

MARTORELL LAW APC  
Eduardo Martorell, State Bar No. 240027  
[EMartorell@Martorell-Law.com](mailto:EMartorell@Martorell-Law.com)  
Jean-Paul Le Clercq, State Bar No. 248818  
[JPLeClerc@Martorell-Law.com](mailto:JPLeClerc@Martorell-Law.com)  
JoAnn Victor, State Bar No. 121891  
[JVictor@Martorell-Law.com](mailto:JVictor@Martorell-Law.com)  
Playa District  
6100 Center Drive, Suite 1130  
Los Angeles, California 90045  
Telephone: (323) 840-1200  
Facsimile: (323) 840-1300

Attorneys for Plaintiff,  
METRICOLOR LLC

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

METRICOLOR LLC,

Plaintiff,

v.

L'ORÉAL USA, INC.; L'ORÉAL USA  
PRODUCTS, INC.; L'ORÉAL USA S/D,  
INC.; REDKEN 5TH AVENUE NYC,  
LLC; and DOES 1 through 100, inclusive,

Defendants.

Case No. 2:18-cv-00364-CAS-E

**FIRST AMENDED COMPLAINT  
FOR:**

- 1. BREACH OF CONTRACT;**
- 2. MISAPPROPRIATION OF  
TRADE SECRETS (DEFEND  
TRADE SECRETS ACT)**
- 3. BREACH OF THE  
COVENANT OF GOOD  
FAITH AND FAIR DEALING**
- 4. VIOLATION OF  
CALIFORNIA'S UNFAIR  
COMPETITION LAW  
("UCL") (CAL. BUS. &  
PROF. CODE §§ 17200, *et*  
*seq.*)**
- 5. COMMON LAW BREACH  
OF CONFIDENCE**
- 6. MISAPPROPRIATION OF  
TRADE SECRET (CAL. CIV.  
CODE §§ 3426, *et seq.*)**

**DEMAND FOR JURY TRIAL**

**FIRST AMENDED COMPLAINT**

PLAINTIFF, METRICOLOR LLC (“Plaintiff” or “Metricolor”), by and through its counsel, respectfully brings this First Amended Complaint against Defendants L’ORÉAL USA, INC. (“L’Oréal USA, Inc.”), L’ORÉAL USA PRODUCTS, INC., (“L’Oréal USA Products, Inc.”), L’ORÉAL USA S/D, INC. (“L’Oréal USA S/D, Inc.”), and REDKEN 5TH AVENUE NYC, LLC (“Redken”) (collectively, the “L’Oréal Defendants” or “L’Oréal”), and Does 1-100 (“Does”), to obtain damages, injunctive relief, and other appropriate relief from all of the above defendants (collectively, the “Defendants”) and alleges as follows upon knowledge as to itself and otherwise upon information and belief:

**NATURE OF THE ACTION**

1. L’Oréal S.A. is a French cosmetics company and the corporate parent company of the L’Oréal Defendants. L’Oréal is the self-proclaimed world-leader in beauty products, including makeup, cosmetics, haircare, and perfume. As of 2018, L’Oréal boasts of a presence in 150 countries, profits equaling approximately 4.92 billion euros, and 505 registered patents in 2018 alone. (See [https://www.loreal-finance.com/fr/system/files?file=2019-10/LOreal\\_2018\\_Annual\\_Report.pdf](https://www.loreal-finance.com/fr/system/files?file=2019-10/LOreal_2018_Annual_Report.pdf).) L’Oréal S.A. has a worldwide network of direct and indirect subsidiaries, including the L’Oréal Defendants named herein through which it operates in the United States.

2. Plaintiff, in contrast, is a small startup company. Plaintiff was founded by Stephen D’Amico and his father, Salvatore D’Amico. Stephen D’Amico is a respected national platform educator and a master hairstylist that has worked in salons in New York City and Beverly Hills and now works in Manhattan Beach, California.

3. Plaintiff’s revolutionary technology (the “Metricolor System”) includes novel packaging for hair color, developer (peroxide), bonder, and other agents and additives and allows hairstylists to accurately measure, dispense, mix, and combine

1 those products to formulate hair treatments with time- and cost-saving efficiency and  
2 accuracy, in a highly-sustainable manner never before seen in the haircare industry.

3 4. Plaintiff is the owner of U.S. Patent Nos. 9,301,587 and 10,017,318.  
4 These patents and the related patent applications describe certain limited aspects of  
5 the Metricolor System and claim them as covered inventions. However, additional  
6 aspects of the Metricolor System, developed by Plaintiff both before and after the  
7 filing of the patent applications (including in the course of Plaintiff's discussions  
8 with L'Oréal, sometimes at L'Oréal's request) through substantial research and  
9 development efforts, were kept confidential by Plaintiff and protected as trade  
10 secrets. The claims stated in this Amended Complaint are based on those aspects of  
11 the Metricolor System.

12 5. Beginning in August 2014, Plaintiff engaged in confidential discussions  
13 with L'Oréal S.A. and the Defendants regarding their potential interest in buying,  
14 licensing, or partnering with Plaintiff to market the Metricolor System. The  
15 discussions were conducted pursuant to a written Non-Disclosure Agreement (the  
16 "NDA") between Stephen D'Amico, Salvatore D'Amico, and "L'Oréal USA, Inc.,  
17 together with its parent, subsidiaries and affiliates....," with Plaintiff as an intended  
18 third-party beneficiary.<sup>1</sup> The parties entered into the NDA, supplied by L'Oréal, for  
19 purposes of ensuring the confidential information shared during discussions  
20 regarding the design and production of the Metricolor System would remain  
21 confidential, and in order to explore a potential joint venture, licensing arrangement  
22 or acquisition.

23 6. Over the course of approximately 18 months of discussions and  
24 negotiations regarding L'Oréal's *supposed* interest in purchasing the Metricolor  
25 System in some fashion, L'Oréal received Metricolor's sought-after confidential  
26 information, including, crucially, all the knowledge necessary to fully understand  
27

28 <sup>1</sup> Stephen D'Amico and Salvatore D'Amico assigned all rights in the Metricolor System to Metricolor in June 2016.

1 how the System worked and how it could be replicated. In June 2016, having no  
2 further need to continue negotiations given that L'Oréal was now ready to create an  
3 effective competing product using confidential information obtained from Plaintiff,  
4 L'Oréal ceased all communications with no explanation. Just three months later, in  
5 September 2016, L'Oréal released two competing products, via two different L'Oréal  
6 brands, featuring and directly advertising Metricolor's patented components: the  
7 Matrix DMI Brand's (the "Matrix Brand") Matrixcolor Bond Ultim8 product and the  
8 Redken 5<sup>th</sup> Avenue NYC Brand's (the "Redken Brand") pH-Bonder product.

### 9 PARTIES

10 7. Plaintiff Metricolor LLC is incorporated under the laws of the State of  
11 California, with its principal place of business in Palos Verdes Estates, California.

12 8. Defendant L'Oréal USA, Inc. ("L'Oréal USA, Inc.") is a Delaware  
13 corporation, headquartered at 10 Hudson Yards, New York, New York.

14 9. Defendant L'Oréal USA Products, Inc. ("L'Oréal USA Products, Inc.")  
15 is a Delaware corporation, headquartered at 10 Hudson Yards, New York, New  
16 York, and is a subsidiary of L'Oréal USA, Inc.

17 10. Defendant L'Oréal USA S/D, Inc. ("L'Oréal USA S/D, Inc.") is a  
18 Delaware corporation, headquartered at 10 Hudson Yards, New York, New York,  
19 and is a subsidiary of L'Oréal USA, Inc.

20 11. Defendant Redken 5<sup>th</sup> Avenue N.Y.C. LLC ("Redken") is a New York  
21 corporation headquartered at 10 Hudson Yards, New York, New York, and is a  
22 subsidiary of L'Oréal USA, Inc.

23 12. The true names, identities, or capacities, whether individual, associate,  
24 corporate, or otherwise, of defendants DOES 1 through 100, inclusive, and each  
25 DOE in between, are unknown to Plaintiff at this time, and Plaintiff therefore sues  
26 said defendants by such fictitious names. When the true names, identities, capacities,  
27 or participation of such fictitiously designated defendants are ascertained, Plaintiff  
28 will ask leave of Court to amend the Complaint to insert said names, identities, or

1 capacities, together with the proper charging allegations. Plaintiff is informed and  
2 believes and thereon alleges that each of the defendants sued herein as a DOE is  
3 responsible in some manner for the events and happenings herein referred to, thereby  
4 legally causing the damages to Plaintiff as hereinafter set forth.

5 13. At all times mentioned herein, each of the defendants sued herein was  
6 the agent, servant, alter ego, employee, employer, master, principal and/or associate  
7 of each other and of his/her/its co-defendants, and, as such, was acting within the  
8 time, place, purpose, and scope of said agency, service, employment, partnership  
9 and/or association.

#### 10 **JURISDICTION AND VENUE**

11 14. This Court has jurisdiction over the subject matter of all claims asserted  
12 herein pursuant to 28 U.S.C. § 1332(a)(1) in that it is a civil action between citizens  
13 of different states in which the amount in controversy exceeds the sum of \$75,000,  
14 exclusive of interest and costs. This action further includes a claim pursuant to the  
15 Defend Trade Secrets Act, 18 U.S.C. § 1836(b)(1). This Court therefore has original  
16 jurisdiction over this federal trade secret action under 28 U.S.C. §§ 1331 and 18  
17 U.S.C. § 1836(b)(1). This Court also has subject matter jurisdiction over the related  
18 California state law claims pursuant to 28 U.S.C. § 1367.

19 15. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and  
20 1400(b). L'Oréal has one or more regular and established places of business in this  
21 judicial district, and transacts business in this district. For example, L'Oréal USA  
22 Products and L'Oréal USA S/D are registered with the State of California to conduct  
23 business here. L'Oréal is responsible for acts of misappropriation occurring in the  
24 Central District of California, as alleged in this Amended Complaint, including by  
25 delivering or causing to be delivered products or services that embody Plaintiff's  
26 trade secrets in the Central District of California. L'Oréal also has caused those  
27 products to be advertised, promoted, and sold in this judicial district.  
28



1 additives, preventing waste of materials and allowing both stylists and customers to  
2 engage in a more clean, cost-effective and environmentally-friendly hair styling  
3 experience. The System uses novel packaging for these hair products that further  
4 reduces waste and lowers costs, while being user-friendly and compatible with a  
5 wide range of products of differing viscosity and corrosiveness.

6 20. Other hair coloring systems currently available on the market typically  
7 comprise a series of capped tubes, such as collapsible aluminum tubes or bottle-type  
8 containers, each containing a different hair coloring agent or additive paste or liquid.  
9 During the hair coloring process, a stylist dispenses the desired amount of hair  
10 coloring agents and/or additives into a mixing receptacle to achieve a desired color.

11 21. A problem with these containers is that stylists are often required to  
12 measure certain amounts by sight or “squeeze to a line” in the mixing receptacle  
13 itself. This inaccurate process makes it difficult for stylists to measure properly since  
14 a change of even 0.1 milliliters can alter the hue of a color mixture. In addition, due  
15 to the nature of these aluminum tubes (similar to toothpaste tubes), it is difficult to  
16 dispense all of the liquid or paste from a single tube, leading to a waste of  
17 approximately 25% of the product in a typical tube. In fact, independent studies  
18 have found that despite best efforts, tube and receptacle markings were only accurate  
19 to +/- 50% of the total volume of the liquid or paste in the container itself.<sup>2</sup> This  
20 inherent inconsistency is also very wasteful, and constitutes a significant expense for  
21 salons and stylists.

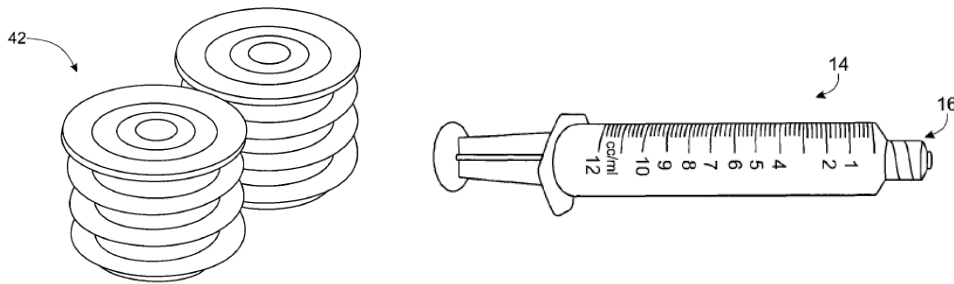
---

22  
23  
24  
25 <sup>2</sup> These studies were cited in an article by Debbie Miller, a salon professional and a  
26 “Global Performing Business Artist” for Redken 5th Avenue NYC and the Redken  
27 Brand. The article, published by Stylist and Salon Newspapers’ September 2010  
28 issue of Northwest Stylist Magazine, was entitled, “Point, Click, Color: Modern  
Technology Takes Off at the Color Bar.” The article was previously available at the  
URL: [http://www.nwstylist.com/features/2010/0910/features/0910\\_modern\\_technology\\_color\\_bar.html](http://www.nwstylist.com/features/2010/0910/features/0910_modern_technology_color_bar.html) (accessed January 15, 2018).



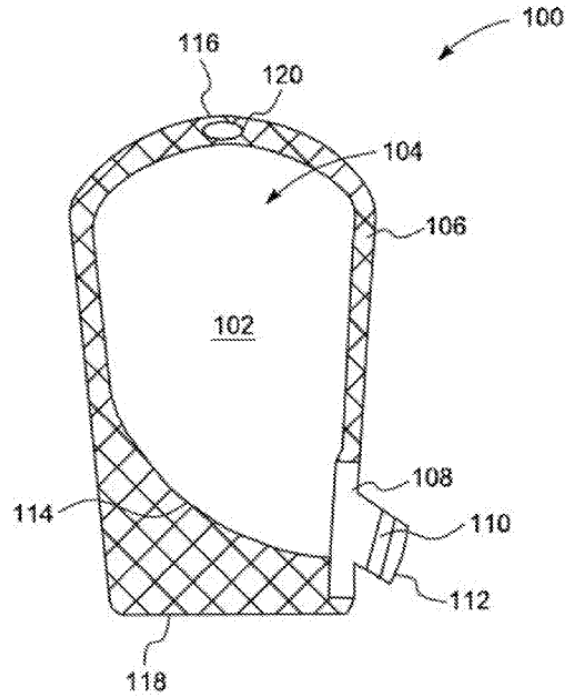
22. The Metricolor System solves all these problems, allowing for accurate and repeatable measurements that prevent waste and allow for the consistent mixture of hair color, developer (peroxide), bonder, and other agents and additives.

23. In one embodiment of the Metricolor System, poly-plastic containers are fitted with a flip-top or twist-off cap and an orifice reducer at the opening that prevents product dripping and reduces oxidation/drying, as seen in the following image, on the left. A graduated needle-less catheter-type syringe, such as the one seen in the image below, on the right, engages the orifice reducer and allows stylists to measure out and dispense an exact amount of the necessary hair coloring agent or additive every time. In contrast with traditional hair coloring agent or additive systems, the syringe allows for an accuracy of  $\pm 1\%$  in measuring liquids/pastes.



24. In other embodiments of the Metricolor System, hair color, developer (peroxide), bonder, and other agents and additives are packaged in a flexible, user-friendly pouch that facilitates withdrawing a higher percentage of hair product than traditional containers make possible, whether or not a syringe is used. The pouch, such as the one seen in the image below, can be constructed from various materials and layers depending on the characteristics (such as viscosity and corrosiveness) of the hair product contained inside.





25. The Metricolor System's novel features and benefits, including its accuracy, the reduction of waste and cost it enables, its user-friendliness, and the reusability of the syringe, makes the System unique in the field of hair coloring systems.

26. In fact, publications have praised Metricolor's revolutionary system as a paradigm shift in the hair styling industry.

### **Plaintiff's Patent and Trade Secrets**

27. Metricolor is the owner of United States Patent No. 9,301,587 (the "'587 Patent") entitled "Hair Color (or Dye) Storage, Dispensing and Measurement (or Measuring) System," which the United States Patent and Trademark Office duly and legally issued on April 5, 2016. A true and correct copy of the '587 Patent is attached hereto as Exhibit A.

28. Metricolor is also the owner of United States Patent No. 10,017,318 (the "'318 Patent") entitled "Hair Color (or Dye) Storage, Dispensing and Measurement (or Measuring) System," which the United States Patent and Trademark Office duly

1 and legally issued on July 10, 2018. A true and correct copy of the ‘318 Patent is  
2 attached hereto as Exhibit F.

3 29. Metricolor has not licensed either the ‘587 Patent or the ‘318 Patent to  
4 any entity or person, and has never authorized Defendants to use any patented  
5 component of the ‘587 Patent or the ‘318 Patent.

6 30. The ‘587 Patent and the ‘318 Patent and the related patent applications  
7 describe and claim only certain limited aspects of the Metricolor System. Other  
8 aspects of the Metricolor System—some developed before the patent applications  
9 were filed but not directly pertinent to the claimed inventions, and others developed  
10 after one or both of the patent applications were filed through further research and  
11 development efforts, including in some cases at L’Oréal’s specific request—are not  
12 described or claimed in the patents.

13 31. For example, the patents disclose the use of a syringe as part of a hair  
14 product dispensing system, but they focus on syringes with a “luer-lock” tip that will  
15 engage with a seal on a hair product container. (*See, e.g.*, Ex. A at Col. 5, lines 41-  
16 50 (stating that the syringe “preferably” comprises such a luer-lock tip) & Fig. 2.)  
17 The patent also discloses syringes with longer, narrower tips, but in connection with  
18 an alternative embodiment in which the syringe is sold pre-loaded with hair dye.  
19 (*See, e.g.*, Ex. A at Col. 6, lines 45-59 & Fig. 11.) The patents do not disclose other  
20 circumstances in which a syringe with a longer, narrower tip (such as the syringes  
21 used with the L’Oréal Defendants’ products) is preferably used with hair products.  
22 The D’Amicos separately developed that information on behalf of Plaintiff, protected  
23 that information as a trade secret, and confidentially disclosed the information to the  
24 L’Oréal Defendants during the parties’ discussions.

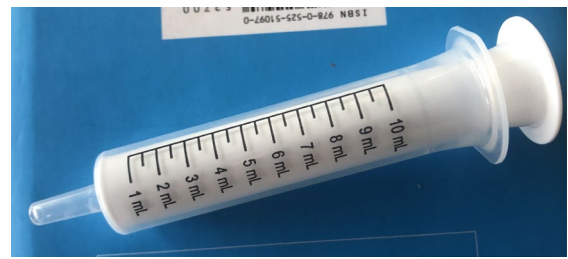
25 32. As another example, the patents disclose the use of a syringe as part of a  
26 hair product dispensing system, but they identify a wide range of potential syringe  
27 sizes—mostly substantially larger than the 10 mL syringes used with the L’Oréal  
28 Defendants’ products. (*See, e.g.*, Ex. A at Col. 6, line 64 (referring to “a common

150 ml syringe”); *id.* at Col. 6, line 66 (referring to a “250 ml or greater syringe”); *id.* at Col. 7, line 66 (referring to a “60 mL luer-lock syringe”). Although Figure 2 in the patents depicts a 12 mL luer-lock syringe, the rest of the specification makes no mention of this syringe size and says nothing about whether or when the use of such a small syringe size would be advisable. The D’Amicos separately developed that information on behalf of Plaintiff, protected it as a trade secret, and confidentially disclosed it to the L’Oréal Defendants during the parties’ discussions—including by providing L’Oréal with confidentially-sourced samples of such a syringe that is seemingly identical to the syringes used with the L’Oréal Defendants’ products, as shown in the following side-by-side comparison:

**Metricolor Supplier**



**L’Oréal-Redken pH Bonder**



33. As another example, the patents disclose the use of an orifice reducer as part of a hair product dispensing system, but they focus on a “self-sealing” orifice reducer with design features not used by L’Oréal. (*See, e.g.*, Ex. A at Col. 8, lines 16-22.) The patents contain no information regarding whether or when it would be advantageous to use a simpler, non-self-sealing orifice reducer with hair products. The D’Amicos separately developed that information on behalf of Plaintiff, protected it as a trade secret, and confidentially disclosed it to the L’Oréal Defendants during the parties’ discussions—including by providing L’Oréal with confidentially-sourced samples of such an orifice reducer that is seemingly identical to the orifice reducers used with the L’Oréal Defendants’ products.

34. As another example, the D’Amicos (acting on behalf of Plaintiff) devoted many hours investigating potential manufacturers, manufacturing methods, pricing (including under different volume scenarios), cost-saving measures, and other

1 such information for components of the Metricolor System, including, but not limited  
2 to: syringes, orifice reducers, and packaging options. Indeed, Plaintiff introduced the  
3 L'Oréal Defendants to one of their preferred manufacturers, with whom Plaintiff had  
4 a separate non-disclosure agreement. Despite Plaintiff's separate NDAs with both  
5 L'Oréal and the manufacturer, Plaintiff suspects (based on the fact that the syringe  
6 and orifice reducer used with the L'Oréal Defendants' products are seemingly  
7 identical to the samples provided to L'Oréal by Plaintiff under the NDA) that they  
8 began working together in violation of their contractual obligations to Plaintiff and  
9 without Plaintiff's or the D'Amicos' knowledge. Plaintiff expects that discovery in  
10 this action will allow it to confirm its suspicion.

11 35. The other trade secrets on which Plaintiff's claims are based likewise  
12 are not disclosed in either the '587 Patent or the '318 Patent.

13 **L'Oréal Acquires Metricolor's Confidential Information and then Abruptly**  
14 **Terminates Acquisition Talks**

15 36. On or around August 14, 2014, Plaintiff's founders, Salvatore and  
16 Stephen D'Amico (the "D'Amicos"), spoke with the President of the Professional  
17 Products Division of L'Oréal USA, Patrick Parenty ("Parenty"), and discussed the  
18 potential for L'Oréal's interest in the acquisition or licensing of the Metricolor  
19 System. On August 25, 2014, L'Oréal, Stephen D'Amico, and Salvatore D'Amico  
20 signed a Mutual Non-Disclosure Agreement (the "NDA") supplied by L'Oréal. A  
21 true and correct copy of the NDA is attached hereto as Exhibit B. Plaintiff was an  
22 intended third-party beneficiary of the NDA.

23 37. The NDA, signed and executed by both parties, contemplated that  
24 "Confidential Information" would be disclosed to L'Oréal "that relates to or is  
25 derived from a party's scientific, technical, business, strategic, marketing or creative  
26 affairs...." (Ex. B at ¶ 1.) Pursuant to the NDA, and in reliance on its confidentiality  
27 provisions and L'Oréal's agreement to abide thereby, the D'Amicos, acting on behalf  
28 of Plaintiff, disclosed many confidential, non-public details regarding the Metricolor

1 System to L’Oréal, in such a manner that L’Oréal was advised or had reason to know  
2 of the confidential and proprietary nature of the information disclosed.

3 38. The NDA included express provisions wherein L’Oréal agreed, for  
4 example, **not to “use, or authorize the use of, such Confidential Information for**  
5 **any purpose other than for the Purpose.”** (Ex. B at ¶ 2(a) (emphasis added).)  
6 The NDA defined the “Purpose” as “to collaborate regarding Stephen D’Amico’s  
7 METRICOLOR System....” (Ex. B, p. 1.)

8 39. In the NDA, L’Oréal further agreed, for example, **not to “copy or**  
9 **reproduce all or any part of such Confidential Information in any medium”**  
10 except as was necessary to effectuate L’Oréal’s collaboration with Metricolor. (Ex.  
11 B at ¶ 2(d) (emphasis added).)

12 40. Under the NDA, L’Oréal further agreed, for example, to “**not**  
13 **decompile, disassemble or reverse engineer all or any part of such Confidential**  
14 **Information without the written permission of the Disclosing Party.”** (Ex. B at ¶  
15 2(e) (emphasis added).)

16 41. On or about October 15, 2014, the D’Amicos met with Parenty, Scott  
17 Schienvar (“Schienvar”), Vice President of Operations-Supply Chain, and Christine  
18 Schuster, Senior VP of Education, at L’Oréal USA’s headquarters in New York City.  
19 During this meeting, the D’Amicos presented and demonstrated multiple  
20 embodiments of the Metricolor System, thereby providing L’Oréal with confidential  
21 trade-secret information regarding the application and use of the Metricolor System.  
22 As a result of the meeting, Parenty referred the project to L’Oréal’s Matrix Brand:  
23 “the #1 American professional brand in the world” according to L’Oréal’s website.  
24 Parenty told Plaintiff he believed the Metricolor System would be a great fit for both  
25 the Matrix Brand’s existing MATRIX DMI products and new products they were  
26 planning to launch globally, due in part to the manual (as opposed to machine-based)  
27 nature of the Metricolor System.  
28

1           42. The very next day, L'Oréal demonstrated their continued interest by  
2 sending the D'Amicos eight large boxes with hundreds of samples of their entire line  
3 of hair coloring products for the D'Amicos to test with the Metricolor System. The  
4 D'Amicos thereafter devoted substantial time and effort testing the many L'Oréal  
5 samples to determine which ones worked best with the Metricolor System, and how  
6 best to tailor the Metricolor System to L'Oréal's product line. Stephen D'Amico  
7 discussed some of the testing results with Parenty during a one-hour telephone call in  
8 late 2014, and other aspects of the testing results were discussed with L'Oréal during  
9 subsequent meetings and telephone discussions.

10           43. L'Oréal continued to demonstrate their interest the following month  
11 when, on or about November 24, 2014, the D'Amicos were contacted by Marika Rex  
12 ("Rex"), the Senior Vice President of the Matrix Brand, to introduce herself and  
13 propose continuing the discussions.

14           44. A short time later, L'Oréal and the D'Amicos (acting on behalf of  
15 Plaintiff) scheduled a second meeting to be held in New York City in January 2015.  
16 At such meeting, the D'Amicos and their packaging contractor and expert, Thomas  
17 Vogt (acting under an NDA with Plaintiff), met with Schienvar, Rex, and Stephanie  
18 Martins ("Martins"), the Vice President of Packaging and Development for L'Oréal,  
19 among others. At this meeting, the D'Amicos and Thomas Vogt gave another formal  
20 presentation and demonstration of the Metricolor System to this new L'Oréal  
21 audience, including a discussion of their new technical developments.

22           45. On information and belief, the Matrix Brand underwent a reorganization  
23 of their leadership in Fall 2015. Telephone discussions and meetings between the  
24 D'Amicos (acting on behalf of Plaintiff) and various divisions of L'Oréal, including  
25 L'Oréal Global and the new leadership of the Matrix Brand, continued after the  
26 reorganization between October and November 2015. Specifically, for example, in  
27 November 2015, the D'Amicos met with Rex, Schienvar, and Martins, and Daniel  
28 Bethelmy-Rada, Global Brand President of Matrix and Biolage at the L'Oréal



1 Professional Products Division, regarding L'Oréal's continued significant interest in  
2 a partnership related to the Metricolor System.

3 46. On or about February 22, 2016, having heard nothing from L'Oréal for  
4 several months, Salvatore D'Amico sent an email to L'Oréal indicating Plaintiff's  
5 intent to take the Metricolor System to market if L'Oréal did not commit to the  
6 Metricolor System.

7 47. On or about March 10, 2016, Marta Wolska-Brys, the new Director of  
8 Open-Innovation and Packaging at L'Oréal Americas, contacted the D'Amicos and  
9 indicated that L'Oréal was still "very interested" in the Metricolor System. On  
10 information and belief, that statement was knowingly false and intended solely to  
11 dissuade Plaintiff from marketing the Metricolor System unilaterally or partnering  
12 with a L'Oréal competitor for that purpose.

13 48. Around this time, the D'Amicos also spoke by telephone with Marta  
14 Wolska-Brys and two corporate executives from L'Oréal Group France, Anne  
15 DeBouge and Anne Alcoloumbre, who specifically asked the D'Amicos for ten  
16 samples of certain components associated with the Metricolor System so that L'Oréal  
17 could perform their own testing of elements of the System with their hair products.  
18 The samples sent by Metricolor in response to this request included two pouches of  
19 different sizes (for different types of hair products), two syringes of different sizes  
20 (for different types of hair products), and two orifice reducers. On information and  
21 belief, L'Oréal made this request in bad faith for the purposes of obtaining additional  
22 trade secrets and confidential information from Plaintiff and stalling Plaintiff further.

23 49. Between April and June 2016, formal negotiations began regarding an  
24 Exclusive Evaluation Agreement between the D'Amicos' licensing consultant and  
25 negotiator, Rand Brenner, and several L'Oréal representatives that included Marta  
26 Wolska, Nathan Gallup (L'Oréal's attorney), Schienvar, and Michael Alekshun  
27 (L'Oréal's Vice President of Research and Innovation and L'Oréal's negotiator).  
28



50. Despite these discussions, on June 16, 2016, L'Oréal's negotiator (Michael Alekshun) contacted Metricolor's negotiator (Rand Brenner) and indicated that L'Oréal would be terminating the negotiations. L'Oréal provided no reason for the sudden termination of negotiations that had been ongoing for nearly two years.

51. On or around September 2016, after three months of silence from L'Oréal and its representatives, L'Oréal launched two new products under the Matrix Brand and the Redken Brand (the Matrix Brand's Matrixcolor Bond Ultim8 product and the Redken Brand's pH-Bonder product), which specifically include and directly advertise Plaintiff's components.

52. On January 9, 2017, Salvatore D'Amico sent an email to Daniel Bethelmy-Rader of L'Oréal that, among other things, asked L'Oréal to return any of the confidential information and materials that had been disclosed to L'Oréal pursuant to the NDA and that was still in L'Oréal's possession. As of the date of the filing of this First Amended Complaint, such information and materials still have not been returned or certified destroyed, contrary to the overt requirements of the NDA, which provides that "Receiving Party will upon the Disclosing Party's request, (a) promptly return any and all materials containing Confidential Information to the Disclosing Party; or (b) destroy such materials and certify their destruction in writing to the Disclosing Party." See NDA at ¶ 7.

**L'Oréal Willfully Copies Substantial Elements of the Metricolor System in its Matrix Brand Matrixcolor Bond Ultim8 Product**

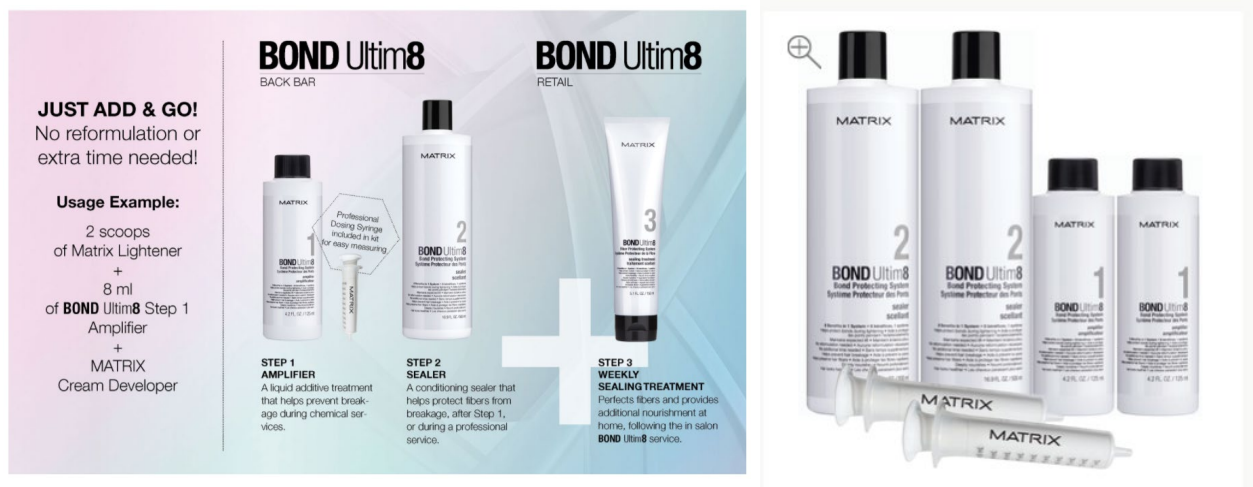
53. L'Oréal's Matrix Brand is tailored to haircare and hair styling products. They advertise haircare products such as conditioners and lotions as well as products designed to color, style and texture hair. A true and correct copy of Matrix's webpages (visited January 15, 2018) are attached hereto as Exhibit C ("Ex. C").<sup>3</sup> Matrix's webpage (<https://www.matrix.com/hair-color/bond-ultim8>) (accessed

<sup>3</sup> Plaintiff reminds the L'Oréal Defendants of their duty to preserve this and all other relevant evidence.

January 15, 2018) also features a link to a separate webpage for professionals, where salon professionals and stylists can log in, examine available products and their potential uses, get certified in using Matrix products, get their salons listed on Matrix's website, and communicate with other stylists and professionals. *See* Ex. C.

54. The Bond Ultim8 product is advertised under the banner "MATRIXCOLOR," with the word "color" appearing in red (Ex. C, at 2), in striking similarity to Metricolor's name and to Metricolor's color scheme and logo, which features the word "Metric" underlined by red measuring tape (<http://www.metricolor.com>) (accessed January 15, 2018). A true and correct copy of Metricolor's website, featuring its logo (visited January 15, 2018), is attached hereto as Exhibit D ("Ex. D").

55. The Bond Ultim8 product is a kit that includes three containers of liquid, comprising an "amplifier," a "sealer," and a "weekly sealing treatment." Also included in this kit is a graduated syringe that is seemingly identical in size, shape, dimensions, materials, and construction to a sample syringe that the D'Amicos provided to the L'Oréal Defendants confidentially under the NDA.



56. The webpage for the Bond Ultim8 product also clearly features the following section regarding the usage of the syringe.

**HOW DO I USE THE SYRINGE?**

1. Remove cap of Step 1 Amplifier
2. Snap the orifice securely into the bottle neck with the ridged end facing into the bottle.
3. Push air out of syringe. Firmly push syringe into bottle opening.
4. Turn the bottle upside down and pull syringe to the correct dose.
5. Dispense liquid slowly into lightener/color mixture. Rinse syringe after each use.

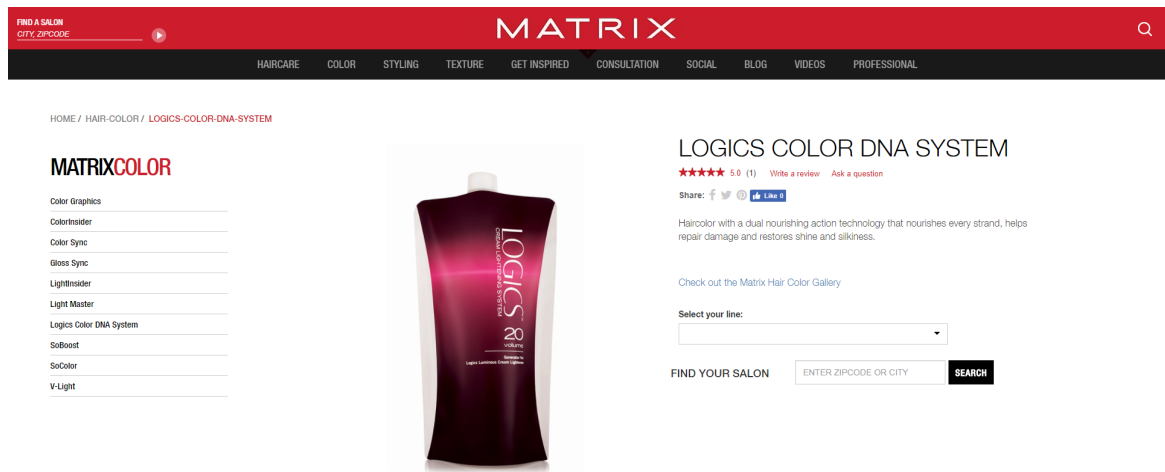
These steps appear to be derived from syringe instructions that Plaintiff developed through its own research and disclosed to L'Oréal confidentially under the NDA.

57. The Matrix Professionals' web portal also includes a Youtube playlist featuring videos of hair stylists instructing views on the proper usage of the Bond Ultim8 product. These videos all feature prominent use of unlawfully copied elements of the Metricolor System. The Matrix Brand's online presence also features prominent use of these features central to the function of the Metricolor System. A YouTube video entitled "Introducing NEW! Bond Ultim8 Bond Protection System | Matrix," uploaded on February 27, 2017 by an account held by the Matrix Brand features a hair stylist using a graduated syringe to extract an exact amount of different hair coloring agents or additives and inserting them into a mixing receptacle. A screen capture of this use is found below, next to a nearly identical Metricolor image. The stylist, while using the graduated syringe, comments, "I love using this syringe because it really gives me precise measurements."

(<https://www.youtube.com/watch?v=zR0B44TpvLM>) (accessed January 15, 2018).



58. The Matrixcolor line even features a hair coloring agent or additive product which is packaged into a pouch design (as seen below), in strikingly similarity to Metricolor's pouch design for its hair coloring agent and additive containers that Plaintiff disclosed to the L'Oréal Defendants confidentially under the NDA.



### **L'Oréal Willfully Copies Substantial Elements of the Metricolor System in its Redken pH-Bonder Product**

59. L'Oréal also advertises, through its subsidiary Redken 5th Avenue NYC, the product pH-Bonder, which features three separate containers of various liquids, which are mixed using a syringe, seemingly identical to Metricolor's graduated syringe apparatus (including confidential aspects thereof), and as seen below.



60. A true and correct copy of the Redken 5<sup>th</sup> Avenue NYC brand webpage featuring the pH-Bonder product (accessed January 15, 2018) is attached hereto as Exhibit E (“Ex. E”).

61. A YouTube marketing video uploaded by “RedkenCANADA” shows users how to use the Redken pH-Bonder product. The video, uploaded on April 11, 2017, is entitled “pH Bonder Product Knowledge.”

(<https://www.youtube.com/watch?v=1v1Nur5A6Uk>) (accessed January 15, 2018)

62. In this video, a stylist is clearly shown describing the process of using the Redken pH-Bonder product. He is also clearly seen using the syringe to extract a hair coloring agent or additive from a plastic container and then mixing it with additional hair coloring agents and additives in a mixing receptacle. This clearly copies the Metricolor System. Following are some images from this YouTube video, showing the use copied from the Metricolor System.





**FIRST CAUSE OF ACTION**

**(Breach of Contract – Against the L’Oréal Defendants and DOES 1 through 100, inclusive)**

63. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

64. As described above, Stephen D’Amico, Salvatore D’Amico, and L’Oréal USA, Inc. signed and executed the NDA. Plaintiff was an intended third-party beneficiary of the NDA. In addition, the D’Amicos have assigned all related rights to Plaintiff. Pursuant to the NDA, the L’Oréal Defendants were bound to refrain from, among other things, improper use or disclosure of confidential information provided by or on behalf of the D’Amicos or Plaintiff relating to or derived from Stephen D’Amico’s or Plaintiff’s scientific, technical, business, strategic, marketing or creative affairs (collectively, “Confidential Information”).

65. On information and belief, as provided for in ¶ 2(c) of the NDA, the L’Oréal Defendants were further “bound by” other “written confidentiality obligations prohibiting the further use and disclosure of” said confidential information. Plaintiff and the D’Amicos were intended third party beneficiaries of the agreements containing said other written confidentiality obligations, and the D’Amicos have assigned all such rights to Plaintiff.

66. Pursuant to the NDA and in reliance on its provisions, the D’Amicos (acting on behalf of each other and on behalf of Plaintiff) disclosed numerous items of Confidential Information to L’Oréal, including, but not limited to: in the form of prototypes, PowerPoints, emails, oral discussions (both in person and by telephone), and data, and including, but not limited to, Confidential Information related to:

- The manufacturing methods, short-cuts, and cost-saving measures for most efficiently creating the tools necessary to use the Metricolor System;
- The identity of the manufacturer of the syringe and the pricing negotiated;

- 1       • The identity of the manufacturer of the orifice reducer and the pricing
- 2       negotiated;
- 3       • The identity of the manufacturer of pouches and the pricing negotiated;
- 4       • The most effective manner for using the Metricolor System, developed
- 5       over the course of twelve years of trial and error research and development;
- 6       • An explanation from the inventor (a hairstylist actively working in the
- 7       industry that had spent twelve years developing the Metricolor System)
- 8       regarding why the industry was ripe for introduction of the disruptive
- 9       Metricolor System, and the competitive advantages of the System;
- 10      • The variable dimension alternatives for the syringe, orifice reducer, and
- 11      pouch, as well as materials and layer arrangements for the pouch, each
- 12      depending on relevant characteristics of the hair products contained therein,
- 13      including the viscosity and corrosiveness of such hair products, and which
- 14      variations worked best for hair products that contain preservatives,
- 15      peroxide or ammonia.

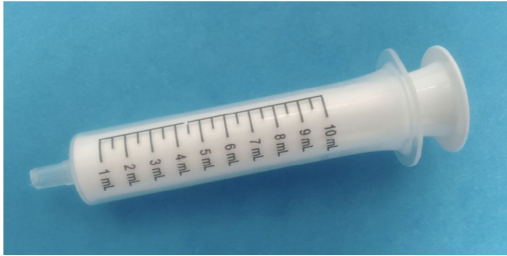
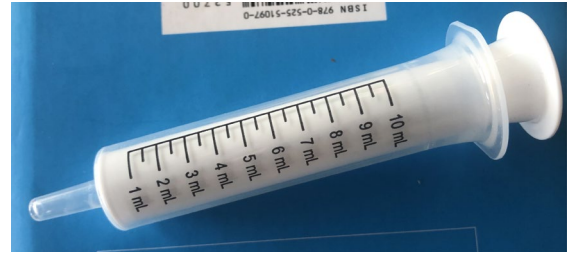
16       67. After using the NDA to lure Plaintiff and the D'Amicos into a false  
17 sense of security and receiving the above Confidential Information from them  
18 pursuant to the NDA, the L'Oréal Defendants breached the express provisions of the  
19 NDA in numerous ways, including by:

- 20      • Using and/or authorizing the use of the Confidential Information for
- 21      purposes other than the permitted "Purpose" specified in the NDA, such
- 22      unauthorized purposes including, without limitation: (i) deciding to
- 23      unilaterally pursue products using elements of the Metricolor System
- 24      without Plaintiff's involvement or consent; (ii) designing, developing,
- 25      testing, approving, and implementing said products; (iii) selecting vendors
- 26      to provide components of said products and negotiating pricing and other
- 27      terms with said vendors; (iv) preparing said products' instructions for use;
- 28      and, (v) marketing, promoting, and selling said products.



- 1 • Failing to hold such Confidential Information in strict confidence or to  
2 protect such Confidential Information with the same degree of care  
3 normally used to protect L'Oréal's own confidential information (or, at  
4 least, a reasonable degree of care), but instead intentionally and/or  
5 negligently disclosing the Confidential Information to many unauthorized  
6 persons including, but not limited to: (i) L'Oréal employees, agents,  
7 parents, subsidiaries, and/or affiliates who did not need to know such  
8 Confidential Information to effectuate the Purpose specified in the NDA  
9 and/or who were not advised of the confidential and proprietary nature of  
10 such Confidential Information; (ii) the general public upon launch of the  
11 L'Oréal products that incorporate elements of the Metricolor System; and,  
12 (iii) on information and belief, one or more vendors of components of the  
13 L'Oréal products that incorporate elements of the Metricolor System.
- 14 • Reverse-engineering, decompiling, disassembling, copying, and  
15 reproducing Confidential Information for purposes other than the Purpose  
16 specified in the NDA.
- 17 • Failing to return to Plaintiff or the D'Amicos, promptly or otherwise, or to  
18 destroy and certify in writing the destruction of, "any and all materials  
19 containing Confidential Information," including, but not limited to, the  
20 prototypes, PowerPoints, emails, and data described above and any L'Oréal  
21 notes or other internal L'Oréal documents that contain or reveal any of the  
22 Confidential Information.

23 68. As just one specific example of the many items of Confidential  
24 Information that L'Oréal improperly used and/or disclosed, below are depictions of  
25 the syringe manufactured by Metricolor's NDA-bound supplier (at least one sample  
26 of which Plaintiff provided to L'Oréal pursuant to the NDA), and the syringe used in  
27 the L'Oréal-Redken pH Bonder:  
28

**Metricolor Supplier****L'Oréal-Redken pH Bonder**

69. L'Oréal committed each of the above breaches of the NDA without the express or implied consent of Plaintiff or the D'Amicos.

70. The Confidential Information described above is not subject to any of the exceptions set forth in ¶ 4 of the NDA.

71. By breaching the NDA in the ways described above, the L'Oréal Defendants have harmed and continue to significantly and materially harm Plaintiff by, for example, depriving Plaintiff of the value of its Confidential Information, depriving Plaintiff of compensation for L'Oréal's use of the Confidential Information, and depriving Plaintiff of revenue and profits it could have obtained from marketing the Metricolor System or engaging with another company to market the Metricolor System free from unfair competition by L'Oréal.

72. Plaintiff and the D'Amicos reasonably relied on the L'Oréal Defendants abiding by the terms of the Agreement, and in turn, they fully complied with and remain compliant with all the terms of the NDA and did not, at any time, breach any provision of or requirement under the NDA.

73. As a result of Defendants' actions and omissions, Plaintiff has suffered compensatory damages in an amount to be proven at trial.

74. Plaintiff has been irreparably harmed by the L'Oréal Defendants' breaches in ways that monetary damages cannot adequately compensate for, and will continue to suffer irreparable harm absent appropriate injunctive relief, such a permanent injunction prohibiting the L'Oréal Defendants and all persons acting in concert with them from, for example, retaining possession of, using, disclosing, or authorizing the use or disclosure of the Confidential Information, and from

1 continuing to market and sell products that embody Confidential Information,  
 2 including the Matrix Brand's Matrixcolor Bond Ultim8 product and the Redken  
 3 Brand's pH-Bonder product. Indeed, L'Oréal expressly acknowledged in the NDA  
 4 that "the unauthorized use or disclosure of the Disclosing Party's Confidential  
 5 Information could cause the Disclosing Party irreparable harm and that money  
 6 damages may be inadequate to compensate the Disclosing Party for such harm."  
 7 Accordingly, the NDA provides that "in addition to other available remedies, the  
 8 Disclosing Party will be entitled to seek equitable relief, including injunctive relief  
 9 and/or specific performance...." (Ex. B, ¶ 9.)

## 10 **SECOND CAUSE OF ACTION**

### 11 **(Federal Theft of Trade Secret, under 18 U.S.C. §§ 1831 *et seq.* – Against the** 12 **L'Oréal Defendants and DOES 1 through 100, inclusive)**

13 75. Plaintiff incorporates the foregoing paragraphs as if fully set forth  
 14 herein.

15 76. After the NDA was signed on or about August 25, 2014, Plaintiff and  
 16 the D'Amicos disclosed the Confidential Information to L'Oréal, including, but not  
 17 limited to, in the form of prototypes, PowerPoints, emails, oral discussions (both in  
 18 person and by telephone), and data, and including, but not limited to, Confidential  
 19 Information related to:

- 20 • The manufacturing methods, short-cuts, and cost-saving measures for most
- 21 efficiently creating the tools necessary to use the Metricolor System;
- 22 • The identity of the manufacturer of the syringe and the pricing negotiated;
- 23 • The identity of the manufacturer of the orifice reducer and the pricing
- 24 negotiated;
- 25 • The identity of the manufacturer of pouches and the pricing negotiated;
- 26 • The most effective manner for using the Metricolor System, developed
- 27 over the course of twelve years of trial and error research and development;
- 28

- 1 • An explanation from the inventor (a hairstylist actively working in the  
2 industry that had spent twelve years developing the Metricolor System)  
3 regarding why the industry was ripe for introduction of the disruptive  
4 Metricolor System, and the competitive advantages of the System;
- 5 • The variable dimension alternatives for the syringe, orifice reducer, and  
6 pouch, as well as materials and layer arrangements for the pouch, each  
7 depending on relevant characteristics of the hair products contained therein,  
8 including the viscosity and corrosiveness of such hair products, and which  
9 variations worked best for hair products that contain preservatives,  
10 peroxide or ammonia.

11 77. Each of said items of Confidential Information, and each combination of  
12 more than one of said items of Confidential Information, constitutes a “trade secret”  
13 within the meaning of 18 U.S.C. §§ 1832 *et seq.*, in that it is financial, business,  
14 scientific, technical, economic, or engineering information consisting of patterns,  
15 plans, compilations, formulas, designs, prototypes, methods, techniques, processes,  
16 and procedures; Plaintiff and the D’Amicos have taken reasonable measures to keep  
17 the Confidential Information secret, including, but not limited to, limiting disclosure  
18 to persons and entities that signed appropriate NDAs and maintaining the  
19 information in secure locations; and the Confidential Information either derives  
20 independent economic value, actual or potential, from not being generally known to,  
21 and not being readily ascertainable through proper means by, other persons who  
22 could obtain economic value from the disclosure or use of the information, or did so  
23 prior to L’Oréal’s improper and unauthorized disclosure of some or all of said  
24 Confidential Information.

25 78. Plaintiff is and at all relevant times has been the owner of the trade  
26 secrets embodied in the Confidential Information within the meaning of 18 U.S.C.  
27 §§ 1832 *et seq.*  
28

1           79. L'Oréal obtained the trade secrets embodied in the Confidential  
2 Information by fraud, artifice, or deception in violation of 18 U.S.C. § 1832(a)(1).  
3 Specifically, in order to gain access to Metricolor's trade secrets, L'Oréal entered  
4 into the NDA under the guise of a good faith negotiation and feigned interest in  
5 partnering with Plaintiff and/or licensing or purchasing the Metricolor System,  
6 thereby enticing Plaintiff and the D'Amicos to disclose the Confidential Information  
7 to L'Oréal.

8           80. L'Oréal appropriated, took, carried away, and concealed the trade  
9 secrets embodied in the Confidential Information, without authorization, in violation  
10 of 18 U.S.C. § 1832(a)(1). Specifically, after Plaintiff and the D'Amicos' disclosure  
11 of the Confidential Information to L'Oréal, L'Oréal disclosed the Confidential  
12 Information to unauthorized persons and refused to return or destroy the Confidential  
13 Information upon request.

14           81. L'Oréal has, without authorization, copied, duplicated, sketched, drawn,  
15 photographed, downloaded, uploaded, altered, photocopied, replicated, transmitted,  
16 delivered, sent, mailed, communicated, and conveyed trade secrets embodied in the  
17 Confidential Information in violation of 18 U.S.C. § 1832(a)(2), including in the  
18 course of disclosing the Confidential Information to unauthorized persons (including  
19 unauthorized L'Oréal employees, L'Oréal vendors, and the general public) and  
20 authorizing them to use the Confidential Information in connection with developing,  
21 designing, manufacturing, marketing, and selling the Matrix Brand's Matrixcolor  
22 Bond Ultim8 product and the Redken Brand's pH-Bonder product.

23           82. L'Oréal has received and possessed trade secrets embodied in the  
24 Confidential Information, knowing the same to have been appropriated, obtained, or  
25 converted without authorization, in violation of 18 U.S.C. § 1832(a)(3). This type of  
26 violation occurred each time such Confidential Information was received, retained,  
27 or used by a L'Oréal employee who was not authorized by the NDA to receive,  
28

1 retain, or use it (*i.e.*, who was doing so for a purpose other than the “Purpose”  
2 specified in the NDA).

3 83. Each of the L’Oréal Defendants conspired among themselves and with  
4 their employees, vendors, parents, subsidiaries, and affiliates to commit the offenses  
5 described above, and many such persons and entities took acts to effect the object of  
6 the conspiracy as described above, in violation of 18 U.S.C. § 1832(a)(5).

7 84. The L’Oréal Defendants committed each of the wrongful acts described  
8 above knowingly and with the intent to convert Plaintiff’s trade secrets embodied in  
9 the Confidential Information.

10 85. The L’Oréal Defendants misappropriated Plaintiff’s trade secrets that  
11 are and were related to products, including the Matrix Brand’s Matrixcolor Bond  
12 Ultim8 product and the Redken Brand’s pH-Bonder product, that are and were used  
13 in or intended for use in interstate and foreign commerce.

14 86. The L’Oréal Defendants misappropriated Plaintiff’s trade secrets for the  
15 economic benefit of the L’Oréal Defendants and their employees, vendors, parents,  
16 subsidiaries, and affiliates, and intending or knowing that their offenses would injure  
17 Plaintiff, the owner of the trade secrets.

18 87. As a result of the L’Oréal Defendants’ trade secret misappropriation,  
19 Plaintiff has suffered actual damages in an amount to be proven. The L’Oréal  
20 Defendants have harmed and continue to significantly and materially harm Plaintiff  
21 by, for example, depriving Plaintiff of the value of its Confidential Information,  
22 depriving Plaintiff of compensation for L’Oréal’s use of the Confidential  
23 Information, and depriving Plaintiff of revenue and profits it could have obtained  
24 from marketing the Metricolor System or engaging with another company to market  
25 the Metricolor System free from unfair competition by L’Oréal.

26 88. As a result of the L’Oréal Defendants’ trade secret misappropriation, the  
27 L’Oréal Defendants have been unjustly enriched in an amount to be proven at trial by  
28 virtue of the revenues and profits they have received from sales of the Matrix

1 Brand's Matrixcolor Bond Ultim8 product and the Redken Brand's pH-Bonder  
2 product.

3 89. The L'Oréal Defendants' trade secret misappropriation was willful and  
4 malicious, entitling Plaintiff to an award of exemplary damages pursuant to 18  
5 U.S.C. § 1836(b)(3)(C) and an award of reasonable attorney's fees pursuant to 18  
6 U.S.C. § 1836(b)(3)(D).

7 90. Should the compensatory and unjust enrichment damages be inadequate,  
8 Plaintiff requests, in lieu thereof, a reasonable royalty for the L'Oréal Defendants'  
9 unauthorized use and disclosure of Plaintiff's trade secrets.

10 91. Plaintiff has been irreparably harmed by the L'Oréal Defendants' actual  
11 and threatened trade secret misappropriation in ways that monetary damages cannot  
12 adequately compensate for, and will continue to suffer irreparable harm absent  
13 appropriate injunctive relief, such as a permanent injunction prohibiting the L'Oréal  
14 Defendants and all persons acting in concert with them from, for example, retaining  
15 possession of, using, disclosing, or authorizing the use or disclosure of the  
16 Confidential Information, and from continuing to market and sell products that  
17 embody Confidential Information, and accordingly requests such an injunction  
18 pursuant to 18 U.S.C. § 1836(b)(3)(A); or, if the Court determines that it would be  
19 unreasonable to prohibit future use, for an injunction conditioning future use on  
20 payment of a reasonable royalty.

### 21 **THIRD CAUSE OF ACTION**

#### 22 **(Breach of Covenant of Good Faith and Fair Dealing – Against the L'Oréal** 23 **Defendants and DOES 1 through 100, inclusive)**

24 92. Plaintiff incorporates the foregoing paragraphs as if fully set forth  
25 herein.

26 93. As described above, the D'Amicos and L'Oréal USA, Inc. entered into  
27 an NDA on or about August 25, 2014. Plaintiff was an intended third-party  
28 beneficiary of the NDA and is the assignee of the D'Amicos' rights. The NDA



1 articulated L'Oréal's obligations with respect to the Confidential Information it  
2 received from Plaintiff and the D'Amicos related to the Metricolor System.

3 94. The NDA, being a valid contract, established a duty of good faith and  
4 fair dealing between the parties. The Defendants, in entering into and executing the  
5 NDA, entered into a valid and enforceable contract with Plaintiff. Similarly,  
6 Plaintiff, in entering into and executing the NDA, entered into a valid and  
7 enforceable contract with Defendants.

8 95. The NDA established an exchange of valuable consideration between  
9 the parties. Specifically, the D'Amicos agreed to provide Plaintiff's valuable and  
10 confidential trade secret information in exchange for Defendants' agreement to honor  
11 the confidential nature of the information and documents being disclosed, keep the  
12 information in strict confidence, destroy or return all confidential documents upon  
13 request, and agree not to improperly, use, decompile, disassemble, or reverse-  
14 engineer any part of the Metricolor System or any of the confidential or trade secret  
15 information disclosed by Plaintiff and the D'Amicos.

16 96. As discussed in detail within the first and second causes of action,  
17 Plaintiff and the D'Amicos honored all of their obligations under the NDA and  
18 disclosed Plaintiff's confidential and/or trade secret information regarding the  
19 Metricolor System to Defendants over several years of meetings, discussions and  
20 negotiations. Plaintiff and the D'Amicos, through their diligence in honoring the  
21 NDA, ensured that all conditions required for Defendants' performance of their  
22 obligations under the NDA were met.

23 97. Defendants, however, not only failed to honor their obligations under  
24 the NDA, they further acted and failed to act so as to frustrate and interfere with  
25 Plaintiff's ability to benefit from its acts of providing confidential information to  
26 Defendants under the NDA and honoring Plaintiff's own obligations under the NDA.

27 98. Defendants also breached the NDA by improperly disclosing,  
28 decompiling and reverse-engineering the Metricolor System and failing to honor

1 their obligation to return all confidential trade secret documents provided to them  
2 upon Plaintiff's written request.

3 99. By entering into this NDA, L'Oréal implicitly agreed to deal with  
4 Metricolor in good faith, and consented to conduct itself under a covenant of good  
5 faith and fair dealing, which covenant L'Oréal expressly violated by breaching its  
6 NDA with Metricolor and interfering with Metricolor's receiving the benefits of the  
7 NDA.

8 100. As a result of Defendants' actions and omissions, Plaintiff has suffered  
9 actual damages in an amount to be proven at trial.

10 **FOURTH CAUSE OF ACTION**

11 **(California Unfair Competition Law – Cal. Bus. & Prof. Code §§ 17200, *et seq.* –**  
12 **Against Defendants and Does 1 through 100, inclusive)**

13 101. Plaintiff incorporates the foregoing paragraphs as if fully set forth  
14 herein.

15 102. Defendants' conduct, in unlawfully obtaining Metricolor's confidential  
16 and trade secret information, in direct violation of Defendants' own NDA and in  
17 violation of applicable laws, constitutes an unlawful and unfair business practice, in  
18 clear violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*

19 103. Upon information and belief, Defendants engaged in confidential  
20 discussions and negotiations with Metricolor, and even signed a NDA with  
21 Metricolor, for the purpose of unlawfully obtaining, using, and profiting from  
22 Metricolor's confidential and trade secret information to create, market, and unfairly  
23 profit from Defendants' own products. Defendants did so under the false pretense of  
24 being genuinely interested in potentially partnering with Plaintiff regarding the  
25 Metricolor System, or purchasing or licensing the Metricolor System, when in fact  
26 Defendants had no such genuine interest.

27 104. Defendants, due to their unlawful and unfair business practices, caused  
28 Metricolor extensive financial loss by inducing Metricolor to continue to engage in

1 discussions with Defendants regarding the Metricolor System for approximately two  
2 years, instead of entering the market early. Defendants also caused significant  
3 damage to Metricolor by disclosing Metricolor's trade secrets internally, to third  
4 parties (such as vendors), and to the general public, thereby causing Metricolor's  
5 trade secrets to lose value.

6 105. Plaintiff seeks a permanent injunction pursuant to Cal. Bus. & Prof.  
7 Code § 17203 directing Defendants: (i) to restore Plaintiff's property to Plaintiff,  
8 namely all of the Confidential Information that Defendants acquired from Plaintiff  
9 and the D'Amicos pursuant to the NDA; and (ii) to retrieve Plaintiff's Confidential  
10 Information from all persons and entities to whom or which Defendants disclosed  
11 such Confidential Information, and to return that retrieved Confidential Information  
12 to Plaintiff. In addition, in order to prevent Plaintiff from suffering further  
13 irreparable harm in ways that monetary damages cannot adequately compensate for,  
14 Plaintiff seeks a permanent injunction prohibiting Defendants and all persons acting  
15 in concert with them from, for example, retaining possession of, using, disclosing, or  
16 authorizing the use or disclosure of the Confidential Information, and from  
17 continuing to market and sell products that embody Confidential Information,  
18 including the Matrix Brand's Matrixcolor Bond Ultim8 product and the Redken  
19 Brand's pH-Bonder product.

## 20 **FIFTH CAUSE OF ACTION**

21 **(California Common Law Breach of Confidence – Against Defendants and Does**  
22 **1 through 100, inclusive)**

23 106. Plaintiff incorporates the foregoing paragraphs as if fully set forth  
24 herein.

25 107. Defendants, as described above, entered into and executed an NDA with  
26 Plaintiff on August 25, 2014.

1           108. Defendants, pursuant to the NDA reached with the D'Amicos, and with  
2 Plaintiff as an intended third party beneficiary, received confidential trade secret  
3 information from Plaintiff and the D'Amicos.

4           109. Pursuant to the parties' executed NDA, as well as the parties' express  
5 oral agreements and mutual understanding, Defendants voluntarily received  
6 Metricolor's protected trade secret information in confidence by means of  
7 prototypes, prototypes, PowerPoints, and data presented during in person meetings  
8 and by telephone, and/or delivered to Defendants, which gave Defendants access to  
9 Metricolor's designs, materials, market information, processes, procedures, and  
10 more.

11           110. Defendants, and their agents, employees, and other representatives,  
12 received these protected materials and information with the understanding that they  
13 were to be strictly governed by the NDA. The parties further agreed that all  
14 information transmitted to Defendants by Metricolor was not to be disclosed to other  
15 parties or individuals outside of the terms of the NDA and was not to be used by  
16 Defendants for any purposes beyond the specific limits of the parties' oral and  
17 written agreement.

18           111. At no point did Metricolor, or any agents, employees or representatives  
19 thereof, give any permission of any kind, whether oral, written, express or implied, to  
20 Defendants or any agents, employees or representatives thereof, regarding any usage,  
21 transmission, or disclosure of Metricolor's confidential trade secret information in  
22 any manner not expressly allowed under the parties' NDA.

23           112. As a result of Defendants' actions and omissions, Plaintiff has suffered  
24 actual damages in an amount to be proven at trial.

25  
26  
27  
28

**SIXTH CAUSE OF ACTION**

**(Misappropriation of Trade Secret, under Cal. Civ. Code §§ 3426 *et seq.* –  
Against the L’Oréal Defendants and DOES 1 through 100, inclusive)**

113. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

114. After the NDA was signed on or about August 25, 2014, Plaintiff and the D’Amicos disclosed the Confidential Information to L’Oréal, including, but not limited to, in the form of prototypes, PowerPoints, emails, oral discussions (both in person and by telephone), and data, and including, but not limited to, Confidential Information related to:

- The manufacturing methods, short-cuts, and cost-saving measures for most efficiently creating the tools necessary to use the Metricolor System;
- The identity of the manufacturer of the syringe and the pricing negotiated;
- The identity of the manufacturer of the orifice reducer and the pricing negotiated;
- The identity of the manufacturer of pouches and the pricing negotiated;
- The most effective manner for using the Metricolor System, developed over the course of twelve years of trial and error research and development;
- An explanation from the inventor (a hairstylist actively working in the industry that had spent twelve years developing the Metricolor System) regarding why the industry was ripe for introduction of the disruptive Metricolor System, and the competitive advantages of the System;
- The variable dimension alternatives for the syringe, orifice reducer, and pouch, as well as materials and layer arrangements for the pouch, each depending on relevant characteristics of the hair products contained therein, including the viscosity and corrosiveness of such hair products, and which variations worked best for hair products that contain preservatives, peroxide or ammonia.

1           115. Each of said items of Confidential Information, and each combination of  
2 more than one of said items of Confidential Information, constitutes a “trade secret”  
3 within the meaning of Cal. Civ. Code § 3426.1(d), in that it is information, including  
4 a formula, pattern, compilation, device, method, technique, or process; it derives  
5 independent economic value, actual or potential, from not being generally known to  
6 the public or to other persons who can obtain economic value from its disclosure or  
7 use, or it did prior to L’Oréal’s improper and unauthorized disclosure of some or all  
8 of the Confidential Information; and it is and has been the subject of efforts that are  
9 reasonable under the circumstances to maintain its secrecy, including efforts by  
10 Plaintiff and the D’Amicos to limit disclosure to persons and entities that signed  
11 appropriate NDAs and to maintain the information in secure locations.

12           116. L’Oréal committed multiple acts of misappropriation of Plaintiff’s trade  
13 secrets within the meaning of Cal. Civ. Code § 3426.1(b), including: (i) one or more  
14 employees of the L’Oréal Defendants acquired trade secrets related to the Metricolor  
15 System knowing or having reason to know that the trade secrets were acquired by  
16 improper means—*i.e.*, from another of the L’Oréal Defendants’ employees for an  
17 unauthorized purpose; and (ii) the L’Oréal Defendants disclosed and used trade  
18 secrets related to the Metricolor System without express or implied consent from  
19 Plaintiff or the D’Amico’s, having used improper means to acquire knowledge of the  
20 trade secrets, and knowing or having reason to know that their knowledge of the  
21 trade secrets: (a) was acquired under circumstances giving rise to a duty (pursuant to  
22 the NDA and/or Plaintiff’s common law rights) to maintain its secrecy or limit its  
23 use, (b) was derived from or through a person who had utilized improper means to  
24 acquire it, and (3) was derived from or through a person who owed a duty to Plaintiff  
25 to maintain its secrecy or limit its use.

26           117. As a result of the L’Oréal Defendants’ trade secret misappropriation,  
27 Plaintiff has suffered actual damages in an amount to be proven. The L’Oréal  
28 Defendants have harmed and continue to significantly and materially harm Plaintiff

1 by, for example, depriving Plaintiff of the value of its Confidential Information,  
2 depriving Plaintiff of compensation for L'Oréal's use of the Confidential  
3 Information, and depriving Plaintiff of revenue and profits it could have obtained  
4 from marketing the Metricolor System or engaging with another company to market  
5 the Metricolor System free from unfair competition by L'Oréal.

6 118. As a result of the L'Oréal Defendants' trade secret misappropriation, the  
7 L'Oréal Defendants have been unjustly enriched in an amount to be proven at trial by  
8 virtue of the revenues and profits they have received from sales of the Matrix  
9 Brand's Matrixcolor Bond Ultim8 product and the Redken Brand's pH-Bonder  
10 product.

11 119. The L'Oréal Defendants' trade secret misappropriation was willful and  
12 malicious, entitling Plaintiff to an award of exemplary damages pursuant to Cal. Civ.  
13 Code § 3426.3(c) and an award of reasonable attorney's fees pursuant to Cal. Civ.  
14 Code § 3426.4.

15 120. Should the compensatory and unjust enrichment damages be inadequate,  
16 Plaintiff requests, in lieu thereof, a reasonable royalty for the L'Oréal Defendants'  
17 unauthorized use and disclosure of Plaintiff's trade secrets.

18 121. Plaintiff has been irreparably harmed by the L'Oréal Defendants' actual  
19 and threatened trade secret misappropriation in ways that monetary damages cannot  
20 adequately compensate for, and will continue to suffer irreparable harm absent  
21 appropriate injunctive relief, such as a permanent injunction prohibiting the L'Oréal  
22 Defendants and all persons acting in concert with them from, for example, retaining  
23 possession of, using, disclosing, or authorizing the use or disclosure of the  
24 Confidential Information, and from continuing to market and sell products that  
25 embody Confidential Information, and accordingly requests such an injunction  
26 pursuant to Cal. Civ. Code § 3426.2; or, if the Court determines that it would be  
27 unreasonable to prohibit future use, for an injunction conditioning future use on  
28 payment of a reasonable royalty.



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For injunctive relief and restitution as specified herein;
2. For damages according to proof (including unjust enrichment and as measured by imposition of liability for a reasonable royalty);
3. For exemplary/punitive damages in an amount to be determined at trial;
4. For pre- and post-judgment interest;
5. For costs of suit herein incurred;
6. For reasonable attorneys' fees; and,
7. For such other and further relief as the Court deems just and proper.

Dated: March 5, 2020

MARTORELL LAW APC

By: /s/ Eduardo Martorell

Eduardo Martorell  
Jean-Paul Le Clercq  
JoAnn Victor  
Attorneys for Plaintiff,  
METRICOLOR LLC

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b) and Local Rule 38-1, Plaintiff hereby demands a jury trial on all issues triable of right by jury.

Dated: March 5, 2020

MARTORELL LAW APC

By: /s/ Eduardo Martorell

Eduardo Martorell  
Jean-Paul Le Clercq  
JoAnn Victor  
Attorneys for Plaintiff,  
METRICOLOR LLC