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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

TRUINJECT CORP., a Delaware
Corporation,

Plaintiff,

vs.

NESTLÉ SKIN HEALTH, S.A., a
Swiss Company; GALDERMA, S.A., a
Swiss Company; GALDERMA
LABORATORIES, L.P., a Texas
Limited Partnership; JOHN ROGERS,
an individual; STUART RAETZMAN,
an individual; SCOTT MCCREA, an
individual; ALISA LASK, an
individual; TIPHANY LOPEZ, an
individual,

Defendants.

Case No.:

COMPLAINT

Jury Trial Demanded

1 **I. INTRODUCTION**

2 **A. Injections Can Cause Adverse Side Effects.**

3 1. Neurotoxin injections (such as Botox) are a \$2.5 billion plus business and
4 are used to smooth skin by temporarily paralyzing muscles, usually in the face.
5 Dermal filler injections (such as collagen) restore volume, smooth lines, and enhance
6 facial contours by injecting a gel-like substance under the skin. Between 2010 and
7 2016, the use of dermal filler injections increased from 1.8 million to 2.6 million
8 procedures. Globally, the neuromodulator market is over \$4 billion and is expected to
9 grow to \$7 billion by 2024.
10

11 2. Both neurotoxins and dermal fillers require medical providers to
12 precisely inject patients, in most cases in the face, to avoid complications. Many
13 people have been permanently blinded by improper injections. In 2015, the FDA
14 issued a warning about rare, but serious injuries (vision impairment, blindness, and
15 stroke) that may occur when a provider injects filler into the blood vessels in the face.
16

17 3. A 2017 study reported that the FDA had disclosed more than 5,024
18 reports of adverse effects over the last decade from the injection of various cosmetic
19 fillers. An article in the Journal of the American Medical Association documented
20 over 1700 adverse injection events suffered by dermal filler patients. The American
21 Academy of Ophthalmology reports that “the potential exists for complications,
22 especially in the hands of a novice injector.” The FDA label for Dysport, Nestlé Skin
23 Health’s neurotoxin injectable, indicates that the adverse side effects include
24 “swallowing and breathing difficulties” and even death.
25
26
27
28

1 4. Adverse side effects resulting from improper injections include
2 blindness, ptosis (a drooping or falling of the upper eyelid), cheek rot (necrosis), and
3 misshapen facial features.
4



12 Necrosis



22 Ptosis



Misshapen Facial Features

B. Inadequate Training Results in Patient Harm.

5. The adverse effects are primarily caused by increased numbers of “physicians not trained in plastic surgery, or professionals who are not even licensed physicians, who are injecting fillers” and are not adequately trained. (<https://www.cnn.com/2017/12/21/health/dermal-lip-filler-injections-risks-study/index.html>). Providers are injecting a substance below the skin and without an adequate understanding of the patient’s anatomy.

C. Truinject Develops Training Technology to Minimize Patient Harm.

6. From 2010 to 2013, Gabrielle Rios (“Ms. Rios”) worked as a business development manager for Allergan, the largest provider of botulinum toxin and one of the largest providers of dermal fillers. She witnessed that poorly trained providers were injecting patients with neurotoxins and dermal fillers, thus exposing their patients to the harm described above.

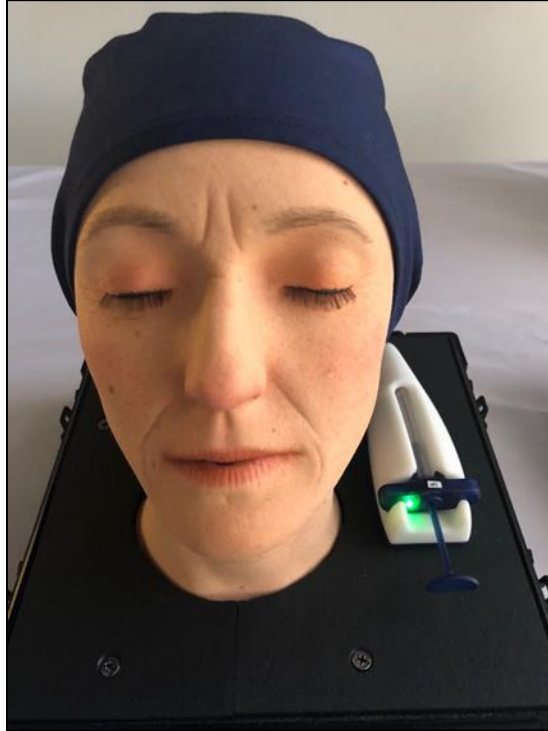
7. The harm caused by injections became personal for Ms. Rios when a close family member suffered a complication from an improper injection.

1 8. Ms. Rios also experienced that providers trained (to the extent they
2 trained at all) on live patients, frequently without disclosing to the patient that he or
3 she was a guinea pig. Providers also trained on cadavers, which can have swollen
4 faces and provided insufficient feedback. Ms. Rios, based on her experience and
5 research, concluded that inadequate training caused many of the serious
6 complications.
7

8 9. Responding to this critical need, Ms. Rios left her position at Allergan
9 and conceived of a sophisticated injection training platform, and a virtual and
10 augmented reality training system that allowed providers to refine their technique by
11 repeatedly performing injections and receiving immediate feedback, all without
12 exposing patients to the complications of bad injections.
13
14

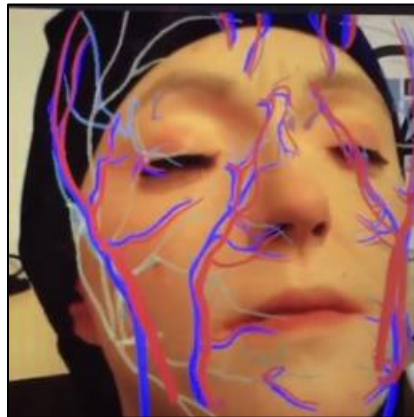
15 10. Investing her life's savings, Ms. Rios formed Truinject, who then hired
16 and engaged engineers, computer programmers and consulted with medical doctors.
17 Among Truinject's hires were Clark Foster (a mechanical engineer); Jeff Crockett (an
18 engineer); David Mishelevich (a doctor and engineer); Milan Treka; Aaron Gifford;
19 and Chris Ludolph. All of Truinject's consultants or employees live in California.
20

21 11. What came out of the collaboration of Truinject and its engineers,
22 scientist and consultants is known as "Kate." Kate is a multi-layered human head
23 model with a sophisticated three-dimensional tracking system, a syringe, and a user
24 interface that allows the user to see on a screen the location, the angle, and the depth
25 of a needle and the consequences of the injections on a three-dimensional image of
26 Kate.
27
28



Kate

12. Truinject also developed an augmented reality device that superimposed the anatomy over Kate so a provider could see the anatomy while injecting on Kate.



13. Truinject, on behalf of its team, applied for and was issued seven patents in the United States and the United Kingdom. Further, Truinject's injection training platform and augmented reality system have a distinctive appearance that identifies Truinject as the producer of these technologies.

1 **D. Companies Wanted Truinject's Training Technology.**

2 14. Medical providers and pharmaceutical companies expressed excitement
3 about Truinject's technology as they learned about it. Pharmaceutical companies like
4 Nestlé Skin Health approached Truinject to negotiate an agreement for the technology
5 and science.
6

7 15. One such company was Galderma (now Nestlé Skin Health). Ms. Rios
8 knew that Nestlé Skin Health was part of Nestlé, a \$90 billion-dollar Swiss company.
9 Ms. Rios also knew that Nestlé Skin Health was one of the leaders in the aesthetic
10 injection market, claiming almost 50% of the dermal filler market in the United States,
11 and with a large global footprint.
12

13 **E. Nestlé Skin Health Signed Confidential Disclosure Agreements to Receive**
14 **Truinject's Trade Secret Information.**

15 16. Nestlé Skin Health arranged for Truinject to demonstrate its technology
16 and platform to Nestlé Skin Health on 21 October 2014. At that meeting, Truinject
17 demonstrated its technology. Over twenty Nestlé Skin Health employees attended the
18 presentation in person or via a telephone conference. Among these employees
19 included Per Lango (Vice-President Aesthetic & Corrective Marketing Global); Alisa
20 Lask (Senior Director Aesthetic & Corrective Marketing Global); Chuck Paschke
21 (Director Sales Training Nestlé Skin Health); and John Rogers (Senior Director of
22 Global Medical Affairs for Aesthetics and Corrective Marketing).
23
24

25 17. Nestlé Skin Health and Truinject signed a series of confidential
26 disclosure agreements ("CDA") beginning on 29 October 2014. Pursuant to those
27 agreements, Nestlé Skin Health could only use Truinject's confidential information to
28

1 evaluate a potential deal with Truinject. Based on the information disclosed, Nestlé
2 Skin Health told Truinject that it was interested in a deal.

3
4 18. On 10 November 2014, Truinject and Nestlé Skin Health signed an
5 exclusivity agreement that gave Nestlé Skin Health nine months to negotiate a deal
6 while excluding its competitors. Nestlé Skin Health agreed to pay Truinject \$25,000
7 per quarter to keep Truinject tied up. Nestlé Skin Health has made only two of the
8 three required payments.

9
10 19. At this time, Truinject had meetings scheduled with Allergan and Merz,
11 two of Nestlé Skin Health's largest competitors. Believing that Nestlé Skin Health
12 was interested and being pressured by Nestlé Skin Health, Truinject ultimately
13 cancelled these meetings.

14
15 20. Over the next several years, Truinject met with Nestlé Skin Health on
16 several occasions, including with Stuart Raetzman (CEO), Pierre Streit (CFO), Scott
17 McCrea (Director of Business Development), Per Lango, and Dr. John Rogers. Nestlé
18 Skin Health told Truinject that the final step to completing a deal was approval by Dr.
19 John Rogers (now the Head of Global Medical Affairs). On 7 February 2017, Rogers
20 went to Truinject to evaluate Kate and Truinject's technology. Before being allowed
21 to see Truinject's technology, Rogers signed a CDA on behalf of Nestlé Skin Health,
22 just as was required for anyone gaining access to Truinject technology housed in its
23 facility. Under the terms of the agreement, "all intellectual property and rights
24 worldwide that relate to injection training or testing devices and associated
25 peripheries, resulting from" Nestlé Skin Health's "exposure to, evaluation of and
26
27
28

1 contact with” Truinject’s confidential information, patents, trade secrets, and
2 copyrights are assigned to Truinject.

3 **F. Nestlé Skin Health Breached Contracts, Infringed Patents and Trade**
4 **Dress, and Misappropriated Trade Secrets.**

5 21. Unbeknownst to Truinject, Nestlé Skin Health began developing its own
6 sophisticated training technology no earlier than 2015. Defendants misappropriated
7 Truinject’s technology for themselves, by among other things creating and launching
8 their own human head model called “Holly” that looks just like Kate down to the
9 same beauty marks. Defendants also launched a virtual reality device called
10 “LucyLive” that is substantially similar to the augmented reality technology
11 developed by Truinject. Nestlé Skin Health’s actions have created a likelihood of
12 confusion in the market. The Defendants’ theft of Kate and Truinject’s virtual and
13 augmented reality technology cut out Truinject as the first participant in this lucrative
14 market.
15
16
17



28
Holly

1 22. Defendants’ false representations about a potential deal with Truinject
2 and that Defendants’ would protect Truinject’s confidential information caused
3 Truinject to forgo other partnerships and to disclose information to Nestlé Skin Health
4 – information that was necessary for Nestlé Skin Health to launch Holly.

5
6 23. Defendants’ actions and conduct have harmed and will harm Truinject in
7 the hundreds of millions of dollars.

8
9 **II. PARTIES, JURISDICTION AND VENUE**

10 **A. Plaintiff.**

11 24. Plaintiff Truinject Corp. (“Truinject”) is a Delaware corporation
12 that is legally qualified to do business in and under the laws of the state of California.

13
14 **B. Defendants.**

15 25. Defendant Dr. John Rogers, MD (“Rogers”) was, and is, an individual.
16 At all relevant times, Rogers was either the Senior Director or the Head of Global
17 Medical Affairs for Defendant Galderma, S.A.

18 26. Defendant Stuart Raetzman was, and is, an individual. At all relevant
19 times, Raetzman was an employee of Defendant Galderma, S.A. or Defendant Nestlé
20 Skin Health, S.A.

21 27. Defendant Scott McCrea was, and is, an individual. At all relevant times,
22 McCrea was an employee of Defendant Galderma, S.A. or Defendant Nestlé Skin
23 Health, S.A.

24 28. Defendant Alisa Lask was, and is, an individual. At all relevant times,
25 Lask was an employee of Defendant Galderma, S.A. or Defendant Nestlé Skin Health,
26 S.A.
27
28

1 29. Defendant Tiphany Lopez was, and is, an individual. At all relevant
2 times, Lopez was an employee of Defendant Galderma, S.A. or Defendant Nestlé Skin
3 Health, S.A.
4

5 30. Defendant Galderma, S.A. is a Swiss company with its principal place of
6 business in Lausanne, Switzerland. Galderma S.A. is a wholly owned subsidiary of
7 Nestlé and acts at the direction of, under the control of, and for the benefit of Nestlé
8 and Nestlé Skin Health.
9

10 31. Defendant Galderma Laboratories, L.P. is a Texas limited partnership
11 with its principal place of business in Fort Worth, Texas.

12 32. Defendant Nestlé Skin Health, S.A. is a Swiss company with its principal
13 place of business in Lausanne, Switzerland.
14

15 33. Non-party Nestle, S.A. is a Swiss company with its principal place of
16 business in Lausanne, Switzerland.

17 34. Defendants Galderma, S.A., Galderma Laboratories, L.P., and Nestlé
18 Skin Health, S.A. are collectively referred to as “Nestlé Skin Health.”
19

20 **C. Subject Matter and Personal Jurisdiction.**

21 35. This Complaint includes claims for patent infringement, a Lanham Act
22 violation, state unfair competition claims, and state contract claims in excess of
23 \$75,000. Complete citizenship diversity exists between Truinject and the Defendants.
24 Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,
25 1332, 1367 and 1338(a).
26

27 36. This Court has personal jurisdiction over Defendants Galderma
28 Laboratories, L.P., Galderma, S.A., and Nestlé Skin Health, S.A. because (1) these

1 entities have substantial, continuous, and systematic contacts within this district; (2)
2 maintain a broad distribution network within this district; and (3) enjoy substantial
3 income from sales of pharmaceutical and dermatology products in this district.
4

5 37. This Court has personal jurisdiction over Defendant Dr. John Rogers as
6 he signed an agreement in California.

7 38. This Court has personal jurisdiction over Defendants Raetzman, McCrea,
8 Lask and Lopez as all the defendants made representations to a business located in
9 California and that such representations resulted in harm in California.
10

11 39. Defendants signed agreements or made representations that give rise to
12 the instant litigation, knowing that Truinject—a company located in this district—
13 would be injured by such acts within this district. Defendants have purposefully
14 targeted their conduct to cause harm in the State of California, and particularly in this
15 district.
16

17 **D. Venue.**

18 **1. Patent Claims.**

19
20 40. Venue in this Court is proper under 28 U.S.C. § 1391(c) as Defendant
21 Nestlé Skin Health, S.A. is a foreign corporation, and is therefore subject to patent
22 claims in any district.
23

24 **2. Galderma, S.A.**

25 41. Galderma, S.A. is a non-resident defendant. Venue is proper in this
26 district with respect to Galderma, S.A. under 28 U.S.C. § 1391(c)(3).
27
28

1 **3. Nestlé Skin Health, S.A.**

2 42. Nestlé Skin Health, S.A. is a non-resident defendant. Thus, venue is
3 proper in this district with respect to Nestlé Skin Health, S.A. under 28 U.S.C. §
4 1391(c)(3).
5

6 **4. Galderma Laboratories, L.P.**

7 43. Venue is proper with respect to Galderma Laboratories, L.P. under 28
8 U.S.C. § 1391(b)(2).
9

10 **5. Individual Defendants**

11 44. Venue is proper with respect to Defendants Rogers, Raetzman, McCrea,
12 Lask and Lopez under 28 U.S.C. 1391(b)(2).
13

14 **III. GENERAL ALLEGATIONS**

15 **A. Ms. Rios Notices Danger and Unnecessary Patient Injuries in the**
16 **Dermal Fillers Industry.**

17 45. Ms. Rios worked as a business development manager for Allergan, a
18 major pharmaceutical company and the leading injectable company in the United
19 States. In approximately 2013, Ms. Rios noticed a frightening trend in the dermal
20 filler and aesthetic industry when a relative suffered complications at the hands of an
21 inexperienced, untrained injector.
22

23 46. Through her initial research, Ms. Rios learned that many general
24 physicians and other medical providers, who did not specialize in cosmetic
25 procedures, were supplementing their incomes through cosmetic injections. Patients
26 were at risk of serious complications, such as blindness, because the injectors were
27 untrained. Indeed, many of these physicians and practitioners had not received any
28

1 training in cosmetic injections, but were essentially practicing on their own patients,
2 who were basically guinea pigs.

3 47. Ms. Rios learned that the risks from aesthetic injections are real and
4 disturbing, including FDA reports detailing the risks of blindness, stroke, ptosis,
5 necrosis and misshapen facial features. Wanting to fix the growing problem and
6 having ethical concerns about patient safety, Ms. Rios sought to find a solution. With
7 her family's support, she cleared her bank accounts and moved forward.
8

9
10 **B. Ms. Rios Starts Truinject to Minimize the Serious Risks Involved**
11 **with Aesthetic and Cosmetic Injections.**

12 48. Ms. Rios decided the simplest and best solution was to provide medical
13 providers with a training platform that would allow them to learn how to properly and
14 safely use injectable products.

15 49. She founded Truinject,¹ the first company to focus on injection-training
16 software and devices for medical providers.
17

18 50. Truinject's signature technology is known as the Truinject Platform. The
19 Truinject Platform consists of an injectable simulation platform featuring an
20 anatomical face model, a smart syringe, and a comprehensive analysis software
21 application with built-in 3D facial anatomy. It is the first injectable simulation system
22 featuring true-to-life tissue, 3D digital facial anatomy, and real-time feedback. It also
23 includes a virtual and augmented reality platform that allows medical providers to see
24 the model's anatomy and structure through augmented and virtual reality lenses.
25
26

27
28 ¹ Truinject was formerly known as Truinject Medical Corp.

1 **C. The Truinject Platform and Technology is the First of its Kind.**

2 **1. Truinject's Kate allows medical providers to practice injecting**
3 **safely and efficiently.**

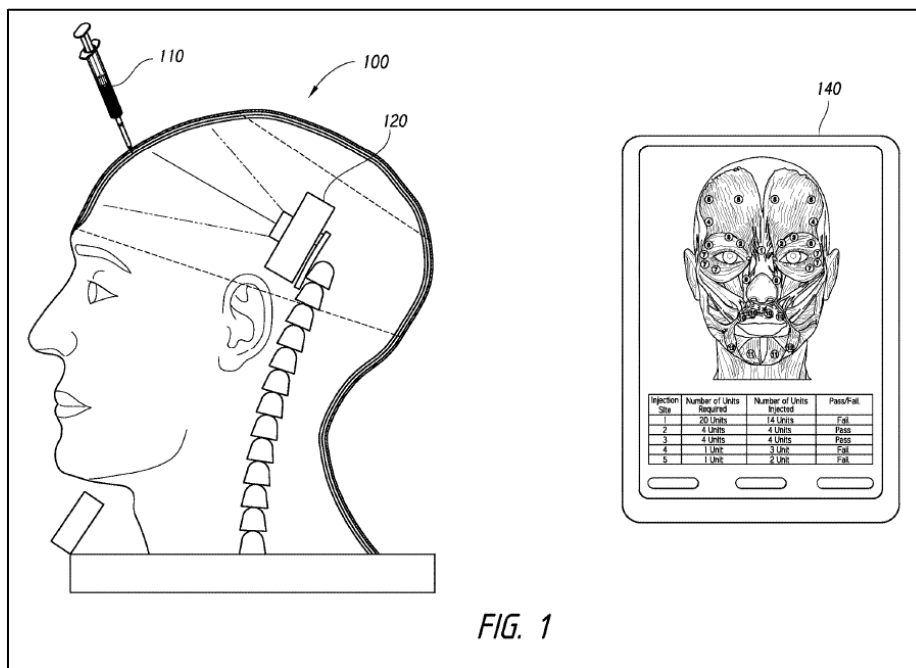
4 51. Truinject named its first product Kate. Kate is a multi-layered apparatus
5 that mimics different layers of tissue and skeletal structures in a head.² Kate uses a
6 training syringe that allows a user to trace the location and angle of the needle as
7 related to the anatomical structures of the face, view any complications from the
8 injection, and measure how much product they injected. Ultimately, the data allows
9 users to refine their injection technique.
10

11 52. Truinject filed a series of patent applications to protect Kate and the
12 Truinject Platform. These have resulted in issued patents. On 31 March 2014,
13 Truinject filed a patent application entitled "Injection Training Apparatus Using 3D
14 Position Sensor." And on 17 October 2017, the United States Patent Trademark
15 Office issued U.S. Pat. No. 9,792,836 entitled "Injection Training Apparatus Using
16 3D Position Sensor" to Truinject (the "'836 Patent" or the "Asserted Patent").
17 Truinject owns all rights to the '836 Patent. Attached as Exhibit 1 is a true and correct
18 copy of the '836 Patent.
19
20
21

22 53. The '836 Patent teaches a system and method for an apparatus and
23 method for practicing injection techniques. The patented apparatus is a multi-layer
24
25
26

27 ² Truinject's technology is not limited to a head and can include other body parts such
28 as a hand.

1 device and an injection device that may be connected to a display device. A
 2 representative figure is below.



15 54. The apparatus may represent any anatomical part, such as a head (as
 16 displayed in Figure 1) or a hand. The apparatus has multilayers which replicate
 17 different layers of tissue, muscle, nerve or bone. The apparatus has a camera or a light
 18 detection inside. The syringe has a light emission device at the tip. As the syringe is
 19 plunged into the training apparatus, the light from the syringe is read by the sensor.
 20 The sensor measures the light, and given the intensity of light appearing through the
 21 different layers and the direction of the light, the apparatus can pinpoint the location,
 22 depth, angle and force of the injection. This information is then displayed on an
 23 output device to show a user the injector's accuracy. Importantly, the patent is not
 24 limited to a light emission device and sensor, but can include other location
 25 technology.
 26
 27
 28

55. A representative claim reads:

1 1. An anatomically shaped injection training apparatus
2 comprising:

3 an at least partially hollow base configured to provide
4 structural support;

5 a clear layer of elastomer coating at least partially
6 covering a base layer;

7 an opaque layer at least partially covering the clear
8 layer, wherein the base, clear layer, and opaque layer form
9 an anatomical shape; and

10 a three-dimensional (3D) tracking system positioned
11 inside the base and configured to determine a location of a
12 needle inserted into the clear layer of elastomer.

13 56. Kate's layers are designed to be anatomically correct.

14 57. Truinject validated the accuracy of Kate's anatomical structure through
15 several years of research and then verified the anatomy with leading physicians.

16 **2. Truinject's Kate has a distinctive trade dress.**

17 58. To aid medical providers, Truinject built Kate to reflect a typical patient
18 and included several distinctive features, for example a beauty mark. A scrub hat was
19 added to the scalp of the apparatus.
20
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59. Truinject's design efforts led to the creation of the distinctive training apparatus.

60. The overall appearance of the product, the user interface, the syringe and other features of the Truinject Platform constitutes Truinject's trade dress.

3. **Kate is supported by augmented and virtual reality technology and training.**

61. Truinject also developed an additional training device that uses augmented and virtual reality. The technology allows medical providers to gain a better visual understanding of Kate's three-dimensional anatomy. The augmented and virtual reality product has the potential to change how physicians train and perform procedures on patients. For example, this technology allows a medical professional to see blood vessels superimposed over Kate's skin, thereby assisting in injection training.



62. Truinject has multiple patents pending on this technology. Other aspects of the augmented and virtual reality training system constitute trade secrets.

4. The Truinject Platform includes data collection and analysis.

63. Truinject's technology also captures data related to injections, including the number of successful injections, and the parameters that led to the successful injection.

64. This data can be used in four major ways: (1) to refine injection technique to teach providers the proper angles and depth of an injection; (2) to help pharmaceutical companies understand the risks associated with their products; (3) to aid pharmaceutical companies in clinical trials; and (4) to assist physicians and practitioners in lowering insurance premium rates.

5. The Truinject Platform streamlines and improves how medical professionals learn to properly inject fillers and toxins.

65. Before Truinject developed its innovative ideas, medical providers either used cadavers or live patients to practice their injection technique.

66. At that time, it took up to two years to learn how to inject patients competently. By one estimate, a pharmaceutical company spent \$125,000 per year to

1 train one doctor. This cost includes providing physicians with free samples of
2 products that some physicians then use to practice on live patients; some even charged
3 patients for the procedures using the free product.
4

5 67. Kate and Truinject's other platforms and trade secrets can be used to
6 create a certification process that saves pharmaceutical companies millions in testing,
7 product samples, and product liability litigation resulting from patient complications.
8 This certification process allows patients to trust that a medical provider is competent
9 before receiving an injection.
10

11 **D. Truinject Approached BioDigital to Build one of Kate's**
12 **Components.**

13 68. Truinject identified potential vendors and contractors to work on specific
14 components of Kate. One such vendor was BioDigital.

15 69. BioDigital calls itself the "World's First Human Visualization Platform"
16 that provides "interactive 3D" visualization of anatomy, diseases and treatments. In
17 essence, BioDigital provides an interactive computer system that displays human
18 anatomy, diseases and treatments.
19

20 70. In early 2014, Truinject approached BioDigital to build a computer
21 application that showed Kate's 3D anatomy and allowed the user to virtually peel
22 back the tissue layers on the computer screen so the user could determine the correct
23 location for an injection.
24

25 71. On 8 April 2014, BioDigital's Aaron Olikier provided Truinject with a
26 proposal for work.
27

28 72. Truinject ultimately picked another vendor to build Kate's user interface.

1 **E. Nestlé Skin Health, a Major Player in the Filler Industry, Was**
2 **Interested in Developing a System for Cosmetic Injection Training.**

3 73. Nestlé Skin Health manufactures and sells several aesthetic injectable
4 products, such as fillers (a substance that adds volume under a patient's skin) or a
5 neurotoxin (a substance that relaxes muscles to smooth the overlying skin). Nestlé
6 Skin Health sells products such as Restylane, Perlane, Emervel, Sculptra and Dysport.
7 As a result, Nestlé Skin Health is a key vendor in the filler and neurotoxin market.
8

9 74. The FDA approved Dysport in 2009. At that time, Allergan's Botox had
10 been the only neurotoxin on the market for the past 7 years, having been approved by
11 the FDA in 2002. Thus, doctors and other providers of neurotoxin injections had used
12 Botox for several years, becoming comfortable with Botox and its protocols before
13 Dysport was even introduced.
14

15 75. Botox and Dysport are not interchangeable because the products are
16 dosed and injected differently. Thus, a health provider's experience with Botox does
17 not directly translate to Dysport. One practitioner reported that using Dysport after
18 using Botox is "like learning a whole new language." Therefore, Nestlé Skin Health
19 faced an uphill battle in its competition with Botox, and it believed that training would
20 be critical to gaining market share.
21

22 76. To address this need, Nestlé Skin Health developed a training network
23 called GAIN (the Galderma Aesthetic Injector Network) to train medical providers.
24 GAIN, however, lacked any technology to train medical providers safely and
25 effectively and so Nestlé Skin Health was trying to identify companies that offered
26 innovative training solutions. In addition to GAIN, Nestlé Skin Health also created a
27
28

1 program called SHIELD to find businesses in which Nestlé Skin Health could invest
2 in, partner with or acquire.

3 **1. Nestlé Skin Health claimed to respect the intellectual property**
4 **rights of third parties.**

5 77. Nestlé Skin Health purports to respect the intellectual property rights of
6 others, in particular start-ups. In 2017, patent counsel for Nestlé Skin Health stated:

8 We create an environment that is respectful to the rights of
9 start-ups and collaborators. . . . Whenever someone comes to
10 us with an idea, we make sure they are protected themselves.
11 We often leave ownership with the collaborators to maintain
12 a sense of trust and entrepreneurship. In return, we ask for
right of first refusal. Our message is that we respect them as
inventors and their IP, as well as our own.

13 78. Nestlé Skin Health's Code of Ethics (and its CEO Stuart Raetzman) also
14 claims that "Nestlé Skin Health respects that third parties have a similar interest in
15 protecting their confidential information. In case third parties, such as suppliers or
16 customers, share confidential information with Nestlé Skin Health, such information
17 shall be treated with the same care as if it was Nestlé Skin Health's confidential
18 information."
19

20
21 79. In addition, Nestlé Skin Health's Code of Ethics states that "We comply
22 with the law at all times[.] Nestlé Skin Health is committed to full compliance with
23 the laws and regulations in which it operates. Nestlé Skin Health employees must
24 comply with all applicable laws and regulations and internal standards (i.e. policies
25 and procedures, SOPs, etc.) These internal rules are specific to our Company and may
26 go beyond what is required by law." These representations and ethical standards are
27
28

1 and were consistent with the representations Nestlé Skin Health made to Truinject as
2 detailed below.

3
4 80. Despite its Code of Ethics and Nestlé Skin Health's representations to
5 Truinject about Nestlé Skin Health's integrity and ethics, Defendants actively used
6 Truinject's trade secrets to manufacture a copy of Kate.

7 **F. Nestlé Skin Health Expresses Interest in Truinject.**

8 **1. Nestlé Skin Health approaches Truinject.**

9
10 81. In early 2014, Ms. Rios was approached by Bethany Bentley ("Bentley"),
11 then a manager for Sales Training with Nestlé Skin Health's Aesthetic & Corrective
12 Department ("A&C"), and a former colleague of Ms. Rios. Bentley told Ms. Rios that
13 Nestlé Skin Health would be interested in Truinject.

14
15 82. On 19 August 2014, Bentley told Ms. Rios that she had "met with the
16 'powers that be' here at [Nestlé Skin Health] about Truinject. They are very
17 interested and have asked me to spearhead a meeting with your team and ours." Via
18 email, Bentley introduced Ms. Rios to others at Nestlé Skin Health to facilitate a
19 phone call.
20

21 83. The call took place on 5 September 2014. Ms. Rios participated for
22 Truinject. On the call for Nestlé Skin Health were Per Lango ("Lango"), Vice
23 President Aesthetic & Corrective Marketing, Alisa Lask ("Lask"), Senior Director
24 Injectables Marketing, Chuck Paschke ("Paschke"), Director Sales Training Nestlé
25 Skin Health and Bentley. During the call, Lask said that Nestlé Skin Health was "very
26 interested" in Truinject and wanted the opportunity to explore a business
27 collaboration. Lask explained that Nestlé Skin Health understood Truinject's start-up
28

1 struggles and the stage of its product development. After the call, Lask invited
 2 Truinject to demonstrate its technology to a small group at Nestlé Skin Health's
 3 United States headquarters in Fort Worth, Texas.
 4

5 **2. Nestlé Skin Health demanded exclusivity from Truinject and**
 6 **forced Truinject to cancel meetings with Nestlé Skin Health's**
 7 **competitors.**

8 84. On 21 October 2014, Ms. Rios, Truinject's Chief Executive Officer, and
 9 Lyle Martin ("Mr. Martin"), Truinject's Former Vice President of Commercial
 10 Operations, met with Nestlé Skin Health in Fort Worth, Texas. Ms. Rios and Mr.
 11 Martin demonstrated Kate and showed a short video about Truinject. During the
 12 demonstration, Nestlé Skin Health's physicians (such as Dr. Alessandra Nogueira),
 13 marketing staff, and sales managers injected Kate with Truinject's syringes.
 14

15 85. Initially, Truinject believed that the demonstration would be limited to a
 16 small number of Nestlé Skin Health employees. However, Truinject's presentation
 17 generated such excitement that Nestlé Skin Health added more people to the meeting
 18 as it progressed and had others join by telephone.
 19

20 86. In addition to Lango, Lask, Bentley and Paschke, the following Nestlé
 21 Skin Health employees attended the 21 October 2014 demonstration:

- 22 • Rick Lawrence, Sr. Director, Innovative Marketing;
- 23 • Patrick Matthews, Associate Finance Director, Aesthetic & Corrective
 24 Business Unit;
- 25 • Dr. Alessandra Nogueira, MD, Dermatologist and Medical Manager;
- 26 • Simone Howell, RN. CCRA, Medical Lead, Aesthetic & Corrective;
- 27 • Beth DelPorte, Medical Science Liaison, Central Region;
- 28

- 1 • At least 10 other Nestlé Skin Health employees came in and out of the
2 room during Truinject's presentation; and
- 3 • Others present telephonically including Dr. John Rogers, Senior Director
4 of Global Medical Affairs for Aesthetics and Corrective Marketing (later
5 promoted to Head of Global Medical Affairs), Drew Fine, and Michelle
6 DeRidder.

7 87. Immediately after the meeting, Lask asked Truinject to send Dr. John
8 Rogers the slides it used during the presentation. Lask stated that Dr. Rogers was in
9 charge of global training and told Ms. Rios that Dr. Rogers had worked for Allergan.
10 Both Ms. Rios and Lask were also former Allergan employees.

11 88. Lango then asked Ms. Rios and Mr. Martin to talk further in his office.
12 Lango said that Nestlé Skin Health was interested in buying the global rights to
13 Truinject's technology for dermatological and aesthetic uses with Truinject retaining
14 the right to use its technology for therapeutic purposes (such as treatment for a disease
15 or migraines, or epidurals). Lango also requested a two to three-week due diligence
16 process and required that Truinject not meet with any other companies during this
17 time. Lango stressed the importance of exclusivity to Nestlé Skin Health and assured
18 Ms. Rios that the due diligence would move quickly.

19 89. Nestlé Skin Health proposed a CDA so that it could receive and review
20 Truinject's confidential and proprietary information. Ms. Rios signed the CDA on
21 behalf of Truinject on 29 October 2014; the CDA had an effective date of 23 October
22 2014.

23 90. In reliance on Nestlé Skin Health's representations that it was pursuing a
24 business relationship in good faith, as well as the executed CDA, Truinject provided
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28

1 Nestlé Skin Health with trade secrets and confidential information, including the
2 names of vendors and information about Kate.

3 **3. Nestlé Skin Health and Dr. John Rogers ask about the**
4 **technological aspects and specifications of the Truinject**
5 **Platform.**

6 91. Nestlé Skin Health's Rogers participated telephonically in the 21 October
7 2014 demonstration. After the meeting, Rogers emailed Ms. Rios, stating that "[a]
8 major responsibility for me while at Allergan, and now at [Nestle Skin Health], will be
9 do [sic] develop and shape the educational platforms for training physicians on
10 injection technique. So, what you are developing at Truinject is very much to my
11 heart [sic]."

12 92. Rogers then asked Ms. Rios about Kate's technical capabilities, including
13 whether the software was capable of mapping different configurations of anatomical
14 features, whether the Kate platform could include a model based on "an Asian face, a
15 male face," and if Kate's anatomy was developed from MRI or ultrasound imaging.

16 93. In response, Ms. Rios emailed that Truinject "designed the system so it
17 could be a visual tool for physicians so that they could truly understand all
18 components of an injection." She also told Rogers that "[o]ur software allows us the
19 ability to add any muscles, nerves, structures of the face that you should want. Our
20 core patent covers all demographics, this includes the Asian face." Ms. Rios stated
21 that what made the Truinject "system different is that we have the capability to track
22 the needle tip." Lask was copied on Ms. Rios's response.

23 94. After the 21 October 2014 meeting, Nestlé Skin Health contacted
24 Truinject to further the discussions Ms. Rios had with Lango, Lask and Rogers, and
25
26
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28

1 scheduled a call for 22 October 2014 with Nestlé Skin Health's Business
2 Development team and Ms. Rios. Nestlé Skin Health told Ms. Rios that there was "no
3 need for counsel on this call."
4

5 95. On 22 October 2014, Ms. Rios had a call with Scott McCrea ("McCrea"),
6 Director of Business Development, and Lango to further discuss a business
7 relationship between Nestlé Skin Health and Truinject.
8

9 96. On 28 October 2014, McCrea called Ms. Rios to discuss an exclusivity
10 agreement with a "no shop" clause. McCrea said that Nestlé Skin Health intended to
11 be a leader in the facial aesthetics market and the Nestlé Skin Health partnership with
12 Truinject would result in a global deal that would benefit both companies. McCrea
13 also said that Nestlé Skin Health needed closer to three months for due diligence
14 rather than the two to three weeks Lango had originally proposed.
15

16 97. McCrea asked Truinject to cancel meetings Truinject had scheduled with
17 companies, including many of Nestlé Skin Health's competitors—Allergan and
18 Merz—because Nestlé Skin Health required exclusivity. Nestlé Skin Health wanted
19 to gain an advantage over its competitors in the training market and believed Kate
20 would provide that advantage.
21

22 98. Truinject decided that it would honor its commitments and told McCrea
23 that Truinject would attend the previously scheduled meetings with Nestlé Skin
24 Health's competitors.
25
26
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28

1 **4. Nestlé Skin Health stresses the importance of an exclusivity**
2 **agreement and pressures Truinject to cancel meetings with all**
3 **other interested parties.**

4 99. During a 4 November 2014 phone call, McCrea again emphasized to Ms.
5 Rios that Nestlé Skin Health wanted an exclusivity agreement with Truinject. McCrea
6 told Ms. Rios that a Truinject-Allergan partnership would be a mistake, claiming that
7 Allergan steals technology from potential partners and would steal Truinject's
8 technology. He promised that Nestlé Skin Health would not steal the technology.
9 McCrea said that the Vice President and General Manager "chewed him out" for not
10 closing the deal with Truinject. He said that Nestlé Skin Health did not want anyone
11 else to see Kate because Nestlé Skin Health was serious about a deal with Truinject
12 and that Ms. Rios could "trust" Nestlé Skin Health.
13
14

15 100. In reliance on McCrea's statements and representations, Truinject agreed
16 to cancel all meetings with Nestlé Skin Health's top competitors believing that Nestlé
17 Skin Health was serious about buying Truinject's technology.
18

19 **5. Nestlé Skin Health and Truinject meet in San Diego and**
20 **Truinject shares its confidential information and trade secrets.**

21 101. While negotiating the terms of an exclusivity agreement and still subject
22 to the 23 October 2014 CDA, Nestlé Skin Health and Truinject held a private meeting
23 in San Diego on 6 November 2014 during the American Society for Dermatologic
24 Surgery ("ASDS") Conference. In attendance for Nestlé Skin Health was Lena
25 Jonsson ("Jonsson"), head of A&C and Portfolio Management, Global Strategic
26 Marketing; Didier Leclercq ("Leclercq"), Senior Director for North American A&C
27 Development (Engineer); Darren Lenczycki ("Lenczycki"), Business Development
28

1 Manager; and Anette Sjodin (“Sjodin”), Commercial Manager. During the meeting,
2 Truinject gave a live demonstration of Kate, a demonstration of Truinject’s syringe,
3 and allowed Nestlé Skin Health to simulate injections on the Truinject Platform.
4

5 102. During the demonstration, Leclercq pulled apart Truinject’s syringe to
6 see how it worked. He unscrewed the needle tip to get a closer look at the optic fiber
7 and explained that because he was an engineer, he wanted to understand how the
8 syringe worked. The contents and technology behind Truinject’s syringe is patented
9 and a trade secret.
10

11 **6. Nestlé Skin Health and Truinject execute an Exclusive**
12 **Negotiation Agreement which prohibits Truinject from**
13 **meeting with other companies.**

14 103. After stressing the importance of exclusivity, Nestlé Skin Health sent
15 Truinject a proposed Exclusive Negotiation Agreement. The initial draft contained a
16 non-compete provision prohibiting Nestlé Skin Health from competing with Truinject
17 for a period of six months. Truinject’s legal counsel extended the non-compete
18 provision to one year. The parties then compromised, agreeing to a nine-month non-
19 compete period. The draft also contained confidentiality provisions that required
20 Nestlé Skin Health to protect Truinject’s information.
21

22 104. The parties signed the Exclusive Negotiation Agreement on 10
23 November 2014; the Exclusive Negotiation Agreement had an effective date of 5
24 November 2014.
25

26 105. The Exclusive Negotiation Agreement stated that “in exchange for a fee
27 in the amount of Seventy-Five Thousand Dollars (\$75,000) to TruInject, TruInject
28 agreed that Nestlé Skin Health and its affiliates shall have the exclusive right to

1 evaluate and negotiate the Proposed Transaction for a period of ninety (90) days.”
2 Truinject believed that the three (3) month period would be used to negotiate the terms
3 of a prospective business relationship; however, Nestlé Skin Health’s true intent was
4 to use the three-month exclusivity period to gain access to Truinject’s proprietary
5 information and trade secrets while preventing Truinject from meeting with other
6 companies.
7

8 106. As part of the terms of the Exclusive Negotiation Agreement, “[Nestlé
9 Skin Health] agree[d] that for the period of nine (9) months commencing on the
10 Effective Date (5 November 2014), [Nestlé Skin Health] shall not cause its
11 Representatives, to directly or indirectly: (i) enter the market with any product or
12 system that is substantially similar in functionality as the TruInject System
13 (“Alternative System”); (ii) engage in development of any Alternative System; or (iii)
14 engage or participate in any discussions or negotiations with any entity that currently
15 sells an Alternative System or is engaged in developing an Alternative System. . . .”
16
17

18 107. The Exclusive Negotiation Agreement also required that Confidential
19 Information “be held in strictest confidence” by both parties and that any disclosed
20 information would be used solely “in connect with [the Exclusivity Agreement] or the
21 Proposed Transaction.” The confidentiality obligations remain in full force and effect
22 for a period of three (3) years after the exclusivity period.
23
24

25 108. Immediately upon sending the fully executed Exclusive Negotiation
26 Agreement, McCrea asked Truinject for its slide presentations, videos and design
27 plans. This was Nestlé Skin Health’s third request for Truinject to provide even more
28 highly confidential information.

1 7. **Relying on the Exclusive Negotiation Agreement, Truinject**
2 **discloses trade secret information to Nestlé Skin Health.**

3 109. During a 14 November 2014 meeting, Truinject disclosed various trade
4 secrets to Nestlé Skin Health, including but not limited to, information related to
5 Truinject's development of Kate, Kate's features, Truinject's business plans, and
6 Truinject's suppliers. Nestlé Skin Health's participants included Rogers, McCrea,
7 Sjodin, and Lenczycki. The phone call took place on the same day that Ms. Rios and
8 Truinject received the Stevie Award for Startup of the Year in New York City, an
9 international award for women in business.
10

11 110. During the meeting, Nestlé Skin Health stressed the importance of
12 completing what it called technical due diligence. The due diligence included
13 interviews with all Truinject employees that helped develop Kate, any and all of
14 Truinject's service agreements, a list of everyone involved with the development of
15 Kate, and the validation of Truinject's software. For example, in this due diligence
16 process, Truinject disclosed BioDigital, a company that received Truinject's
17 confidential information and trade secrets in order to bid on building Kate.
18

19 111. Nestlé Skin Health also wanted Truinject's platform to be validated by
20 the medical community. The medical validation involved a demonstration of Kate to
21 10 Key Opinion Leaders ("KOLs") who are physicians identified as thought leaders in
22 the industry and who help Nestlé Skin Health make business decisions. Ms. Rios
23 asked that Truinject be a part of the KOL selection. Nestlé Skin Health agreed and
24 stated that Rogers, Head of Medical Affairs, would organize the search for doctors
25
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1 with worldwide influence. Truinject would also be allowed to participate in preparing
2 the questions asked to the KOLs.

3
4 112. On the marketing and business sides, Nestlé Skin Health asked in
5 December 2014 for Truinject's business plan and to look for ways in which Nestlé
6 Skin Health could participate and benefit. Nestlé Skin Health and Truinject then went
7 through a Truinject summary of Kate's current functionality and plans for a Kate 2.0,
8 Kate 3.0 and Kate 4.0. Nestlé Skin Health asked Truinject for more information on
9 future generations, intellectual property, and on Ms. Rios's visions for how to change
10 the injectable industry and how to monetize the data that the Truinject Platform would
11 generate.
12

13
14 113. Knowing the importance of being the first to market with this type of
15 technology, Nestlé Skin Health requested that Truinject not share any information
16 with any potential new investors and also keep the negotiations a secret, in order to
17 make a "big splash" later together.
18

19 114. Shortly after the 14 November 2014 meeting, Nestlé Skin Health started
20 to pressure Truinject. On a telephone call with Ms. Rios, McCrea discussed an
21 exclusive license between Nestlé Skin Health and Truinject, or an acquisition of
22 Truinject. McCrea also told Ms. Rios that Nestlé Skin Health had taken a leap of faith
23 by entering the exclusivity agreement and it was rare to pay a company for these sorts
24 of provisions. He also told Ms. Rios that Nestlé Skin Health could acquire a "face"
25 for approximately \$1,800. Ms. Rios was taken aback by this and promptly asked
26 McCrea why Nestlé Skin Health was even bothering talking to Truinject if Nestlé
27 Skin Health was interested in shopping other faces and technologies given the non-
28

1 compete provisions in the Exclusivity Agreement. McCrea did not have an answer
2 and brushed the question off.

3
4 115. McCrea then initiated a second call with Ms. Rios. McCrea's purported
5 objective was to identify additional technical and medical information for Nestlé Skin
6 Health's due diligence review. The call was initially intended to be between McCrea
7 and Ms. Rios. To Ms. Rios's surprise, Lango, Rogers, and Sjodin (business
8 development) and Lenczycki (business development) also joined the call.

9
10 116. During the call, Lango asked Ms. Rios who would own the intellectual
11 property ("IP") rights if Nestlé Skin Health and Truinject were to develop technology
12 together. Ms. Rios responded by stating that she would have to ask her legal counsel
13 because she was not an IP expert. Lango became upset by Ms. Rios's response,
14 asking "can you not answer a question without your attorney?" Ms. Rios responded
15 by informing Lango that her counsel were the experts on IP.

16
17 117. Sensing that Nestlé Skin Health's attitude had shifted, Ms. Rios said that
18 Truinject was willing to discuss what Nestlé Skin Health and Truinject could develop
19 together moving forward and asked Nestlé Skin Health to provide Truinject with a
20 term sheet to further the relationship.

21
22 118. Truinject shared numerous trade secrets with Nestlé Skin Health during
23 the 14 November 2014 call and subsequent calls. These trade secrets included the
24 capabilities of the Truinject Platform, Truinject's business and marketing plans, how
25 data analytics would be used (clinical trials, refine injection protocols and techniques),
26 and other possible approaches to the Truinject Platform.
27
28

1 119. On 26 November 2014, Jonas Tornsten asked about Truinject's sensor.
2 In addition, McCrea pushed for even more information about Kate's development and
3 demanded to test the sensor. The parties also discussed the syringe, how it worked,
4 and how it was integrated with the device, sensors and the computer.
5

6 120. On 3 December 2014, McCrea called Ms. Rios to let her know that
7 Nestlé Skin Health would be late making the first \$25,000 payment. Ms. Rios told
8 McCrea that the payment needed to be on time. Nestlé Skin Health wired the \$25,000
9 payment to Truinject on 5 December 2014.
10

11 **8. Nestlé Skin Health was exposed to and came in contact with**
12 **Truinject's confidential information and trade secrets.**

13 121. Continuing with its crusade to extract information from Truinject, Nestlé
14 Skin Health scheduled an in-person meeting for 16 December 2014 at its
15 headquarters.
16

17 122. Before the meeting, Nestlé Skin Health sent Truinject a proposed agenda
18 including the following:

- 19 • Hardware (durability, precision, repeatability...)
20 • Software (algorithm billed-up, software validation...)
21 • Manufacturing (Choice of partner, methodology, capacity...)
22 • Product development plans (next step, NLF filling technique, adaptation
23 to Nestlé Skin Health fillers, validation strategies, timelines...)
24 • QA Status on development + manufacturing (QA systems, audits system,
25 QC, release...)
26 • Plus, the practical testimony of the device.
27
28

1 123. In addition, Nestlé Skin Health also sent the names and titles of potential
2 Nestlé Skin Health attendees for the 16 December 2014 meeting which included the
3 following:
4

- 5 • Todd Zavodnick: VP GM, A&C Business, US;
- 6 • Per Lango: Sr. Director A&C;
- 7 • Alisa Lask: Sr. Director Injectables Marketing;
- 8 • Benoit Chardon: Global Manager A&C;
- 9 • Rick Lawrence: Sr. Director Innovative Marketing;
- 10 • Henrik Karlsson: Device Engineer;
- 11 • Jonas Tornsten: Manager Packaging & Device Development;
- 12 • Didier Leclercq: Sr. Director A&C Product Development;
- 13 • Brant Schofield: VP Commercial Strategy;
- 14 • Scott McCrea: Director Business Development;
- 15 • Darren Lenczycki: Manager Business Development;
- 16 • Anette Sjodin: Global Manager Business Development;
- 17 • Bethany Bentley: Manager Training; and
- 18 • Various Field Sales Managers.
- 19
- 20
- 21

22 124. In response, Truinject's Lyle Martin told Nestlé Skin Health that
23 Truinject would be prepared to discuss all relevant topics. Truinject stated that it
24 would be focusing its responses on the Truinject Platform's current and future
25 capabilities. Once again, Truinject informed Nestlé Skin Health that it would not
26 discuss how Kate's components operated or functioned. This information was
27 confidential and included trade secrets.
28

1 125. In addition to Mr. Martin's response, Truinject's intellectual property
2 counsel, Steve Jensen ("Jensen") of Knobbe Martens, also responded to Nestlé Skin
3 Health's proposed agenda. Jensen observed and warned Nestlé Skin Health, "I
4 noticed that [Nestlé Skin Health] also lists individuals from device development,
5 product development and a device engineer. I am surprised [Nestlé Skin Health]
6 would have any interest in exposing these individuals to Truinject's proprietary
7 technology, and I cannot understand why [Nestlé Skin Health] would involve
8 development personnel in these business discussions." Nestlé Skin Health never
9 responded.

10
11
12 126. In response to Mr. Martin's email, McCrea wrote that Nestlé Skin Health
13 believed the 16 December 2014 meeting would allow Nestlé Skin Health to take a
14 huge step forward towards being able to present plans about Nestlé Skin Health's
15 proposed uses for the Truinject Platform.

16
17 127. Before the 16 December 2014 meeting, Ms. Rios met with a Nestlé Skin
18 Health vice president in a private, one-on-one meeting. During the meeting, Ms. Rios
19 requested that Nestlé Skin Health be transparent with its intentions on using the
20 Truinject Platform. Ms. Rios again stressed that Truinject was providing Nestlé Skin
21 Health with information, but Nestlé Skin Health was not reciprocating. The vice
22 president responded that at the end of the 16 December 2014 meeting, Nestlé Skin
23 Health's Lango would let Truinject know Nestlé Skin Health's intentions.

24
25
26 128. Based on Nestlé Skin Health's expression of continued interest, Truinject
27 went forward with the larger, full presentation and demonstration of the Truinject
28 Platform to Nestlé Skin Health. After Truinject's demonstration and disclosure of

1 confidential information, Nestlé Skin Health's Lango told Truinject that it was
2 interested in acquiring the exclusive global rights to Kate and the Truinject technology
3 for a term of one hundred years. In exchange for exclusivity, Nestlé Skin Health said
4 that it would be willing to make a \$50 million upfront payment together with lifetime
5 royalties. Nestlé Skin Health also said that it would hire Ms. Rios as a consultant
6 during a transition period and discussed Ms. Rios's willingness to relocate to Texas.
7 Lango told Ms. Rios that partnering with "Uncle Nestlé" would "catapult her" and
8 Truinject into the global market.
9

10
11 129. McCrea and Brant Schofield told Ms. Rios that her children and her
12 children's children would be taken care of for life.

13
14 130. Truinject and Nestlé Skin Health then had a round table discussion with
15 Nestlé Skin Health's device engineers, and discussed additional information regarding
16 Truinject's business model and the development, capabilities and other technical
17 aspects of the Truinject Platform including next generation versions. McCrea asked
18 Truinject if they would be willing to leave them with a prototype of Kate. Truinject
19 refused to do so, stating that it first needed a deal in place.
20

21 **9. Negotiations between Nestlé Skin Health and Truinject fall**
22 **apart when Truinject attempted to protect its confidential**
23 **information.**

24 131. After the 16 December 2014 meeting, Ms. Rios received an email from a
25 Nestlé Skin Health vice president that expressed his appreciation for Ms. Rios and
26 Truinject, stating "You truly are an exceptional person with great passion and vision."
27 The vice president continued by saying "I hope you see/feel I do what I say, we will
28

1 go through the process as explained today, and we will expect the same reciprocation
2 from you on items needed.”

3 132. After receiving the vice president’s email, Truinject believed that a term
4 sheet and/or agreement were forthcoming from Nestlé Skin Health.
5

6 133. On 17 December 2014, McCrea sent Truinject an email attaching
7 summaries of Kate 1.0, 2.0, and 3.0 capabilities based on the discussions during the 16
8 December 2014 meeting. But Nestlé Skin Health did not provide a term sheet for the
9 proposed 100-year deal.
10

11 134. On or about 21 December 2014, McCrea called Ms. Rios to discuss
12 adding Truinject to an upcoming meeting scheduled for 10 January 2015 in Dallas,
13 Texas. The 10 January 2015 meeting was a pre-scheduled meeting with Nestlé Skin
14 Health’s Key Opinion Leader (“KOLs”) Advisory Board. McCrea told Ms. Rios that
15 this would be the final due diligence meeting between Nestlé Skin Health and
16 Truinject.
17

18 135. McCrea said that Nestlé Skin Health would want Truinject to conduct a
19 demonstration before the KOLs.
20

21 136. In a 22 December 2014 email, McCrea outlined some of the specifics for
22 the 10 January 2015 meeting including:
23

- 24 • A minimum of seven (7) attendees from Nestlé Skin Health’s KOL list
25 and Nestlé Skin Health’s ability to choose who attended the
demonstration;
- 26 • Truinject would be required to demonstrate the Truinject Platform to
27 each physician individually and then each physician would be asked to
28 fill out a survey to capture feedback on the Truinject Platform;

- Nestlé Skin Health would be willing to share a blank survey form with Truinject prior to the meeting but would not allow Truinject to make any revisions;
- Nestlé Skin Health would provide a verbal summary to Truinject of the survey responses;
- Nestlé Skin Health would be willing to reimburse the reasonable travel cost for two Truinject employees to be present at the demonstration; and
- Truinject would be required to demonstrate the Truinject Platform to Rogers prior to meeting with the KOLs.

137. Truinject believed Nestlé Skin Health's demands went beyond the due diligence and collaborative effort that McCrea had promised would happen.

138. In response, Truinject proposed the following terms:

- Truinject was willing to allow seven (7) physicians during the demonstration, however, Truinject wanted the opportunity to choose three (3) of the physicians;
- Truinject would require that each physician sign a non-disclosure agreement individually with Truinject; and
- Truinject requested access to the survey, the ability to provide suggestions for the survey, and the right to review the raw data from the survey.

139. Nestlé Skin Health refused to accommodate Truinject's request requiring the physicians to sign individual non-disclosure agreements or the request to give Truinject access to the raw data from the surveys.

140. On January 5, 2015 at 11:09 a.m., after rejecting Truinject's requests, McCrea downloaded Truinject's documents from a Dropbox file. The documents were available to McCrea two weeks prior but had not been downloaded until the email denying Truinject's requests was sent.

1 141. Surprised at McCrea's response regarding the 10 January 2015 meeting,
2 Truinject involved its legal counsel in an attempt to save the deal. During a call
3 between legal counsel for Nestlé Skin Health and Truinject, Nestlé Skin Health stated
4 that it would no longer allow Truinject to review the questions on the survey and
5 would not be giving Truinject a verbal summary of the survey responses. Nestlé Skin
6 Health stated that regardless of what McCrea had previously represented, no one had
7 authorization to promise Truinject access to the questions or the results, whether in the
8 form of raw data or a verbal summary.
9
10

11 142. Ms. Rios followed up with a call to McCrea and stated she had honored
12 all of Nestlé Skin Health's requests and that McCrea was changing the agreed-upon
13 terms just five days before the final meeting was scheduled to take place. She asked
14 McCrea "would you let Allergan do a survey on your launch product Restylane Silk
15 with your customers and not show you the questions they asked or the answers they
16 gave?" McCrea replied "of course not." Ms. Rios then asked "Why are you asking us
17 to do the same?" Ms. Rios continued and stated that "the only reason you are asking
18 us to do this is because we are a start-up. It's not a reasonable request and it puts my
19 company at risk." Ms. Rios told McCrea that the 10 January 2015 meeting could not
20 go forward unless Nestlé Skin Health would negotiate in good faith and provide a
21 term sheet.
22
23
24

25 143. Following that conversation, Ms. Rios emailed Nestlé Skin Health's Vice
26 President on 7 January 2015 to find out what was happening with the meeting and
27 Nestlé Skin Health's position. Within the email, Ms. Rios stated that Truinject was
28 willing and ready to present on 10 January 2015. Nestlé Skin Health never responded

1 to Ms. Rios's email. However, Ms. Rios kept her travel plans open for the trip to Fort
2 Worth, Texas to honor the company's agreement.

3 144. On 10 January 2015, Nishan Patel ("Patel"), counsel for Nestlé Skin
4 Health, emailed counsel for Truinject 30 minutes prior to the start of the scheduled
5 meeting. The email falsely claimed that Truinject canceled the 10 January 2015
6 demonstration. The email stated that Truinject's unwillingness to permit the 10
7 January 2015 demonstration to go forward "frustrates the underlying purpose of the
8 Exclusive Negotiation Agreement." The email continued with the following: "I am
9 sure you can understand, [Nestlé Skin Health] cannot provide a term sheet when it has
10 little-to-no information as to whether Truinject's technology will have any utility to
11 doctors -- the ultimate end-users of the technology."

12 145. Patel's assertions in the 10 January 2015 letter were not only false but an
13 attempt by Nestlé Skin Health to manufacture a breach of the Exclusive Negotiation
14 Agreement.

15 146. In furtherance of Nestlé Skin Health's attempt to manufacture a breach of
16 the Exclusive Negotiation Agreement, Nestlé Skin Health started a misinformation
17 campaign directed at Truinject and Ms. Rios.

18 147. For example, Lask told its employees and physicians that Truinject never
19 showed up to the final meeting, that Truinject stood up Nestlé Skin Health and that
20 Ms. Rios was difficult to work with and should not be trusted.

21 148. Upon information and belief, Nestlé Skin Health's intentions in
22 provoking the termination of the Exclusive Negotiation Agreement was to begin
23 competing against Truinject.
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1 149. In response to Patel's email, counsel for Truinject stated that they were
2 surprised by the email. The email noted that Nestlé Skin Health had waited to send
3 the Patel email until it was too late for Truinject to be involved in the 10 January 2015
4 meeting. Counsel for Truinject also asserted that Truinject had provided Nestlé Skin
5 Health with a significant amount of both written and verbal information regarding the
6 Truinject Platform and had met with at least 20 people from Nestlé Skin Health.
7 Finally, counsel for Truinject reiterated that Truinject was open and willing to
8 continue discussions with Nestlé Skin Health and that it still expected to receive the
9 final installment of \$25,000 under the Exclusive Negotiation Agreement.
10

11 150. Following Nestlé Skin Health's cancellation of the 10 January 2015
12 meeting, deal discussions between the parties broke down. Although Nestlé Skin
13 Health had the opportunity and ability to conclude an agreement with Truinject
14 regarding the rights to Kate, an agreement giving Nestlé Skin Health exclusive rights
15 to Kate, or even a potential purchase of Truinject, Nestlé Skin Health chose instead to
16 begin working on the development of its own injectable simulation system.
17

18 151. In breach of the Exclusive Negotiation Agreement, on 27 January 2015,
19 Patel informed Truinject's counsel that Nestlé Skin Health would not be making the
20 final \$25,000 payment.
21

22 152. On 29 January 2015, Lask expressed her contempt for Truinject's
23 position as a mere start-up in the industry. Lask stated, "Who the f**k do you think
24 you are? What if we were not going to show you the survey, so what if we change
25 things, you pissed off everyone in upper management by asking for a term sheet. If
26 you beg us then maybe we will consider you. You guys won't make it without us.
27
28

1 But you need us, you need a major manufacturer to get this in the hands of doctors.
2 But because you didn't do what we said and you are being petty and not trusting us,
3 you lost out. Unfortunate for Truinject. Really unfortunate." Ms. Rios tried to
4 contact McCrea and Lango but received no response.
5

6 153. Despite Nestlé Skin Health's material breach of the Exclusive
7 Negotiation Agreement, Truinject honored the agreement through its expiration date
8 of February 5, 2015.
9

10 154. Upon the expiration of the Exclusive Negotiation Agreement, Truinject
11 went forward with developing its technology and the Truinject Platform. However,
12 the nine-month exclusivity period hampered Truinject's relationships with other major
13 companies and Nestlé Skin Health's insistence that Truinject cancel meetings with
14 these competitors forced Truinject to start from scratch.
15

16 155. Upon information and belief, in or around 2015, Nestlé Skin Health
17 started creating a similar technology to Truinject's Platform. Upon information and
18 belief, these attempts eventually resulted in Holly. Upon information and belief,
19 Holly is based on Truinject's confidential information, trade secrets, patents and
20 published patent applications shared with Nestlé Skin Health under the confidential
21 disclosure agreements.
22

23
24 **10. Nestlé Skin Health, after it has started developing a competing**
25 **technology, reenters into negotiations with Truinject.**

26 156. Between February 2015 and February 2016, Truinject and Nestlé Skin
27 Health had very limited interactions with the exception of emails from Nestlé Skin
28 Health's Lango to Ms. Rios inquiring as to developments in Truinject's technology

1 and lauding Ms. Rios' innovation and business acumen. And on 5 December 2015,
2 Stacy Wright, from Nestlé Skin Health, filled out an online information request on
3 Truinject's website.
4

5 157. On 9 November 2015, the New York Times published an article about
6 medical training technologies, and mentioned a company called the Chamberlain
7 Group, which developed a surgical training dummy.
8

9 158. On information and belief, and unbeknownst to Truinject, Nestlé Skin
10 Health contacted the Chamberlain Group shortly after the 9 November 2015 article to
11 begin developing Holly.
12

13 159. In early 2016, Nestlé Skin Health CEO Raetzman contacted Truinject
14 expressing a renewed interest in Truinject's technology. Raetzman requested a
15 summary of Truinject and Nestlé Skin Health's prior discussions.
16

17 160. Steve Carlson, Truinject's former President, responded to Raetzman with
18 a summary and reminded Raetzman that Nestlé Skin Health owed Truinject a \$25,000
19 payment as required by the Exclusive Negotiation Agreement.
20

21 161. On 19 February 2016, Raetzman invited several high-level Nestlé Skin
22 Health executives to a meeting to discuss a potential deal with Truinject. The meeting
23 included a presentation by Truinject, an overview and demonstration of Kate, and a
24 discussion of the value drivers and benefits of Truinject's potential partnership with
25 Nestlé Skin Health. In attendance at the meeting were Ms. Rios, Carlson (Truinject),
26 Raetzman (CEO of Nestlé Skin Health), Pierre Streit ("Streit") (CFO of Nestlé Skin
27 Health), and McCrea (Director of Business Development – North America for Nestlé
28 Skin Health).

1 **11. Nestlé Skin Health informs Truinject that Rogers would be the**
2 **final step in due diligence for Nestlé Skin Health.**

3 162. On 5 March 2016, Truinject (Ms. Rios and Steve Carlson) met with
4 Nestlé Skin Health in Washington, D.C. In attendance for Nestlé Skin Health were
5 Raetzman, McCrea, and Streit. During the meeting, Raetzman discussed Nestlé Skin
6 Health's interest in licensing Truinject's technology, a potential global deal, and a
7 desire for the timeline to move quickly. He stated that Nestlé Skin Health was "very
8 interested in using the technology that you so cleverly developed to help us convert
9 accounts and help us in different ways" and "we are willing to pay you for that." This
10 discussion included augmented and virtual reality technology and various
11 technologies.
12

13
14 163. Raetzman stated that Roger's review of the technology, now Head of
15 Medical Affairs for Nestlé Skin Health, would be the final step in Nestlé Skin
16 Health's due diligence. Raetzman also stated that Nestlé Skin Health did not have the
17 core competency to recreate what Truinject had done and wouldn't even know where
18 to begin. Raetzman stated that Nestlé Skin Health would prefer to work with a
19 company like Truinject who lives, eats, and breathes the technology and if a
20 comparative study was done, Nestlé Skin Health would be open to a profit share with
21 Truinject.
22

23
24 164. Raetzman also said that he did not want to certify or credential medical
25 providers because if a medical provider blinded someone, then Nestlé Skin Health
26 could be liable. Raetzman said, "If something happens, I don't wanna be ya know,
27
28

1 yes we credentialed this person. I put a plaque up their office that says they're
2 qualified to do this and then somebody got blinded or some other thing."

3
4 165. McCrea raised the issue of a letter of intent, "Maybe it's, maybe there is a
5 letter of intent to say ok here is what we are thinking based on due diligence and a
6 document that outlines the path."

7
8 166. In addition to Raetzman's comments, Streit seemed very excited about
9 the financial impacts of Truinject's technology for Nestlé Skin Health. Streit stated
10 that he was "fascinated by her technology," Raetzman agreed and then Streit asked
11 Ms. Rios "Let me ask you the question, in a brutal different manner and I mean brutal.
12 Question, if tomorrow you are hit by a car, what happens to the company?" Ms. Rios
13 replied, "If I get hit by a car?" Meanwhile, on information and belief and
14 unbeknownst to Ms. Rios, Nestlé Skin Health was already in development on their
15 infringing Holly simulation system at the same time its CFO and CEO were inquiring
16 about Ms. Rios's post-mortem plans for Truinject and its technology.

17
18 167. During the 5 March 2016 meeting, Carlson (Truinject) again informed
19 Raetzman that Truinject was still owed \$25,000 pursuant to the Exclusive Negotiation
20 Agreement and that it should be paid as a show of Nestlé Skin Health's good faith.
21 Raetzman agreed that the \$25,000 would be paid.

22
23 168. During the 5 March 2016 meeting, Truinject disclosed trade secrets to
24 Nestlé Skin Health, including information related to Truinject's business and
25 marketing plans, how the technology in the Truinject Platform and Kate was
26 developed, technical advances achieved since the two companies last spoke, and
27 future plans for the Truinject Platform and its product pipeline.
28

1 169. Finally, Raetzman told Ms. Rios “Congratulations on where you are at
2 with this, I can imagine the mind of a sales person dealing with all of these issues and
3 coming up with this idea, so I really congratulate you on this, it’s really great work
4 that you’ve done.” Ms. Rios responded that “it was an entrepreneur’s dream” to have
5 so many companies excited about what Truinject was developing.
6

7 170. After the 5 March 2016 Washington, D.C. meeting, Peter Nicholson
8 (“Nicholson”), Vice President of Global Business and Development for Nestlé Skin
9 Health, emailed Truinject with a summary of the meeting. Although Nicholson was
10 not in attendance, he stated that Nestlé Skin Health would need to reengage its
11 technical team for an updated review of the Truinject Platform. Nicholson also stated
12 that Nestlé Skin Health would need to know Truinject’s business model on a deeper
13 level and from there, Nestlé Skin Health hoped to quickly get a term sheet to
14 Truinject. Nicholson expressed that the Truinject Platform could enhance the value
15 Nestlé Skin Health provides to its customers on a global level and that Nestlé Skin
16 Health wanted to use Kate in Nestlé Skin Health’s SHIELD Center in New York City.
17 Nicholson also pushed for exclusivity between Nestlé Skin Health and Truinject.
18
19
20

21 171. In an effort to reengage Nestlé Skin Health’s technical team, Nestlé Skin
22 Health requested that Truinject meet with the team during a conference in Monaco.
23 Instead, however, a call was scheduled for 18 April 2016. Participating on the call for
24 Nestlé Skin Health was Rogers, Sjodin, Henrick Karlson (a Nestlé Skin Health device
25 engineer), Jonas Tornsten (Packaging and Device Development), and Rick Lawrence
26 (marketing). During this call, Nestlé Skin Health asked for Truinject’s anatomy
27 providers, references, and sources. Truinject provided this confidential information
28

1 under the protection of a confidentiality agreement. Nestlé Skin Health advised
2 Truinject that their due diligence would need to include a firsthand interactive
3 demonstration of Kate and that Rogers would need to attend and have the opportunity
4 to inject Kate. Sjodin asked for a summary of Truinject's research regarding Kate's
5 anatomy, one of Truinject's trade secrets. Based on Nestlé Skin Health's
6 representations, Truinject worked to schedule a face-to-face demonstration of Kate
7 with Rogers.
8

9
10 172. That same day, Ms. Rios sent Nestlé Skin Health the anatomy data and
11 research that Sjodin requested.

12 173. Concurrently, Nestlé Skin Health's Lango, now head of M&A for Nestlé
13 Skin Health, reached out to Ms. Rios on at least ten different occasions from 2015
14 through 2017 using his personal email account. Lango's emails constantly asked Ms.
15 Rios about her progress and the progress of the Truinject Platform. As a part of his
16 communications, Lango stated that "Gabrielle and technology seemed to be a match
17 made in heaven . . . I love how you keep in the forefront of technology evolution."
18 Lango also asked Ms. Rios' opinion on future biologic products, such as Evolus, that
19 Nestlé Skin Health was considering acquiring. When Ms. Rios asked why Lango
20 wanted to know her opinion, Lango replied "Because I believe you are a smart and
21 business savvy person and I respekt [sic] and appreciate your opinion . . . I share your
22 view[.]"
23

24
25
26 174. Between April 2016 and November 2016, Truinject attempted on
27 multiple occasions to connect with Rogers so that Nestlé Skin Health could complete
28 its due diligence.

1 175. On 9 December 2016, Rogers emailed Truinject and requested an update
2 on the progress made with the technology and a summary of feedback from advisors
3 in the United States, including physicians who were part of a data gathering on
4 injection protocols in Las Vegas. Rogers asked specifically about items he knew to be
5 Truinject's trade secret information, including questions about the Las Vegas meeting,
6 what data had been gathered, who was present and why, and the specific feedback
7 received on the device.
8

9
10 176. Subsequent to that conversation, on 14 December 2016, Rogers held a
11 conference call asking for an update on Truinject. During the call, Truinject and
12 Nestlé Skin Health discussed Kate being used by Nestlé Skin Health for point of sale.
13 Rogers stated that he would follow up with Truinject shortly.
14

15 177. On 18 December 2016, Ms. Rios received a forwarded email from
16 Raetzman, in which he informed a physician who had inquired about Nestlé Skin
17 Health and Truinject's relationship that Rogers would assess Truinject's technology in
18 California. However, neither Ms. Rios nor Truinject heard from Rogers or Raetzman
19 until 10 January 2017, approximately eleven months after Nestlé Skin Health
20 reinitiated conversations with Truinject.
21

22 **12. Nestlé Skin Health sent Chad Tiskos and Tiphany Lopez to**
23 **learn more about Truinject.**

24 178. As Nestlé Skin Health executives were reengaging Truinject about a
25 potential deal, Nestlé Skin Health sent two drug sales representatives, Chad Tiskos
26 ("Tiskos") and Tiphany Lopez ("Lopez"), to learn more about Truinject. Nestlé had
27 created a program called SHIELD that provided a forum for top sales representatives
28

1 and other employees to pitch businesses that Nestlé should invest in, acquire or
2 partner with. Tiskos and Lopez contacted Truinject, claiming they were interested in
3 presenting Truinject to Nestlé Skin Health's SHIELD.
4

5 179. Nestlé Skin Health's SHIELD is an acronym for Skin Health
6 Investigation, Education, and Longevity Development. Nestlé Skin Health says that
7 the initiative is a response to the expected rise in skin health needs.
8

9 180. On or around the fall of 2016, Lopez talked with Ms. Rios about
10 Truinject, expressed excitement about the technologies that Ms. Rios and Truinject
11 had developed, and received confidential information about Kate.
12

13 181. Tiskos also called Ms. Rios to pitch Truinject to Nestlé Skin Health's
14 SHIELD. Tiskos asked Truinject to provide him and Lopez with detailed
15 information about Kate and Truinject's technologies so they could both pitch
16 Truinject to SHIELD in New York City.
17

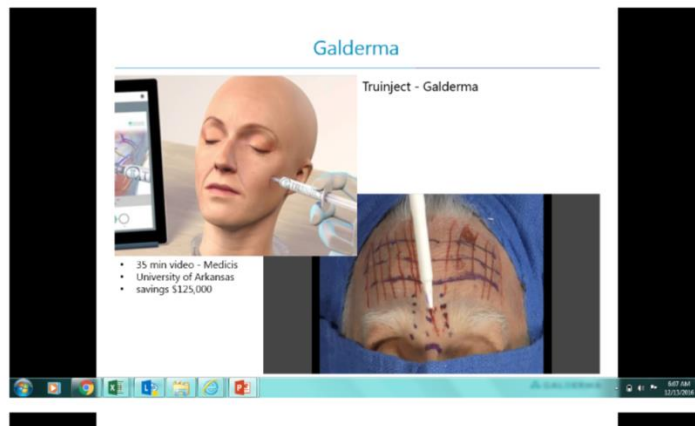
18 182. On 8 December 2016, Tiskos came to Truinject's headquarters in
19 California and signed a Confidential Disclosure Agreement with Truinject that
20 required Tiskos, Lopez, and Nestlé Skin Health to use Truinject's confidential
21 information "only for the Purpose of the Agreement" and to "hold the disclosure of
22 Confidential Information in confidence."
23

24 183. On 13 December 2016, Tiskos emailed Ms. Rios to thank her for
25 meeting with him. Tiskos said, "I am not sure how my current employer will move
26 on this, but this will be big and broad." He further said that "Truinject will be
27 different in all facets of the customer learning experience."
28

184. Truinject and Ms. Rios also told Tiskos about its augmented and virtual reality platforms.

185. Tiskos sent Ms. Rios two slides that he was going to use when presenting on Truinject.

Truinject will be different in all facets of the customer learning experience.
Wishing you and your son an amazing Holiday Season, and look forward to staying in touch!
All the best,
Chad
Chad M. Tiskos



1 **13. Rogers is exposed to and comes in contact with confidential**
2 **information after signing a non-disclosure agreement with**
3 **Truinject individually and on behalf of Nestlé Skin Health.**

4 186. On 7 February 2017, Rogers – the final due diligence step – visited the
5 Truinject facilities with the understanding that the discussions would involve
6 Truinject’s proprietary and trade secret information.

7 187. Upon his arrival, Ms. Rios told Rogers that he would be required to sign
8 a non-disclosure agreement and specifically that Truinject required all visitors to sign
9 a non-disclosure agreement due to possible exposure to confidential information,
10 technology currently being developed, and Truinject’s trade secrets. Given Rogers’
11 position as the Head of Nestlé Skin Health’s Medical Affairs Department and the
12 importance of his assessment and opinion on the potential relationship between Nestlé
13 Skin Health and Truinject, Ms. Rios stressed the importance and necessity of Rogers’
14 signing a non-disclosure agreement on behalf of Nestlé Skin Health before
15 participating in the demonstration of Kate.
16
17
18

19 188. Initially, Rogers stated that he could not sign the confidential disclosure
20 agreement on behalf of Nestlé Skin Health without a review by Nestlé Skin Health’s
21 legal team. Ms. Rios told Rogers that without the confidential disclosure agreement,
22 he would not be allowed to enter the offices or to participate in the hands-on
23 demonstration of Kate.
24

25 189. Rogers responded that he would have to call Nestlé Skin Health’s legal
26 team to decide whether he could sign the non-disclosure agreement on behalf of
27 Nestlé Skin Health. Ms. Rios told Rogers that he would have sufficient time to call
28

1 Nestlé Skin Health's legal team and if he decided not to continue, the meeting could
2 be rescheduled.

3
4 190. Ms. Rios left Rogers in the lobby and returned to her office to allow
5 Rogers to speak with his legal team and decide whether to sign the non-disclosure
6 agreement on behalf of Nestlé Skin Health.

7
8 191. After speaking with his legal team, Rogers signed the non-disclosure
9 agreement ("NDA"). The NDA contained the following provisions that were binding
10 on Nestlé Skin Health and Rogers:

11 6. Invention Rights. All intellectual property and rights
12 worldwide that relate to injection training or testing devices
13 and association peripheries, resulting from Vendor's
14 exposure to, evaluation of and contact with Truinject's
15 Confidential Information disclosed, including but not limited
16 to patents, trade secrets, and copyrights ("IP") shall be the
17 exclusive property of Truinject, regardless of the source of
18 improvements or intellectual property. Vendor and its
19 employees, agents, and independent contractors hereby
20 assign and agree to execute documents confirming the
21 assignment to Truinject of the IP.

22 192. The NDA defines Confidential Information as:

23 (i) the existence of this Agreement, (ii) the existence or
24 terms of any discussion between the Parties, (iii) any
25 non-public information of any Party and/or any of its
26 affiliate or subsidiary company including, without
27 limitation, know-how, trade secrets, inventions,
28 whether patentable or not, software, schematics,
algorithms, theory, methods and approaches to
software and/or medical device design, development
and manufacturing, and any unpublished information
concerning existing or contemplated products,
services, processes, markets, techniques or data
owned by, and confidential and proprietary to, a Party,
including, but not limited to, customer information

1 (including leads and target accounts), financial
2 information, procurement requirements, business
3 product and/or component forecasts, sales and
4 merchandising information, marketing plans and
5 information, and any technical specifications,
6 drawings or models as well as any such information
7 that is disclosed orally or visually with regard thereto
(such as through a facility tour or in the course of any
other meeting).

8 193. Truinject used a computer system that allowed a person to review and
9 sign a document (called “Envoy”), here a CDA. Once the CDA was signed, Truinject
10 received a notification email. Through this system, Ms. Rios received a notification
11 email informing her that Rogers had signed the CDA on behalf of Nestlé Skin Health.
12 Envoy emailed the signed agreement to Rogers and Ms. Rios. Ms. Rios retrieved
13 Rogers from the lobby and allowed him to enter Truinject’s office where he
14 participated in a full demonstration of Kate and was exposed to Truinject’s
15 confidential information and trade secrets.
16
17

18 194. As part of the full demonstration, Rogers was allowed to inject Kate for
19 approximately an hour and a half, saw Truinject’s augmented reality, and injected a
20 filler syringe in Kate’s face. Rogers was only allowed access to Truinject’s
21 confidential and trade secret information because he signed the CDA on behalf of
22 Nestlé Skin Health.
23

24 195. While Rogers was in Truinject’s office, Truinject’s NEST camera system
25 captured several photos of Rogers injecting Kate and testing the Truinject Platform.
26 For example, Rogers was seen cradling Kate’s face while injecting Kate with his right
27 hand.
28



196. As another example, Rogers can be seen actually holding the patented Truinject syringe in his right hand, after injecting Kate, and looking at the results of his injection on the screen in front of him.



197. The NEST camera also captured interactions between Rogers and Truinject's Chief Technology Officer. During the time that Rogers spent injecting Kate, Rogers gave feedback on Kate, and asked questions about Truinject's plans and the future of the technology. Truinject's Chief Technology Officer and Ms. Rios answered all of Roger's questions, giving technical and medical details about Kate.



198. After a long period of silence, on 25 May 2017, Ms. Rios emailed Raetzman to congratulate him on his promotion to CEO of Global Nestlé. Raetzman replied that he and Ms. Rios should connect at a future meeting but Ms. Rios never heard from him again.

199. Ms. Rios also never heard from Lango after 7 February 2017.

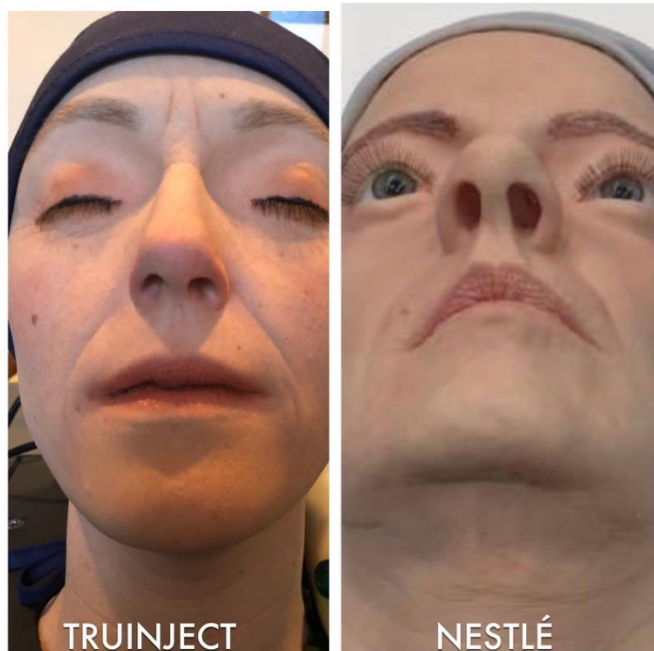
200. On 3 March 2017, Carrie Liakos (“Liakos”), another top sales representative selected by Nestlé Skin Health, contacted Ms. Rios about presenting Truinject to Nestlé Skin Health’s SHIELD, making her the third sales representative to contact Truinject for this purpose.

201. When Ms. Liakos presented Truinject to Nestlé Skin Health SHIELD, Leclercq publicly berated Liakos for proposing Truinject. Nestlé Skin Health admitted that it knew about Truinject but claimed that Truinject’s Kate and virtual reality platform were worthless.

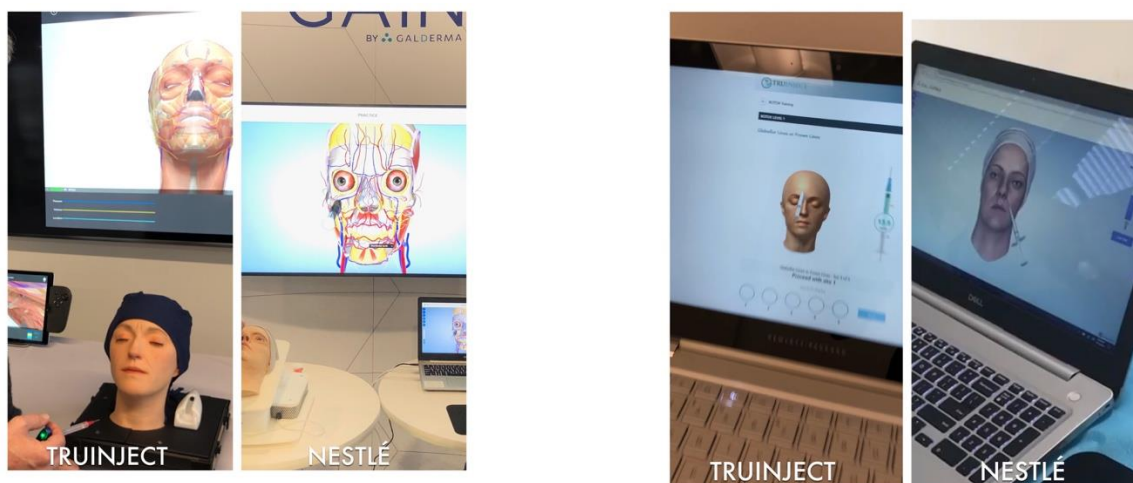
1 **G. Truinject Learns that Nestlé Skin Health has Developed Holly and**
2 **LucyLive After Being Exposed to and Coming in Contact with**
3 **Truinject's Proprietary Information and Trade Secrets in Violation**
4 **of the Exclusive Negotiation Agreement and the NDA.**

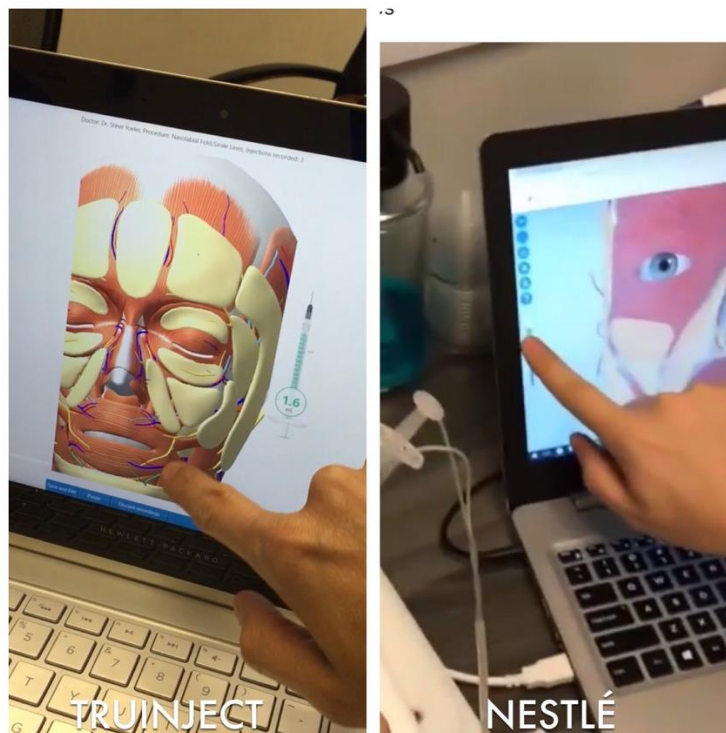
5 202. On 24 March 2018, an investor, Dr. Ervin Braun, contacted Ms. Rios to
6 alert Ms. Rios that his daughter, a dermatologist, had witnessed a demonstration of
7 what she believed to be Kate. Dr. Braun asked if Nestlé Skin Health had acquired
8 Truinject because Nestlé Skin Health had hosted the demonstration. Relying upon the
9 terms of the all the CDAs and NDAs Nestlé Skin Health had signed and the Exclusive
10 Negotiation Agreement, Ms. Rios informed the Dr. Braun that he had no need to
11 worry.
12

13 203. After the phone call from Dr. Braun, on or around 28 April 2018, Ms.
14 Rios saw posts on Facebook and Instagram showing Nestlé Skin Health's device
15 named Holly. The post stated that Holly was a first of its kind, virtual 3D head
16 revolutionizing how Nestlé Skin Health would train all future injectors and teach them
17 facial anatomy and assessment. Ms. Rios, and physicians familiar with Truinject's
18 technology, instantly recognized Kate's and Holly's identical features. For example,
19 both had moles in similar spots on the right side of the face, similar wrinkles on the
20 neck and face, and had similar surgical caps.
21
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204. Additionally, both systems had a similar display. In the pictures below, the television and computer screens of both Kate and Holly show the anatomy, including layers of the skin, muscles, fat pads, and arteries. In addition, Holly's display allowed a user to peel back layers of tissues, just like Kate's.





205. Holly received praise from the providers in the aesthetic community.



206. Those in the industry who were familiar with Truinject and Kate were shocked.

hcsmsa Damn!
 cindyguerra2828 I volunteer as tribute.
 sosiguevara @nrdorka quiero unoooo
 flavioacl 🍌🍌🍌🍌 I'm going to check
 it tomorrow in the #asaps2018
 alyxzandrea_roe This injection training is
 so futuristic! State of the art!!
 drheidiwaldorf Actually still surprised
 that galderma was able to rip this off from
 @truinject ...

207. Holly was marketed as a facial injection anatomy education simulator that provides both a physical model and 3D graphics. Holly shares many similar features to the version of Kate demonstrated to Nestlé Skin Health and Rogers. On information and belief, Defendants developed Holly only after receiving Truinject's proprietary information and trade secrets.

208. On information and belief, Nestlé Skin Health began working on Holly as early as 2015 at the direction of CEO Raetzman and Vice President Lask. On information and belief, Rogers and Noguiera provided crucial guidance to the Holly project and had exposure to Kate and the Truinject Platform. Lopez, who is identified as Holly's creator, received confidential information from Truinject under the protection of a non-disclosure agreement.

209. At the highest level, Nestlé Skin Health, Noguiera, and Rogers were exposed to and came in contact with Truinject confidential information and trade secrets from the outset of the relationship between Truinject and Nestlé Skin Health and, certainly, from the beginning of the Holly project. Rogers was exposed to Truinject's technology on multiple occasions. Nestlé Skin Health, Noguiera and Rogers actively asked for and received confidential information and trade secrets from Truinject. As events unfolded, it became apparent that Nestlé Skin Health did not ask Truinject for information to complete a deal, but rather to build Holly.

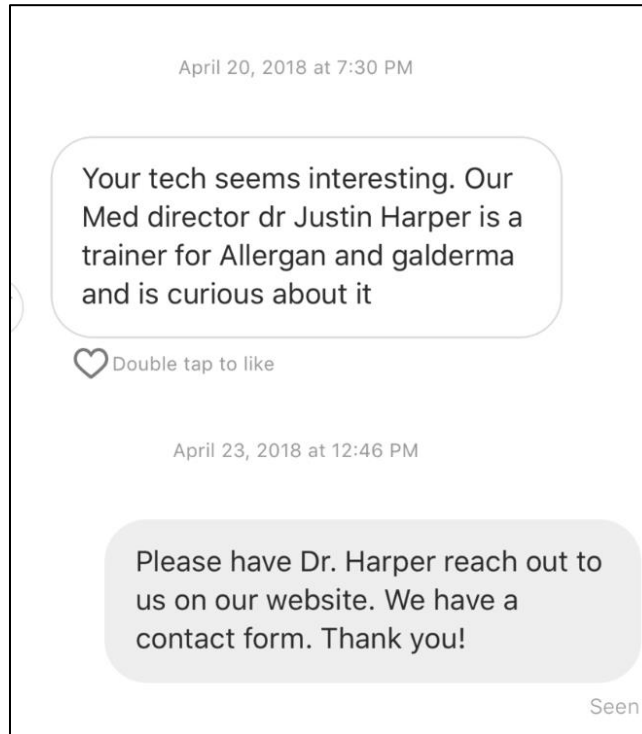
1 210. During the relationship, culminating in Roger's 7 February 2017 meeting
2 at Truinject's headquarters, Nestlé Skin Health and Rogers received Truinject's
3 confidential information and trade secrets while misrepresenting their intent to do a
4 deal with Truinject, as demonstrated by their simultaneous work on Holly.

5
6 211. Nestlé Skin Health has marketed Holly, including to Truinject's
7 customers, as the first of its kind virtual 3D head which will revolutionize how future
8 injectors are trained: "Her name is Holly: the first smart cadaver used for patients'
9 simulation in the world!"
10

11 **H. Nestlé Skin Health Starts to Demonstrate Holly and Represent the**
12 **Technology behind Holly as its Own in Violation of the Exclusive**
13 **Negotiation Agreement and the CDA.**

14 212. Beginning as early as March 2018, Defendants conducted public Holly
15 demonstrations. These demonstrations included a showing at the American Society
16 for Aesthetics Plastic Surgery meeting held in New York City on 28 April 2018.
17 Holly was also demonstrated at Nestlé Skin Health's SHIELD Center in New York
18 City. This included targeting potential customers of Truinject.
19

20 213. For example, Juvly Aesthetics, a national aesthetic chain, and Dr. Justin
21 Harper, Juvly's Medical Director, contacted Truinject on April 20, 2018, a few days
22 prior to Holly's launch, to inquire about Kate. Juvly asked if Dr. Justin Harper could
23 meet with Truinject. Truinject directed Dr. Harper to Truinject's online contact form.
24
25
26
27
28



214. A short time later, Juvly posted online that it was the first in the world to “have the Holly Touch technology for training.”



1 215. Tiphany Lopez, from Nestlé Skin Health, responded, “Amazing!
2 @juvly_aesthetics I am so excited you are the very first! She’s in good hands.”

3 216. Nestlé Skin Health has also demonstrated Holly internationally. On
4 information and belief, Holly has been shown and used in at least Brazil, Mexico,
5 Italy, Slovakia, Canada, Ireland, and Lebanon, as well as the United States. On
6 information and belief, Nestlé Skin Health has partnered with Medica, a United Arab
7 Emirates-based aesthetic and medical solutions company, to make Holly available to a
8 global audience using their GAIN programs.
9
10

11 217. After the launch of Defendants’ Holly device, Truinject received
12 inquiries from doctors and investors wondering if Defendants’ device was in fact
13 Truinject’s Kate.
14

15 218. In addition to Holly, Nestlé Skin Health also introduced “LucyLive” on
16 28 April 2018. Lopez was one of the first representatives to present Truinject to the
17 Nestlé’s Skin Health’s SHIELD Center and in fact reached out to Ms. Rios to share
18 her enthusiasm about the technologies Ms. Rios was developing in late 2016. Lopez
19 instructed Tiskos to visit Ms. Rios’s office in California so they could present
20 Truinject to Nestlé’s Skin Health’s SHIELD Center. Tiskos signed a CDA in
21 December of 2016. In this meeting, Tiskos learned about the virtual reality
22 technologies and the Kate technologies Truinject was developing. LucyLive is similar
23 to the augmented and virtual reality that accompanies Kate. On information and
24 belief, Lopez and Lask have taken credit for being the visionaries behind the
25 technology even though they had received Truinject’s confidential information and
26 trade secrets and knew of Truinject’s patents.
27
28

1 219. As another indication of its intent to compete against Truinject, Nestlé
 2 Skin Health has informed the United States Patent and Trademark Office that it
 3 intends to use the “Holly,” “SimHolly” and “HollyTouch” marks in commerce for the
 4 following purposes:
 5

- 6 • Software in the nature of digital anatomy and digital anatomical models;
 7 computer software for use in the storage, management, visualization and
 8 analysis of data in the medical and scientific fields; three-dimensional
 9 (3D) media, namely, biomedical animation, anatomic models, medical
 10 device models, and interactive scientific simulation; software for
 11 controlling electronic anatomical models;
- 12 • Computer software for use in the storage, management, visualization and
 13 analysis of data in the medical and scientific fields; three-dimensional
 14 (3D) media, namely, biomedical animation, anatomic models, medical
 15 device models, and interactive scientific simulation; medical devices,
 16 namely, anatomical models; medical devices, namely, electronic
 17 anatomical models; medical devices, namely, kits comprising electronic
 18 anatomical models, software for controlling anatomical models and
 19 instruction manuals sold together; Anatomical models for scientific,
 20 instructional, and educational purposes;
- 21 • Educational services in the field of anatomy education, medical
 22 education, dermatology education; rental of anatomical models for
 23 educational purposes; and
- 24 • Medical services; medical information; providing a website featuring
 25 information for doctors, dermatologists, nurses, healthcare practitioners,
 26 students and patients in the fields of medicine, dermatology and cosmetic
 27 surgery.

28 220. On 30 April 2018, LucyLive was launched as evidenced by an Instagram
 post proclaiming a “successful launch.”

221. Nestlé Skin Health’s launch caused great confusion in the market place.

222. Ms. Rios received calls and messages from physicians, industry
 executives, and other providers to congratulate her on the launch of her technology.

1 223. When these people found out that Nestlé Skin Health stole Truinject's
2 technology, they were outraged.

3 224. Dr. Heidi Waldorf, who was selected as a Master Injector in 2016 to
4 provide input for the inject paradigms of Kate, had seen Truinject's Kate only once in
5 2016. Dr. Waldorf has no connection to or interest in Truinject, told Juvly and other
6 companies praising Nestlé Skin Health that Nestlé Skin Health was stealing
7 Truinject's technology. Dr. Waldorf's comment was removed a few days after it was
8 posted on Instagram.
9
10



20 225. A former Vice President of Nestlé Skin Health called Ms. Rios to make it
21 clear he never would direct his team to do what Nestlé Skin Health had done and he
22 wanted her to know that he had nothing to do with it.
23

24 226. Ms. Rios also received an email from a physician on Truinject's board
25 who forwarded an email titled "I wanted to share this with you. You have a lot of
26 fans." The email shared several other physicians' outrage and included a response
27 from Vice-President Lask when a physician demanded a response from Nestlé Skin
28 Health for what they had done to Truinject. Lask replied, "Thanks for your email.

1 [Nestlé Skin Health] respects the valid intellectual property rights of all third parties.
2 While we believe the development of our Holly simulator was completely lawful, we
3 will review this matter to confirm our understanding.”
4

5 227. On 3 August 2018, Nestlé Skin Health held another public event
6 demonstrating its virtual reality and Holly platform, further exposing over one million
7 of Truinject’s potential customers to Truinject’s technology and intellectual property
8 while claiming that Nestlé Skin Health was the visionary behind Truinject’s
9 technologies. Over 150 social posts praised Nestlé Skin Health. For example, one
10 poster said, “An amazing weekend with mind blowing technology.” Another said that
11 Nestlé Skin Health introduced “mind blowing technological advances and educational
12 tools, and more importantly, I was thrilled to see Nestlé prioritizing ethical climate
13 and culture for the organization.” Lopez and Lask were credited as the masterminds
14 of the technologies.
15
16

17 **I. Nestlé Skin Health’s Holly Infringes Truinject’s Patents.**
18

19 228. Truinject owns U.S. Pat. No. 9,792,836, entitled “Injection Training
20 Apparatus Using 3D Position Sensor” and issued on October 17, 2017.

21 229. As explained above, the ‘836 patent teaches systems and methods for
22 practicing injection on an apparatus. Frequently, the apparatus will look like a head or
23 a hand. The apparatus has sensors that detect a signal from a training syringe. The
24 signal is then processed to inform the user the location, angle, and other data about the
25 injection.
26

27 230. A representative claim is below.
28

1 1. An anatomically shaped injection training apparatus
2 comprising:

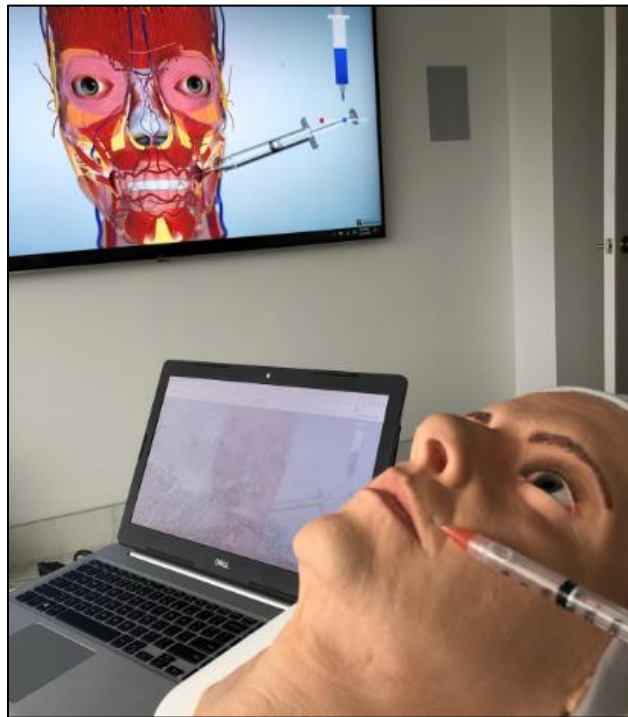
3 an at least partially hollow base configured to provide
4 structural support;

5 a clear layer of elastomer coating at least partially
6 covering a base layer;

7 an opaque layer at least partially covering the clear
8 layer, wherein the base, clear layer, and opaque layer form
9 an anatomical shape; and

10 a three-dimensional (3D) tracking system positioned
11 inside the base and configured to determine a location of a
12 needle inserted into the clear layer of elastomer.

12 231. Nestlé Skin Health's Holly infringes the '836 patent.



25
26 232. The Holly is an anatomically shaped training apparatus used by
27 physicians to practice injections. Here, Holly looks like a head.

1 233. The Holly also has a training syringe. The system uses a three-
2 dimensional tracking system to determine the location of the needle inserted into the
3 training apparatus.
4

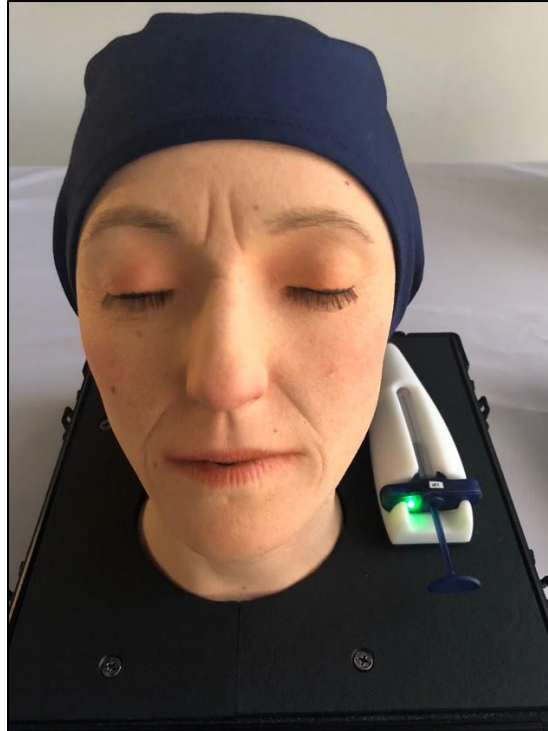
5 234. On information and belief, the Holly has multiple layers, including
6 opaque and clear, and is partially hollow.
7

8 235. In sum, the Holly infringes at least claim 1 of the '836 patent.
9

10 236. Nestlé Skin Health was aware of the '836 patent application and its
11 publication as early as November 2014 when Truinject provided the patent application
12 to Nestlé Skin Health. Nestlé Skin Health's infringement has been willful and
13 deliberate.
14

15 **J. Nestlé Skin Health's Holly Infringes Truinject's Trade Dress.**
16

17 237. Truinject spent years and over several million dollars developing Kate.
18 To help physicians train as precisely as possible, Truinject designed and built Kate to
19 mimic the age, look and structural features of an average cosmetic patient. The
20 physical detail and design of Kate distinguishes it from all other products. In fact,
21 Kate was the only anatomically validated training device at the time Truinject and
22 Nestlé Skin Health were discussing a potential deal, and Kate's design is distinctive
23 and non-functional.
24
25
26
27
28



238. Truinject's trade dress includes the overall appearance of Kate, the coloration of Kate, a scrub hat, the facial features, and other aspects of Kate's appearance.

239. Truinject owns all rights to Kate's trade dress.

240. Nestlé Skin Health's Holly has and will continue to create confusion among ordinary consumers as to the source, sponsorship, affiliation, or Truinject's approval of Nestlé Skin Health's device.

241. Holly's overall appearance, coloration, scrub hat, facial features and other aspects of Holly's appearance is similar to Kate's appearance.



K. Market Confusion Exists with the Kate and the Holly.

242. On information and belief, Nestlé Skin Health released Holly in April 2018.

243. The market – doctors, medical providers and pharmaceutical companies – were shocked. Other doctors, medical providers and KOLs have also noted that Holly looks like Kate. Some physicians have contacted Ms. Rios to inform her that they had seen Truinject's Kate at a Nestlé Skin Health meeting and Ms. Rios has had to correct them and ask "You mean Holly?"

244. Upon information and belief, Nestlé Skin Health employees have also described Holly and Kate as looking confusingly similar.

1 **L. Truinject Protected its Trade Secrets.**

2 245. Truinject developed or invented financial, business, technical, economic,
3 or engineering information including patterns, compilations, programs, devices,
4 methods, techniques, or processes.
5

6 246. Truinject's information includes the business analysis for training
7 devices, virtual or augmented reality training devices, business plans, marketing plans,
8 potential partnerships, sales funnels and strategies, engineering specifications,
9 technical drawings, and other business strategy information.
10

11 247. Truinject has taken reasonable efforts or measures to keep the
12 information secret.
13

14 248. Truinject has anyone interested in their technology sign a confidential
15 disclosure agreement. On 24 January 2014, Bentley, an employee of Nestlé Skin
16 Health, signed a non-disclosure agreement with Truinject in order to receive
17 Truinject's confidential and proprietary information.
18

19 249. Under the terms of the confidentiality agreement, Bentley agreed to
20 maintain all of Truinject's information "in strict confidence" and to not disclose or use
21 Truinject's proprietary information.
22

23 250. Bentley further acknowledged and agreed that all of the proprietary
24 information she received remained "the sole and exclusive property" of Truinject.
25

26 251. Truinject and Nestlé Skin Health signed a series of confidential
27 disclosure agreements, beginning on 29 October 2014 (effective date of 23 October
28 2014).

1 252. Nestlé Skin Health agreed to hold Truinject’s information “in confidence
2 and not publish or disclose” Truinject’s confidential information. Nestlé Skin Health
3 further agreed that it would not use Truinject’s information for any other purposes
4 except for the purposes outlined in the agreement.
5

6 253. Nestlé Skin Health further agreed that all confidential information
7 received by Nestlé Skin Health from Truinject “shall at all times be and remain the
8 exclusive property of the disclosing party.”
9

10 254. On 5 November 2014, Nestlé Skin Health signed another agreement with
11 Truinject that included a confidentiality provision. Nestlé Skin Health agreed that all
12 information directly or indirectly received from Truinject “shall be held in strictest
13 confidence.” Nestlé Skin Health further agreed not to directly or indirectly “enter the
14 market with any product or system that is substantially similar in functionality as the
15 Truinject System.”
16

17 255. On 18 February 2016, Nestlé Skin Health signed yet another confidential
18 disclosure agreement with Truinject.
19

20 256. Nestlé Skin Health agreed to hold Truinject’s information “in confidence
21 and not publish or disclose” Truinject’s confidential information. Nestlé Skin Health
22 further agreed that it would not use Truinject’s information for any other purposes
23 except for the purposes outlined in the agreement.
24

25 257. Nestlé Skin Health further agreed that all confidential information
26 received by Nestlé Skin Health from Truinject “shall at all times be and remain the
27 exclusive property of the disclosing party.”
28

1 258. On 8 December 2016, Tiskos, a Nestlé Skin Health drug representative,
2 signed a confidential disclosure agreement with Truinject.

3 259. Tiskos, on behalf of Nestlé Skin Health, agreed to use Truinject's
4 information only for the purposes of the agreement, and to "hold the disclosure of
5 Confidential Information in confidence and shall not disclose the Confidential
6 Information" to a third party.
7

8 260. On 7 February 2017, Rogers signed the ultimate confidential disclosure
9 agreement with Truinject on behalf of himself individually and Nestlé Skin Health.
10

11 261. Rogers and Nestlé Skin Health agreed to use Truinject's information only
12 for the purposes of the agreement, and to "hold the disclosure of Confidential
13 Information in confidence and shall not disclose the Confidential Information" to a
14 third party.
15

16 262. Rogers and Nestlé Skin Health further agreed that all intellectual property
17 and rights to "injection training or testing devices and associated peripheries"
18 belonged to Truinject including improvement regardless of source.
19

20 263. Nestlé Skin Health signed additional confidential disclosure agreements
21 with Truinject, including on:

- 22 • 22 October 2016; and
- 23 • April 2016.
- 24

25 264. The 22 October 2016, April 2016, and 7 February 2017 CDAs all contain
26 the following paragraph:

27 6. Invention Rights. All intellectual property and rights
28 worldwide that relate to injection training or testing devices
 and associated peripheries, resulting from Vendor's

1 exposure to, evaluation of and contact with Truinject's
2 Confidential Information disclosed, including but not limited
3 to patents, trade secrets, and copyrights ("IP") shall be the
4 exclusive property of Truinject, regardless of the source of
5 improvements or intellectual property. Vendor and its
6 employees, agents, and independent contractors hereby
7 assign and agree to execute documents confirming the
8 assignment to Truinject of the IP.

9 265. In addition to having Nestlé Skin Health and individuals sign non-
10 disclosure or confidential disclosure agreements, Truinject maintained its property,
11 source code and other information in a locked and secured location. Truinject uses
12 cameras and keycards at its facility to control and monitor who has access to its
13 information.

14 266. For example, when Rogers visited Truinject's facility in February 2017, a
15 camera in plain view of Rogers monitored his use of Kate.

16 267. These measures and others constitute reasonable efforts or measures to
17 protect Truinject's information.

18 **M. Nestlé Skin Health Used Improper Means to Misappropriate**
19 **Truinject's Trade Secrets.**

20 268. Nestlé Skin Health acquired Truinject's trade secrets through
21 misrepresentation or through breach or inducing a party's breach of a duty to maintain
22 secrecy.

23 269. Nestlé Skin Health or its employees signed non-disclosure or confidential
24 disclosure agreements that required Nestlé Skin Health to maintain Truinject's
25 confidential and proprietary information in the strictest of confidences.
26
27
28

1 270. Nestlé Skin Health and its employees further agreed that it would only
2 use Truinject's confidential and proprietary information to evaluate a potential deal
3 between Truinject and Nestlé Skin Health.
4

5 271. Upon information and belief, Nestlé Skin Health breached these
6 agreements by using Truinject's information for purposes other than evaluating a
7 potential deal with Truinject. Nestlé Skin Health used Truinject's information to
8 develop a competing training system and launched that system under the name Holly.
9 Nestlé Skin Health further breached its duty to preserve Truinject's confidential and
10 proprietary information by building and launching LucyLive.
11

12 272. Nestlé Skin Health made misrepresentations that constitute improper
13 means.
14

15 273. Upon information and belief, Nestlé Skin Health was developing Holly
16 and LucyLive no later than 1 January 2016.
17

18 274. On 18 February 2016, Nestlé Skin Health signed a confidential disclosure
19 agreement with Truinject because the parties were "interested in evaluating a possible
20 business or collaborative opportunity with regard to Truinject's proprietary
21 technology."
22

23 275. At the time Nestlé Skin Health entered the agreement, it had no intent to
24 enter or evaluate a possible business relationship.

25 276. On 8 December 2016, Tisckos, a Nestlé Skin Health employee, entered
26 into an agreement with Truinject "in order for the Parties to evaluate the possibility of
27 engaging in a business transaction and/or relationship."
28

1 277. On information and belief, at the time Nestlé Skin Health entered into the
2 agreement, it had no intent to enter or evaluate a possible business relationship.

3 278. On 7 February 2017, Rogers, on behalf of himself and Nestlé Skin
4 Health, signed an agreement with Truinject “in order for the Parties to evaluate the
5 possibility of engaging in a business transaction and/or relationship.”

6 279. At the time Nestlé Skin Health entered into the agreement, it had no
7 intent to enter or evaluate a possible business relationship.

8 280. Nestlé Skin Health used improper means to acquire, use or disclose
9 Truinject’s confidential and proprietary information.

10 281. When Holly was launched in May 2018, Nestlé Skin Health publicly
11 disclosed that BioDigital helped develop Holly.

12 282. Nestlé Skin Health received the name of BioDigital from Truinject
13 pursuant to a non-disclosure agreement. By using BioDigital to develop Holly, Nestlé
14 Skin Health breached the non-disclosure agreement.

15 283. On information and belief, Nestlé Skin Health met with a company called
16 Sector 5 to build LucyLive. Lopez attended the meeting. During the meeting, Lopez
17 asked Sector 5 if it could take what Truinject had done and duplicate it. On
18 information and belief, Nestlé Skin Health and Lopez knew about Truinject’s virtual
19 reality technology when it asked Sector 5 to duplicate Truinject. That same day, Stacy
20 Wright submitted a request for information on Truinject’s website.

21 **N. Defendants’ Infringement and Misappropriation has Harmed Truinject.**

22 284. Defendants’ actions have harmed Truinject.

1 285. Nestlé Skin Health has demonstrated, sold, or used Holly and LucyLive
2 in events in New York, California, Florida, Arizona, Brazil, Mexico, Italy, Slovakia,
3 Canada, Ireland, and Lebanon
4

5 286. At these events, Holly and LucyLive have been widely praised by doctors
6 and medical providers.

7 287. For example, doctors have proclaimed that Holly is the “future” and will
8 revolutionize the aesthetics industry.
9

10 288. Other doctors proclaimed that “simulation tools such as HOLLY, creates
11 a learning environment where novice and intermediate injectors can appreciate depth
12 of anatomy and tissue planes with the need for human injections.”
13

14 289. As a direct and proximate result of Defendants’ actions, Truinject has lost
15 sales and its business reputation has been harmed.

16 290. As one specific example, Dr. Justin Harper, a leading key opinion leader
17 in the aesthetics industry, heard about Truinject. He approached Truinject to learn
18 more about the technology on 8 April 2018.
19

20 291. In May 2018, Dr. Harper posted on Instagram that his clinic was the first
21 in the world to receive Holly for training.

22 292. Because of Nestlé Skin Health’s conduct, Holly was first to market and
23 unfairly and unlawfully harmed competition and Truinject’s reputation and business.
24
25
26
27
28

1 **IV. CLAIMS**

2 **COUNT I**

3 **Breach of Contract – Against Galderma**

4 293. All previous allegations in the Complaint are incorporated herein by
5 reference as if fully set forth in their entirety.

6 294. The CDA, signed on 7 February 2017 by Rogers, is a valid contract
7 between Truinject and Galderma.

8 295. Rogers, as the Head of Global Medical Affairs for Galderma has actual
9 or apparent authority to sign on behalf of Galderma.

10 296. The CDA states the following:

11
12
13 2. The Receiving Party agrees on behalf of itself and
14 its affiliates that it shall disclose Confidential Information
15 only to those of its and its affiliates' respective officers,
16 employees, contractors, representatives, advisors, agents,
17 successors and assigns who need to know such information
18 in furtherance of the Purpose of the Agreement and only to
19 the extent necessary to fulfill the intent and terms of this
20 Agreement, provided that such officers, employees,
21 contractors, representatives, advisors, agents, successors and
22 assigns are already or shall have agreed to be bound by
23 confidentiality obligations with respect to the Confidential
24 Information that are substantially similar to those of this
25 Agreement.

26 * * *

27 3. The Receiving Party shall use the Confidential
28 Information only for the Purpose of the Agreement, shall
hold the disclosure of Confidential Information in
confidence and shall not disclose the Confidential
Information to third parties except as permitted herein.

* * *

4. The Receiving Party agrees to protect the Disclosing Party's Confidential Information with the same degree of care that the Receiving Party employs with respect to its confidential information of like importance in order to prevent the unauthorized use, disclosure, publication or dissemination thereof, but in no event less than a commercially reasonable degree of care.

* * *

6. Invention Rights. All intellectual property and rights worldwide that relate to injection training or testing devices and associated peripherals, resulting from Vendor's exposure to, evaluation of and contact with Truinject's Confidential Information disclosed, including but not limited to patents, trade secrets, and copyrights ("IP") shall be the exclusive property of Truinject, regardless of the source of improvements or intellectual property. Vendor and its employees, agents, and independent contractors hereby assign and agree to execute documents confirming the assignment to Truinject of the IP.

297. Galderma materially breached the CDA by:

- Failing to only use the Confidential Information for the purpose of the Agreement;
- Failing to hold the Confidential Information in confidence;
- Failing to prevent disclosure of the Confidential Information to third parties;
- Failing to protect the Disclosure Party's Confidential Information with the same degree of care that Galderma employs with respect to its own Confidential Information; and
- Failing to assign and agree to execute documents confirming the assignment to Truinject of the IP that was used for all training and peripheries, including Holly, LucyLive and all data associated with those products.

298. Truinject performed all conditions, covenants and promises that could reasonably be performed on their part in accordance with the CDA.

299. As a direct and proximate result of Galderma's breach, Truinject has suffered damages in an amount to be proven at trial.

300. As this cause arises out of contract, Truinject is entitled to its attorney's fees and costs pursuant to the provisions of the CDA, which expressly provides for the recovery of attorneys' fees and costs to the prevailing party in any action for its breach.

COUNT II
Breach of Covenant of Good Faith and Fair Dealing – Against Galderma

301. All previous allegations in the Complaint are incorporated herein by reference as if fully set forth in their entirety.

302. A Covenant of Good Faith and Fair Dealing (the “Covenant”) is implied in every contract, including the 7 February 2017 CDA between Truinject and Galderma.

303. This duty requires that neither party do anything that prevents the other party from receiving the benefits of the agreement.

304. In addition to the aforementioned acts, Galderma breached the Covenant by doing at least the following:

- Galderma misrepresented its intentions in terms of a business relationship between Truinject and Galderma;
- Galderma misrepresented that it did not have the capability or capacity to compete with Truinject; and
- Galderma actively solicited proprietary information and trade secrets from Truinject in order to advance their own competing project, Holly.

* * *

3. **Galderma's Covenant Not to Compete with TruInject.** In exchange for the disclosure by TruInject of Confidential Information relating to the TruInject System, Galderma agrees that for the period of nine (9) months commencing on the Effective Date, Galderma shall not, and shall not cause its Representatives, to directly or indirectly: (i) enter the market with any product or system that is substantially similar in functionality as the TruInject System ("Alternative System"); (ii) engage in development of any Alternative System. . ."

* * *

5. **Confidentiality.** During the Exclusivity Period, either Party (a "Disclosing party") may furnish the other Party (a "Receiving Party") with certain confidential and/or proprietary material, including, but not limited to, files, records, documents, pictures, videos, and drawings ("Confidential Information"). Accordingly, it is hereby understood and agreed by each Party that all Confidential Information received by such Party, directly or indirectly, from the other Party in connection with this Agreement or the Proposed Transaction, shall be held in strictest confidence by such Party. . . . The obligations stated in this Section 5 shall remain in full force and effect after the expiration of the Exclusivity Period for a period of three (3) years.

312. Galderma materially breached the Exclusive Negotiation Agreement by:
- Failing to make the final installment payment of \$25,000 within ninety (90) days after the effective date;
 - Engaging in the development of an Alternative System, Holly, before the expiration of the non-compete provisions; and
 - Failing to hold Truinject's Confidential Information in "strictest confidence" for a period of three (3) years."

1 confidence and shall not disclose the Confidential
2 Information to third parties except as permitted herein.

3 * * *

4 4. The Receiving Party agrees to protect the
5 Disclosing Party's Confidential Information with the same
6 degree of care that the Receiving Party employs with respect
7 to its confidential information of like importance in order to
8 prevent the unauthorized use, disclosure, publication or
9 dissemination thereof, but in no event less than a
commercially reasonable degree of care.

10 * * *

11 6. Invention Rights. All intellectual property and
12 rights worldwide that relate to injection training or testing
13 devices and associated peripherals, resulting from Vendor's
14 exposure to, evaluation of and contact with Truinject's
15 Confidential Information disclosed, including but not limited
16 to patents, trade secrets, and copyrights ("IP") shall be the
17 exclusive property of Truinject, regardless of the source of
18 improvements or intellectual property. Vendor and its
employees, agents, and independent contractors hereby
assign and agree to execute documents confirming the
assignment to Truinject of the IP.

19 325. Rogers materially breached the CDA by:

- 20 • Failing to only use the Confidential Information for the Purpose of
21 the Agreement;
- 22 • Failing to hold the disclosure of Confidential Information in
23 confidence;
- 24 • Failing to prevent disclosure of the Confidential Information to
25 third parties;
- 26 • Failing to protect the Disclosure Party's Confidential Information
27 with the same degree of care that Galderma employs with respect
28 to its own Confidential Information; and

- Failing to assign and agree to execute documents confirming the assignment to Truinject of the IP that was used for all training and peripheries, including Holly, LucyLive and all data associated with those products.

326. Truinject performed all conditions, covenants and promises that could reasonably be performed on their part in accordance with the CDA.

327. As a direct and proximate result of Rogers' breach, Truinject has suffered damages in an amount to be proven at trial.

328. As this matter arises out of a contract and that allows for a prevailing party to recover its attorney's fees and costs, Truinject is entitled to its attorney's fees and costs.

COUNT VI

Breach of Covenant of Good Faith and Fair Dealing – Against Dr. John Rogers

329. All previous allegations in the Complaint are incorporated herein by reference as if fully set forth in their entirety.

330. The Covenant is implied in every contract, including the CDA between Truinject and Rogers.

331. This duty requires that neither party do anything that prevents the other party from receiving the benefits of the agreement.

332. In addition to the aforementioned acts, Rogers breached the Covenant by doing at least the following:

- Rogers misrepresented his intentions and reasons for viewing Truinject's technology; and
- Rogers actively solicited proprietary information and trade secrets from Truinject in order to advance Galderma's competing project, Holly.

1 333. In doing so, Rogers was unfaithful to the purpose of the CDA and the
2 Covenant.

3 334. As a result of Roger's breach of the Covenant, Truinject has suffered and
4 continues to suffer actual harm and consequential damages in an amount to be proven
5 at trial.

6 335. This claim arises out of contract and Truinject is entitled to its attorney's
7 fees and costs as provided in the CDA.

8
9
10 **COUNT VII**
11 **Deceit – Against Galderma**

12 336. All previous allegations in the Complaint are incorporated herein by
13 reference as if fully set forth in their entirety.

14 337. During the course of negotiations between Nestlé Skin Health and
15 Truinject, Galderma made several misrepresentations, knowing they were false, and
16 intended to induce Truinject to rely on the misrepresentation and share its confidential
17 information with Galderma.

18 338. Galderma's misrepresentations included the following:
19

- 20
- 21 • On 21 October 2014, Galderma's Per Lango falsely represented that
22 Galderma was interested in buying the global rights to Truinject's
23 technology for dermatological and aesthetic uses with Truinject retaining
24 the right to use its technology for therapeutic purposes;
 - 25 • On 4 November 2014, Galderma's Scott McCrea falsely stressed and
26 cautioned Truinject that Allergan would steal Truinject's technology and
27 then falsely represented that Galderma would not steal Truinject's
28 proprietary information and trade secrets;
 - On 16 December 2014, Galderma's Per Lango falsely represented to
Truinject that Galderma was interested in an exclusivity agreement with a
term of one hundred (100) years;

- 1 • On 16 December 2014, Galderma's Per Lango indicated that Galderma
2 was willing to make a \$50 million upfront payment with lifetime
3 royalties for an exclusivity agreement with Truinject;
- 4 • On 16 December 2014, Nestlé Skin Health falsely represented that Nestlé
5 Skin Health would "go through the process as explained today";
- 6 • On 5 March 2016, Galderma's Stuart Raetzman falsely represented that
7 Galderma was interested in licensing Truinject's technology, interested in
8 a global deal with Truinject, and wanted the timeline to move quickly;
- 9 • On 5 March 2016, Galderma's Stuart Raetzman also falsely represented
10 that Galderma did not have the core competence to recreate what
11 Truinject had done and wouldn't even know where to begin. Raetzman
12 falsely represented that Galderma would prefer to work with a company
13 like Truinject who lives, eats, and breathes the technology;
- 14 • On 14 December 2016, Galderma's Dr. John Rogers falsely represented
15 that Kate would be used for point of sale with Galderma; and
- 16 • On and around 7 February 2017, Rogers represented that he was
17 inspecting Kate for purposes of evaluating Nestlé Skin Health's interest
18 in Kate.

19 339. At the time Galderma made these misrepresentations, Galderma knew the
20 statements were false. Alternatively, Galderma made these misrepresentations
21 recklessly and without regard for their truth.

22 340. Galderma's true purpose in making these misrepresentations was to
23 induce reliance. Galderma needed and desired Truinject's proprietary information and
24 trade secrets in order to develop Holly. As such, it made the misrepresentations to
25 foster confidence and trust by Truinject in Galderma and thus, induce Truinject to
26 share its trade secrets, confidential information, technology in development, and
27 confidential information.

1 341. Truinject justifiably relied on Galderma's misrepresentations and was
2 damaged as a result.

3 342. Had Truinject known of the falsity of Galderma's representations and
4 Galderma's true intentions, it would have never shared its confidential information
5 with Galderma.

6 343. Additionally, Galderma concealed or suppressed material facts in order to
7 induce Truinject into sharing its proprietary information and trade secrets. For
8 example, Galderma concealed or suppressed the fact that it was working on Holly and
9 LucyLive to directly compete with the Truinject Platform. This fact would have been
10 crucial to Truinject's decision to share proprietary information and trade secrets with
11 Galderma, especially when Truinject met with Nestlé Skin Health's CEO in
12 Washington, D.C. in 2016 and allowed Rogers to evaluate Kate in 2017.

13 344. Galderma engaged in the fraudulent and deceitful activities as described
14 herein without the knowledge or consent of Truinject who reasonably relied upon
15 Defendants' false representations.

16 345. As a result of Galderma's misrepresentations and omissions, Truinject
17 has been damaged in an amount to be proven at trial.

18 346. Galderma's conduct was intentional, willful and malicious and was
19 intended to cause injury to Truinject. Truinject is therefore entitled to an award of
20 exemplary and punitive damages in an amount to be determined at the time of trial.

COUNT VIII
Tortious Interference with Business Expectancy/Prospective Economic
Advantage – Against Galderma

347. All previous allegations in the Complaint are incorporated herein by reference as if fully set forth in their entirety.

348. During the time Truinject was initially approached by Galderma, Truinject was actively pitching the Truinject Platform to several large pharmaceutical companies – all of which are direct competitors to Galderma.

349. Truinject had scheduled several meetings with these other companies and had established that the companies were interested in pursuing an economic relationship with Truinject.

350. Nestlé Skin Health was aware of the meetings and Truinject's economic relationship with these companies.

351. Nestlé Skin Health was also aware that, in order to properly and effectively launch the Truinject Platform, Truinject was dependent on developing a relationship with Nestlé Skin Health or one of Nestlé Skin Health's competitors.

352. Knowing Truinject's needs, Nestlé Skin Health intentionally interfered with Truinject's scheduled meetings by requiring Truinject to cancel the meetings and enter into the Exclusive Negotiation Agreement with Galderma. Galderma misrepresented its intentions regarding a potential relationship with Truinject to induce Truinject to cancel the meetings.

353. Relying on Galderma's misrepresentations, which Truinject believed to be true at the time they were made, Truinject cancelled its meetings with potential business partners to pursue a relationship with Galderma.

363. Truinject is entitled to recover from Nestlé Skin Health the damages sustained by Truinject as a result of Nestlé Skin Health's infringement in an amount to be determined at trial and, in any event, no less than a reasonable royalty under 35 U.S.C. § 284.

364. Truinject has suffered irreparable harm as a result of Nestlé Skin Health's infringement of the '836 patent. Unless Nestlé Skin Health is enjoined by this Court from continuing its infringement of the '836 patent, Truinject will continue to suffer irreparable harm and impairment of the value of its patent rights.

COUNT X
Trade Secret Misappropriation Under The Defend Trade Secret Act
(18 U.S.C. § 1836)

365. All previous allegations in the Complaint are incorporated herein by reference as if fully set forth in their entirety.

366. Truinject has information that was secret that derived actual or potential independent economic value because it was kept secret.

367. Truinject made reasonable efforts to keep the information secret.

368. Nestlé Skin Health misappropriated Truinject's information through improper means.

369. Truinject has been harmed by Nestlé Skin Health's misappropriation.

COUNT XI
Trade Dress Infringement (15 U.S.C. § 1125)

370. All previous allegations in the Complaint are incorporated herein by reference as if fully set forth in their entirety.

371. Truinject's Kate's trade dress is distinctive.

1 372. Truinject owns all rights to Kate's trade dress.

2 373. Kate's trade dress is nonfunctional.

3 374. Nestlé Skin Health's Holly uses a trade dress similar to Truinject's Kate
4 without the consent of Truinject.

5
6 375. Nestlé Skin Health Holly has or is likely to cause confusion among
7 ordinary consumers as to the source, sponsorship, affiliation, or approval of Holly's
8 trade dress.

9
10 376. Truinject has been harmed or will be harmed by Nestlé Skin Health
11 infringing Truinject's trade dress.

12 377. Truinject is entitled to recover its damages for Nestlé Skin Health's
13 infringement including, but not limited to, disgorgement of Nestlé Skin Health's
14 profits.

15
16 378. Truinject has been and will continue to be irreparably harmed by Nestlé
17 Skin Health's trade dress infringement unless the Court enjoins Nestlé Skin Health's
18 infringement.

19
20 **COUNT XII**

21 **Trade Secret Misappropriation (Cal. Civ. Code 3426)**

22 379. All previous allegations in the Complaint are incorporated herein by
23 reference as if fully set forth in their entirety.

24 380. Truinject has information that was secret that derived actual or potential
25 independent economic value because it was kept secret.

26
27 381. Truinject made reasonable efforts to keep the information secret.

1 382. Nestlé Skin Health misappropriated Truinject's information through
2 improper means.

3 383. Truinject has been harmed by Nestlé Skin Health's misappropriation.
4

5 **COUNT XIII**
6 **Unfair Competition (Cal. Bus. and Prof. Code 17200)**

7 384. All previous allegations in the Complaint are incorporated herein by
8 reference as if fully set forth in their entirety.

9 385. The acts and conduct of Galderma and Nestlé Skin Health as alleged in
10 this Complaint are violations of California Business and Professions Code § 17200.
11 Specifically, the Defendants actions constitute trade dress infringement, unlawful
12 passing off and unfair competition under California common law, and as a result they
13 constitute an unlawful business practice in violation of Cal. Bus. & Prof. Code §
14 17200.
15

16 386. In addition, Galderma and Nestlé Skin Health violated federal law for
17 patent infringement, trade secret misappropriation and trade dress infringement, and as
18 a result, they constitute an unlawful business practice in violation of Cal. Bus. & Prof.
19 Code § 17200.
20

21 387. Defendants' acts of unlawful competition have cause harm to
22 competition, to consumers, and to its competitors. Defendants' acts of unlawful
23 competition have proximately caused Truinject to suffer injury in fact and loss of
24 money and/or property in an amount to be proven at trial. Defendants' acts of
25 unlawful competition also have caused irreparable and incalculable injury to
26 Truinject, to its shareholders, and to the Kate trade dress and to the business and
27
28

1 goodwill represented thereby, and unless enjoined, could cause further irreparable and
2 incalculable injury, whereby Truinject has no adequate remedy at law.

3 388. The acts and conduct of Defendants as alleged above in this Complaint
4 constitute unlawful, unfair, and/or fraudulent business acts or practices as defined by
5 Cal. Bus. & Prof. Code § 17200 *et seq.*

7 **COUNT XIV**

8 **Deceit as to Nestlé Skin Health (California Civil Code 1710)**

9 389. All previous allegations in the Complaint are incorporated herein by
10 reference as if fully set forth in their entirety.

11 390. Upon information and belief, Nestlé Skin Health was developing Holly
12 and LucyLive as early as 2015.

13 391. Nevertheless, Nestlé Skin Health represented to Truinject that it was
14 interested in acquiring or partnering with Truinject, and that Nestlé Skin Health would
15 protect Truinject's information. Nestlé Skin Health made the following
16 representations or implications, among others:

- 17 • On 23 February 2016, Nestlé Skin Health and Truinject signed a
18 confidential disclosure agreement in connection with a "evaluating a
19 possible business or collaborative opportunity with regard to Truinject's
20 proprietary technology."
- 21 • On 5 March 2016, Stuart Raetzman said that Nestlé Skin Health had no
22 core competency to recreate Truinject's technology;
- 23 • Raetzman said that approval from John Rogers was the final step before
24 completing a deal with Truinject;
- 25 • On 8 December 2016, Nestlé Skin Health sent sales representatives to go
26 to Truinject's offices to gather information to present the technology to
27 Nestlé SHIELD center;
28

- 1 • On 7 February 2017, John Rogers went to Truinject to evaluate the
- 2 Truinject Platform; and
- 3 • On 7 February 2017, Nestlé Skin Health signed a confidential disclosure
- 4 agreement with Truinject that limited Nestlé Skin Health's use of
- 5 Truinject's information to evaluating a possible "business transaction
- 6 and/or relationship."

7 392. Nestlé Skin Health knew these statements were false. Nestlé Skin Health

8 intended to and did deceive Truinject to alter its position.

9 393. Truinject relied on and altered its position based on Nestlé Skin Health's

10 suggestion, assertion, or suppression of a fact.

11 394. Truinject's reliance was on Nestlé Skin Health's statement was

12 reasonable.

13 395. Had Truinject known of the falsity of Nestlé Skin Health's

14 representations and Nestlé Skin Health's true intentions, it would have never shared

15 its confidential information with Nestlé Skin Health.

16 396. Truinject was injured by Nestlé Skin Health's deceit.

17 397. Truinject's reliance on Nestlé Skin Health's statement was a substantial

18 factor in causing its harm.

19 398. As a result of Nestlé Skin Health's deceit, Truinject has been damaged in

20 an amount to be proven at trial.

21 399. Nestlé Skin Health's conduct was intentional, willful and malicious and

22 was intended to cause injury to Truinject. Truinject is therefore entitled to an award

23 of exemplary and punitive damages in an amount to be determined at the time of trial.

COUNT XV

Deceit as to Rogers (California Civil Code 1710)

400. All previous allegations in the Complaint are incorporated herein by reference as if fully set forth in their entirety.

401. Upon information and belief, Nestlé Skin Health was developing Holly and LucyLive as early as 2015.

402. John Rogers, knowing that Nestlé Skin Health was actively developing Holly, went to Truinject on 7 February 2017 to examine Kate and discuss the technology with Truinject. Rogers said that he was there regarding a potential deal between Nestlé Skin Health and Truinject. Rogers represented that he was inspecting Kate for purposes of evaluating Nestlé Skin Health's interest in Kate. Based on Roger's representation and signing a confidential disclosure agreement, Truinject allowed Rogers to see and use Kate and answered Roger's questions about the technology. In addition, on 14 December 2016, Galderma's Dr. John Rogers falsely represented that Kate would be used for point of sale with Galderma.

403. Rogers knew these statements were false.

404. Rogers intended to and did deceive Truinject to alter its position.

405. Truinject relied on and altered its position based on Roger's suggestion, assertion, or suppression of a fact.

406. Truinject's reliance was on Rogers's statement was reasonable.

407. Had Truinject known of the falsity of Rogers' representations and his true intentions, it would have never shared its confidential information with Rogers or let Rogers into its office to see and use Kate.

408. Truinject was injured by Roger's deceit.

409. Truinject's reliance on Rogers's statement was a substantial factor in causing its harm.

410. As a result of Rogers' deceit, Truinject has been damaged in an amount to be proven at trial.

411. Rogers' conduct was intentional, willful and malicious and was intended to cause injury to Truinject. Truinject is therefore entitled to an award of exemplary and punitive damages in an amount to be determined at the time of trial.

COUNT XVI

Deceit as to Raetzman (California Civil Code 1710)

412. All previous allegations in the Complaint are incorporated herein by reference as if fully set forth in their entirety.

413. Upon information and belief, Nestlé Skin Health was developing Holly and LucyLive as early as 2015.

414. Stuart Raetzman, as the CEO of Nestlé Skin Health knew it was actively developing Holly, Raetzman told Truinject on 5 March 2016 that John Rogers needed to sign off on Truinject's technology for the deal with Truinject to happen. Raetzman sent John Rogers to Truinject on 7 February 2017 under the auspices of examining Kate and Truinject's technology for a potential deal between Nestlé Skin Health and Truinject. Raetzman knew these statements were false.

415. In addition Raetzman made the following the statements that he knew were false:

- On 5 March 2016, Galderma's Stuart Raetzman falsely represented that Galderma was interested in licensing Truinject's technology, interested in

1 a global deal with Truinject, and wanted the timeline to move quickly;
2 and

- 3 • On 5 March 2016, Galderma's Stuart Raetzman also falsely represented
4 that Galderma did not have the core competence to recreate what
5 Truinject had done and wouldn't even know where to begin. Raetzman
6 falsely represented that Galderma would prefer to work with a company
like Truinject who lives, eats, and breathes the technology.

7 416. Raetzman intended to and did deceive Truinject to alter its position.

8 417. Truinject relied on and altered its position based on Raetzman's
9 suggestion, assertion, or suppression of a fact.
10

11 418. Truinject's reliance on Raetzman was reasonable.

12 419. Had Truinject known of the falsity of Raetzman's representations and his
13 true intentions, it would have never shared its confidential information with Galderma
14 or let Rogers into its office to see and use Kate.
15

16 420. Truinject was injured by Raetzman's deceit.

17 421. Truinject's reliance on Raetzman's statement was a substantial factor in
18 causing it harm.
19

20 422. As a result of Raetzman's deceit, Truinject has been damaged in an
21 amount to be proven at trial.

22 423. Raetzman's conduct was intentional, willful and malicious and was
23 intended to cause injury to Truinject. Truinject is therefore entitled to an award of
24 exemplary and punitive damages in an amount to be determined at the time of trial.
25

26 **COUNT XVII**

27 **Deceit as to Lopez (California Civil Code 1710)**

28 424. All previous allegations in the Complaint are incorporated herein by
reference as if fully set forth in their entirety.

1 425. Upon information and belief, Nestlé Skin Health was developing Holly
2 and LucyLive as early as 2015.

3 426. Tiphany Lopez knew that Nestlé Skin Health was actively developing
4 Holly. Lopez called Truinject in December 2016 to discuss presenting Truinject to
5 Nestlé SHIELD for a potential deal. Lopez instructed Chad Tiskos to sign a
6 confidential disclosure agreement with Truinject. Lopez knew these statements were
7 false when she made them.
8

9 427. Lopez intended to and did deceive Truinject to alter its position by
10 having Tiskos go to Truinject on 8 December 2016 to learn more about the Truinject
11 Platform even though Nestlé Skin Health was developing Holly.
12

13 428. Truinject altered its position based on Lopez's suggestion, assertion, or
14 suppression of a fact.
15

16 429. Had Truinject known of the falsity of Lopez's representations and her
17 true intentions, it would have never shared its confidential information with her or
18 Tiskos or let Tiskos into its office to see Kate.
19

20 430. Truinject was injured by Lopez's deceit.

21 431. As a result of Lopez's deceit, Truinject has been damaged in an amount
22 to be proven at trial.
23

24 432. Lopez's conduct was intentional, willful and malicious and was intended
25 to cause injury to Truinject. Truinject is therefore entitled to an award of exemplary
26 and punitive damages in an amount to be determined at the time of trial.
27
28

COUNT XVIII

Deceit as to McCrea (California Civil Code 1710)

433. All previous allegations in the Complaint are incorporated herein by reference as if fully set forth in their entirety.

434. Upon information and belief, Nestlé Skin Health was developing Holly and LucyLive as early as 2015.

435. Scott McCrea knew that Nestlé Skin Health was actively developing Holly.

436. On 5 March 2016, McCrea suggested and represented that Nestlé Skin Health was interested in doing a deal with Truinject. McCrea asked questions about Truinject's syringe. McCrea knew these statements were false.

437. Truinject altered its position based on McCrea's suggestion, assertion, or suppression of a fact.

438. Had Truinject known of the falsity of McCrea's representations and his true intentions, it would have never shared its confidential information with him.

439. Truinject was injured by McCrea's deceit.

440. As a result of McCrea's deceit, Truinject has been damaged in an amount to be proven at trial.

441. McCrea's conduct was intentional, willful and malicious and was intended to cause injury to Truinject. Truinject is therefore entitled to an award of exemplary and punitive damages in an amount to be determined at the time of trial.

COUNT XIX**Aiding and Abetting Fraud and Deceit as to Lask**

442. All previous allegations in the Complaint are incorporated herein by reference as if fully set forth in their entirety.

443. Upon information and belief, Nestlé Skin Health was developing Holly and LucyLive as early as 2015.

444. Alisa Lask, as a vice-president of Nestlé Skin Health for North America, was and is involved with all business decisions, including meetings between Truinject and Nestlé Skin Health and its employees. Lask masterminded and had actual knowledge of the fraudulent scheme to acquire Truinject's confidential information and trade secrets to build a competing product, Holly.

445. Lask knew that:

- Raetzman fraudulently represented that Nestlé Skin Health was interested in partnering with or acquiring Truinject;
- Rogers fraudulently represented that he was evaluating Kate on 7 February 2017;
- McCrea fraudulently represented that Nestlé Skin Health was going to provide a term sheet to Truinject; and
- Lopez fraudulently represented that she was presenting Truinject to Nestlé Skin Health's SHIELD for a potential partnership with or acquisition of Truinject.

446. Lask knew that the foregoing conduct was to be undertaken in an effort to obtain Truinject's confidential information to build Holly. Lask intended that Truinject would alter its position based on Raetzman's, Rogers's, McCrea's and Lopez's suggestions, assertions, or suppressions of a fact and, in reliance, share its confidential information with them.

1 447. Had Truinject known of the falsity of Raetzman's, Rogers's, McCrea's
2 and Lopez's representations and his/her true intentions, it would have never shared its
3 confidential information with him/her.

4
5 448. Lask provided substantial assistance to Raetzman, Rogers, McCrea and
6 Lopez in defrauding Truinject, including:

- 7 • Selecting and directing sales representatives, such as Lopez, to approach
8 Truinject about presenting Truinject to SHIELD;
- 9 • In late 2016, directing Lopez and her team to call Truinject and gather
10 Truinject's confidential information;
- 11 • In early 2017, directing Rogers to meet with Truinject under the guise of
12 evaluating Kate for a deal with Truinject; and, based on the information
13 obtained; and
- 14 • In 2016 and 2017, directing the design team to manufacture Holly based
15 on the misappropriated confidential information and trade secrets.

16 449. As a result of Lask's aiding and abetting and specifically directing
17 Raetzman, Rogers, McCrea and Lopez deceit, Truinject has been damaged in an
18 amount to be proven at trial.

19 450. Lask's conduct was intentional, willful and malicious and was intended
20 to cause injury to Truinject. Truinject is therefore entitled to an award of exemplary
21 and punitive damages in an amount to be determined at the time of trial.

22
23 **V. PRAYER FOR RELIEF**

24 WHEREFORE, Truinject prays for relief as follows:

25 A. A judgment that Defendants have breached one or more contracts with
26 Truinject;

27
28 B. A judgment that Defendants have infringed Truinject's asserted patent;

- 1 C. A judgment that Defendants have infringed Truinject's trade dress;
- 2 D. A judgment that Defendants have misappropriated Truinject's trade secrets;
- 3 E. A judgment that Defendants committed deceit;
- 4 F. A judgment that Defendants tortuously interfered with Truinject's business
- 5 expectancy;
- 6
- 7 G. A judgment that Defendants have engaged in unfair and unlawful competition
- 8 in violation of California Business & Professions Code § 17200 *et seq.*;
- 9
- 10 H. A judgment awarding general, actual, compensatory and consequential
- 11 damages in an amount to be determined at the time of trial;
- 12
- 13 I. A judgment awarding exemplary and punitive damages due to the intentional,
- 14 willful, and malicious misconduct;
- 15
- 16 J. An order and judgment permanently enjoining Defendants and its officers,
- 17 directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or
- 18 in concert with them, and their parents, subsidiaries, divisions, successors and assigns, from
- 19 further acts of infringement of Truinject's asserted patents, trade dress, and trade secrets;
- 20
- 21 K. A judgment ordering the disgorgement and restitution of all earnings, profits,
- 22 compensation, and other ill-gotten gains obtained as a result of the unlawful actions and
- 23 practices of Defendants;
- 24
- 25 L. A judgment awarding Truinject all damages adequate to compensate for
- 26 Defendants' infringement of Truinject's patents and trade dress, Defendants'
- 27 misappropriation of trade secrets; Defendants' breaches of contracts; Defendants' breach of
- 28

1 the covenants of good faith and fair dealing; Defendants' tortious interference; and
2 Defendants' fraud;

3 M. A judgment awarding Truinject all damages including treble damages based on
4 any infringement found to be willful, pursuant to 35 U.S.C. § 284, together with prejudgment
5 interest;
6

7 N. A judgment awarding Truinject its costs pursuant to 35 U.S.C. § 284;

8 O. A judgment finding that this case is exceptional and awarding Truinject its
9 attorney's fees in accordance with 35 U.S.C. § 285 and 15 U.S.C. § 1117;
10

11 P. A judgment awarding Truinject's Nestlé Skin Health's profits under 15 U.S.C.
12 § 1117;
13

14 Q. A judgment awarding Truinject monetary compensation for the damage
15 suffered under 15 U.S.C. § 1117;

16 R. A judgment awarding Truinject its costs pursuant to 15 U.S.C. § 1117;

17 S. A judgment awarding Truinject treble damages pursuant to 15 U.S.C. § 1117;

18 T. A judgment awarding Truinject its actual damages caused by Defendants' trade
19 secret misappropriation and in any event no less than a reasonable royalty under 18 U.S.C. §
20 1836 and California Civil Code § 3426.3;
21

22 U. A judgment awarding Truinject any unjust enrichment received by Defendants
23 and caused by Defendants' trade secret misappropriation under 18 U.S.C. § 1836 and
24 California Civil Code § 3426.3;
25

26 V. An order finding Defendants' misappropriation is willful and malicious under
27 18 U.S.C. § 1836 and California Civil Code § 3426.3;
28

1 W. A judgment awarding Truinject double any damages for trade secret
2 misappropriation under 18 U.S.C. § 1836 and California Civil Code § 3426.3;

3 X. A order requiring Defendants to pay Truinject's general, special, and actual
4 and statutory damages;
5

6 Y. A judgment awarding Truinject punitive damages on account of Defendants'
7 malicious conduct;
8

9 Z. A judgment awarding Truinject its costs and attorneys' fees incurred by
10 Truinject in prosecuting this action;

11 AA. A judgment assigning all of Nestlé Skin Health's intellectual property resulting
12 from Nestlé Skin Health exposure to, evaluation of and contact with Truinject's Confidential
13 Information disclosed; and
14

15 BB. Any other remedy to which Truinject may be entitled to or the Court deems
16 just and proper.
17

18 **VI. JURY DEMAND**

19 Truinject requests this case be tried to a jury on all issues triable by a jury under
20 Federal Rule of Civil Procedure 38.
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1
2 DATED this 12th day of October 2018
3

4 **BEUS GILBERT PLLC**

5
6
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