its successors, assigns, agents, employees, representatives, and all entities or persons acting in concert with them.

4. That, under Business & Professions Code section 17203 the Court immediately enter a permanent injunction against further engaging in acts of unfair competition, including vertical price-fixing, by DermaQuest and its successors, assigns, agents, employees, representatives, and all entities or persons acting in concert with them.

5. That, under Business & Professions Code section 17206, the Court assess a \$2,500 civil penalty against DermaQuest for each violation of the UCL, Business & Professions Code section 17200 et seq.

6. That, under Business & Professions Code sections 16750, the Court order DermaQuest to reimburse California for the reasonable attorney fees and costs accrued by California in investigating this matter and pursuing this lawsuit.


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7. That the Court grant such other legal and equitable relief as the Court deems just and proper.

Dated: February 2, 2010

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California



JONATHAN M. EISENBERG
Deputy Attorney General
Attorneys for Plaintiff
THE PEOPLE OF THE STATE OF
CALIFORNIA

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