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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PACIFIC BIOSCIENCE
LABORATORIES, INC., a Washington
corporation,

Plaintiff,

v.

NUTRA-LUXE M.D., LLC, a Florida
limited liability company,

Defendant.

No.

COMPLAINT FOR PATENT
INFRINGEMENT

JURY DEMAND

Plaintiff Pacific Bioscience Laboratories, Inc. (“PBL”), for its Complaint for Patent Infringement against Defendant Nutra-Luxe M.D., LLC, (“NutraLuxe”), hereby alleges, by and through its attorney, on personal knowledge as to its own actions and on information and belief as to the actions of others, as follows:

I. INTRODUCTION

1. Plaintiff PBL dramatically changed the market for skin cleansing products when it introduced its innovative Clarisonic Sonic Skin Cleansing System (the “Clarisonic System”) in 2004. The Clarisonic System employs motion and forces at sonic frequencies to cleanse, soften, and smooth skin.

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2. Prior to the introduction of the Clarisonic System, there were no sonic facial cleansing devices on the market. PBL created today’s market for such products.

3. The Clarisonic System has been an enormous success and has achieved national recognition and awards. In 2010, PBL was named one of Inc. 500’s Fastest Growing Private Companies.

4. PBL received broad protection for its innovations, including utility and design patents. However, PBL’s innovations have been the subject of widespread imitation by others, who have attempted to capitalize on PBL’s success.

5. Defendant NutraLuxe is one such imitator. After seeing PBL’s success, NutraLuxe introduced its NutraSonic 4-Speed facial cleansing system (“NutraSonic 4-Speed”) and NutraSonic Travel/Companion facial cleansing system (“NutraSonic Travel”). NutraLuxe has made the NutraSonic 4-Speed and NutraSonic Travel work and look like PBL’s products, thereby infringing PBL’s patents.

6. NutraLuxe sells or has sold the NutraSonic 4-Speed and NutraSonic Travel throughout the United States at least through Amazon.com, <http://www.amazon.com/NutraSonic-1020-Professional-Cleansing/dp/B002RZKFAQ/> and <http://www.amazon.com/NutraSonic-0046-Companion-Professional/dp/B004UOTVG6/>.

7. PBL seeks to stop NutraLuxe’s infringing conduct and obtain compensation for the violations that have occurred thus far.

II. PARTIES

8. Plaintiff PBL is a Washington corporation incorporated in January 2001, with its principal place of business at 17275 NE 67th Court, Redmond, WA 98052.

9. In December 2011, PBL was acquired by L’Oréal S.A., a French société anonyme (“L’Oréal”). L’Oréal is the owner, and PBL is the exclusive U.S. licensee with the right, *inter alia*, to bring suit, of protectable patent rights as described herein.

1 10. On information and belief, Nutra-Luxe M.D., LLC is a limited liability company
2 organized and existing under the laws of Florida with its principal place of business at 6835
3 International Center Blvd. Unit 5, Fort Myers, FL 33912.
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7 11. On information and belief, NutraLuxe manufactures, markets, and sells electric
8 skin care devices under the name NutraSonic.
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11 **III. JURISDICTION AND VENUE**

12 12. This case arises under the patent laws of the United States, 35 U.S.C. § 101 et seq.
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14 13. The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C.
15 §§ 1331, 1332, and 1338.
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18 14. PBL has its principal place of business in this District, and makes its Clarisonic
19 devices available for sale in this District.
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21 15. This Court has personal jurisdiction over NutraLuxe because, on information and
22 belief, NutraLuxe has committed and continues to commit the acts violating PBL’s intellectual
23 property described herein within the State of Washington, including in this District, and places
24 infringing products into the stream of commerce, with the knowledge or understanding that such
25 products are sold in the State of Washington, including in this District.
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32 16. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), (c), and 28
33 U.S.C. § 1400(b) because, *inter alia*, PBL’s principal place of business is within this District and
34 PBL suffered harm in this District, because a substantial part of the events giving rise to the
35 claims against NutraLuxe occurred and are occurring in this District, and because NutraLuxe
36 transacts business within this District and offers for sale in this District products that infringe
37 PBL’s intellectual property.
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44 **IV. BACKGROUND**

45 17. Since the early 2000s, PBL has designed, developed, manufactured, marketed,
46 and sold in the United States (and worldwide) its innovative Clarisonic System, which is a line of
47 skin care products including a number of Sonic Cleansing Brushes and accessories, the
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1 Clarisonic Opal® Sonic Infusion System, and targeted treatment solutions. Examples of
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3 Clarisonic products are pictured below:
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20 18. The Clarisonic System was developed by PBL over many years at great expense
21 and effort and represents a breakthrough in devices and methods for treatment of early stage acne
22 and for effective cleansing of skin. Those devices and methods employ motion and forces at
23 sonic frequencies to cleanse, soften, and smooth skin. They alleviate clogged pores and remove
24 debris from skin more gently and effectively than alternative devices or methods, such as manual
25 cleansing.
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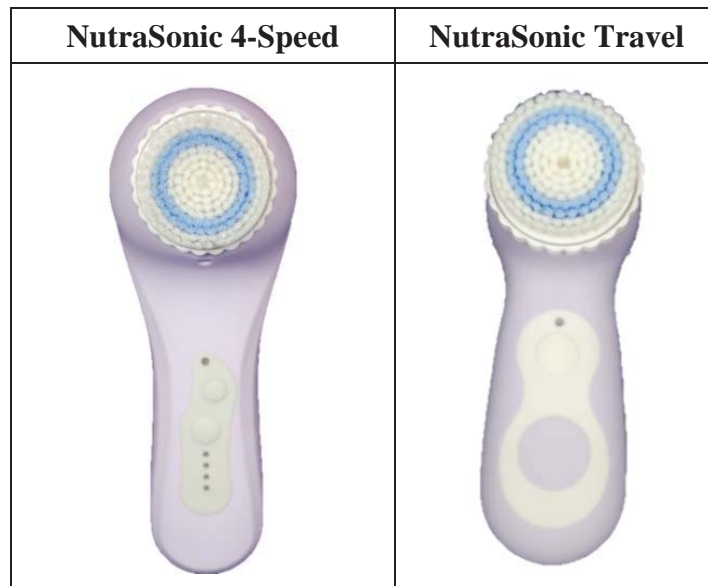
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32 19. The innovations embodied in the Clarisonic System are protected by numerous
33 United States and foreign intellectual property rights, including rights deriving from patents.
34

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36 20. Prior to the introduction of the Clarisonic System, there were no sonic facial
37 cleansing devices on the market. Indeed, before development of the Clarisonic System, no
38 market existed for sonic skin care devices. PBL expended considerable resources to create the
39 sonic skin care market and to educate the public regarding facial cleansing, as well as to market
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44 its sonic facial cleansing devices.

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46 21. Since its introduction, the Clarisonic System has become widely acclaimed by
47 professionals and consumers, and has garnered many media awards from sources such as
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51 authoritative magazines in the beauty industry, Oprah's Favorite Things in 2007 on the Oprah

1 Winfrey Show, Best of Sephora in 2007 and 2008, and QVC Customer Choice in 2008, 2009,
2
3 and 2010.

4 22. The success of the Clarisonic System has spurred a large number of imitations,
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6 such as NutraLuxe's NutraSonic 4-Speed and NutraSonic Travel, pictured below.
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28 **V. PBL'S PATENTS**

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30 **U.S. Patent No. 7,320,691**

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32 23. U.S. Patent No. 7,320,691 ("the '691 patent") issued on January 22, 2008, and is
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34 entitled "Apparatus and Method for Acoustic/Mechanical Treatment of Early Stage Acne." The
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36 inventors are Kenneth A. Pilcher, David Giuliani, and Stephen M. Meginniss.

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38 24. A copy of the '691 patent is attached as Exhibit 1.

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40 25. PBL is the exclusive licensee having all substantial rights in and to the '691
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42 patent, with the rights to bring enforcement actions for past, present and future infringement and
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44 to collect damages for past infringement.

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46 26. The '691 patent has been reexamined pursuant to Reexamination Request Nos.
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48 90/009,797 and 90/011,343. The patentability of all of the originally issued claims 1-52 of the
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1 '691 patent was confirmed pursuant to these reexamination requests, and claims 53-64 were
2 added. A reexamination certificate issued on September 20, 2011. *See* Exhibit 1.
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4 27. The '691 patent is valid, enforceable, and currently in full force and effect.
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6 **U.S. Patent No. D523,809**
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8 28. U.S. Patent No. D523,809 (“the D’809 patent”) issued on June 27, 2006, and is
9 entitled “Charger for an Electric Skin Brush.” The inventors are Dane M. Roth, Robert E.
10 Akridge, and Kenneth A. Pilcher.
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12 29. A copy of the D’809 patent is attached as Exhibit 2.
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14 30. PBL is the exclusive licensee having all substantial rights in and to the D’809
15 patent, with the rights to bring enforcement actions for past, present and future infringement and
16 to collect damages for past infringement.
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18 31. The D’809 patent is valid, enforceable, and currently in full force and effect.
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20 **CLAIM I – INFRINGEMENT OF THE '691 PATENT**
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22 32. PBL hereby incorporates and realleges Paragraphs 1 - 31 as if fully set forth
23 herein.
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25 33. NutraLuxe has been and/or is directly infringing one or more claims of the '691
26 patent pursuant to 35 U.S.C. § 271(a), literally or under the doctrine of equivalents, by making,
27 using, offering to sell, and/or selling in the United States and/or importing into the United States,
28 products, devices, or systems that are covered by the '691 patent, including the NutraSonic 4-
29 Speed and NutraSonic Travel.
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31 34. PBL has consistently and continuously marked its products with the '691 patent
32 number pursuant to 35 U.S.C. § 287 and has provided constructive notice of the '691 patent.
33 PBL seeks monetary and all other damages permitted by statute.
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35 35. NutraLuxe’s infringement of the '691 patent has been and will continue to be
36 willful and deliberate, by making, using, offering to sell, and/or selling in the United States
37 and/or importing into the United States, infringing devices despite that such actions constitute
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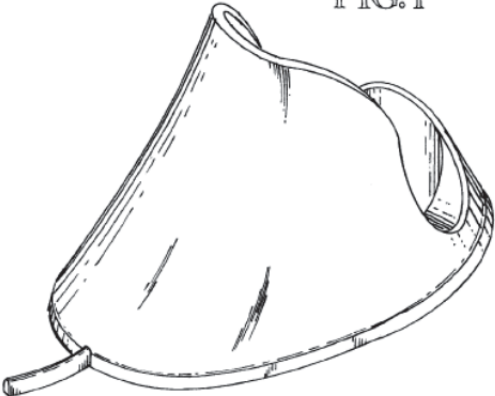

1 infringement and despite being at least on constructive notice that its actions constitute
 2 infringement.
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 5 36. NutraLuxe’s infringement of the ’691 patent has caused and will continue to
 6 cause PBL substantial and irreparable injury, for which PBL is entitled to all of the relief
 7 provided by 35 U.S.C. §§ 281, 283, 284, and 285, including but not limited to injunctive relief,
 8 compensatory damages not less than the amount of a reasonable royalty, interest, costs, enhanced
 9 damages, and reasonable attorney’s fees, as the court deems just and appropriate.
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11 **CLAIM II – INFRINGEMENT OF THE D’809 PATENT**

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 17 37. PBL hereby incorporates and realleges Paragraphs 1 - 36 as if fully set forth
 18 herein.
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 21 38. NutraLuxe has been and/or is directly infringing the D’809 patent pursuant to 35
 22 U.S.C. § 271(a), by making, using, offering to sell, and/or selling in the United States and/or
 23 importing into the United States, products, devices, or systems that embody the design covered
 24 by the D’809 patent, including the NutraSonic 4-Speed.
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D’809 Patent	NutraSonic 4-Speed Charging Station
<p>29</p> <p>30 FIG. 1</p>  <p>31 32 33 34 35 36 37 38 39 40 41 42 43 44</p>	 <p>45</p>

46 39. PBL has consistently and continuously marked its products with the D’809 patent
 47 number pursuant to 35 U.S.C. § 287 and has provided constructive notice of the D’809 patent.
 48 PBL seeks monetary and all other damages permitted by statute.
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1 40. NutraLuxe’s infringement of the D’809 patent has been and will continue to be
2 willful and deliberate, by making, using, offering to sell, and/or selling in the United States
3 and/or importing into the United States, infringing devices despite that such actions constitute
4 infringement and despite being at least on constructive notice that its actions constitute
5 infringement.
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10 41. NutraLuxe’s infringement of the D’809 patent has caused and will continue to
11 cause PBL substantial and irreparable injury, for which PBL is entitled to all of the relief
12 provided by 35 U.S.C. §§ 281, 283, 284, 285, and 289, including but not limited to injunctive
13 relief, compensatory damages not less than the amount of a reasonable royalty, interest, costs,
14 enhanced damages, NutraLuxe’s profits, and reasonable attorney’s fees, as the court deems just
15 and appropriate.
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22 VI. DEMAND FOR JURY TRIAL

23 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, PBL respectfully requests a
24 trial by jury of all issues properly triable by jury.
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29 VII. PRAYER FOR RELIEF

30 WHEREFORE, PBL prays for relief, as follows:
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- 32 A. A judgment that NutraLuxe has infringed one or more claims of the ’691 patent;
33 B. A judgment that NutraLuxe has infringed the D’809 patent;
34 C. An order and judgment preliminarily and permanently enjoining NutraLuxe and
35 its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in
36 privity or in concert with them, and their investors, partners, parents, subsidiaries, divisions,
37 successors, and assigns, from further acts of infringement of PBL’s asserted patents;
38 D. A judgment awarding PBL all damages adequate to compensate for NutraLuxe’s
39 infringement of PBL’s asserted patents and/or NutraLuxe’s total profits pursuant to 35 U.S.C.
40 § 289, and in no event less than a reasonable royalty for NutraLuxe’s acts of infringement,
41 including all pre-judgment and post-judgment interest at the maximum rate permitted by law;
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1 E. A judgment declaring that NutraLuxe’s infringement of the asserted patents has
2 been willful and deliberate;
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4 F. A judgment awarding PBL all damages, including treble damages, as a result of
5 NutraLuxe’s willful and deliberate infringement of the asserted patents, pursuant to 35 U.S.C.
6 § 284, together with pre-judgment and post-judgment interest;
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9 G. A judgment declaring that this case is exceptional and awarding PBL its expenses,
10 costs, and attorney’s fees in accordance with 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the
11 Federal Rules of Civil Procedure; and
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14 H. Such other and further relief as the Court deems just and proper.
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17 DATED: May 1, 2015
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Respectfully submitted,
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