

# Daily Journal

# VERDICTS & SETTLEMENTS

FRIDAY, JUNE 10, 2022

# SETTLEMENT

# \$30,000,000.00

## CONSUMER LAW

### CONSUMERS LEGAL REMEDIES ACT

SETTLEMENT: **\$30,000,000**

CASE/NUMBER: Lash Boost Cases /  
CJC-18-004981

COURT/DATE: San Francisco Superior /  
Mar. 11, 2022

JUDGE: Ethan P. Schulman

#### ATTORNEYS:

Plaintiff Scherr – James P. Willett, Allison R. Willett (Willett & Willett LLP);  
Peter J. Farnese (Beshada Farnese LLP)  
Plaintiff Gorzo – Andrea R. Gold,  
Hassan A. Zavareei, Annick M. Persinger  
(Tycko & Zavareei LLP)

Defendant – Meegan B. Brooks,  
Anthony J. Anscombe,  
Stephanie A. Sheridan  
(Step toe & Johnson LLP)

#### FACTS:

Rodan & Fields, LLC, specializes in skincare products and markets and sells a topical serum known as Lash Boost. Lash Boost is applied nightly along the upper lash line “to promote the appearance of longer, stronger and darker looking” lashes or brows. Multiple class actions were brought in California state court against

Rodan & Fields on behalf of all California consumers who purchased Lash Boost for personal, family, or household purposes.

#### PLAINTIFF’S CONTENTIONS:

Plaintiffs contended that defendant failed to disclose material information to them regarding Lash Boost, including that Lash Boost contained a drug ingredient, Isopropyl Cloprostenate (ICP), which is alleged to present undisclosed risks of physical injury. Because they paid money for Lash Boost when it was allegedly unlawful to sell, plaintiffs in state court contended that defendant was liable to them for, among other things, the price each California consumer paid for the sale of an unapproved drug, which was not what they bargained for, during the applicable period. Plaintiffs further contended that injunctive relief was appropriate because of the defendant’s continued misrepresentations and omissions related to the ingredient ICP.

#### DEFENDANT’S CONTENTIONS:

Defendant denied all contentions. Defendant contended that plaintiffs’ claims would be preempted, that users love Lash Boost such that class certification could not be proven, and that plaintiffs could not prove monetary damages. Defendant denied that it had marketed the product for anything other than cosmetic uses, and maintained that it was not a drug

because defendant had never intended that the product affect the structure and/or function of the human body. Defendant contended that Lash Boost was safe when used in accordance with its label, which it alleged disclosed the potential for the types of reactions plaintiffs allegedly experienced. Defendant alleged that it had always cautioned customers to discontinue use if unpleasant symptoms arose from this product.

#### SETTLEMENT DISCUSSIONS:

The parties engaged in several mediation sessions with the Hon. Jay C. Gandhi (Ret.) and Peter Rosen of JAMS. As a result of the mediation sessions and extensive arms-length negotiations, the parties reached a settlement agreement.

#### RESULT:

The cases settled for a \$30,000,000 cash common fund, a \$8,000,000 credit common fund, and injunctive relief requiring that certain labeling statements be made about ICP.

#### OTHER INFORMATION:

Included Actions: Scherr v. Rodan & Fields LLC; San Bernardino Superior Court; Case Number: CIVDS 1723435. Gorzo, et al. v. Rodan & Fields LLC; San Francisco Superior Court; Case Number: CGC-18- 565628.