

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

LDGP, LLC, d/b/a HARTSOUGH )  
DERMATOLOGY, an Illinois LLC, RITACCA )  
COSMETIC SURGERY AND MED SPA, Ltd. an )  
Illinois LLC, BLACK ALSATIANS, LLC d/b/a )  
PIGMENT DEMOGRAPHICS AND LASER )  
REMOVAL, a Texas LLC, SAXON and )  
SUSAN HATCHETT, BURKE DERMATOLOGY, )  
P.A., and ALL OTHERS SIMILARLY SITUATED,)

Plaintiffs,

v.

CYNOSURE, Inc., a Delaware Corporation,

Defendants.

Case No. 3:15-cv-50148

**FIRST AMENDED CLASS ACTION COMPLAINT AND JURY DEMAND**

Plaintiff, LDGP, LLC, d/b/a Hartsough Dermatology, Ritacca Cosmetic Surgery and Med Spa, Ltd., Black Alsatians, LLC d/b/a Pigment Demographics and Laser Removal, Saxon and Susan Hatchett, Burke Dermatology, P.A. bring this Class Action Complaint against Defendant Cynosure, Inc. based upon false and misleading representations and omissions of material fact made to plaintiffs and similarly situated others regarding the PicoSure Picosecond Aesthetic Workstation. Plaintiffs, for their class action complaint, allege, hypothetically and in the alternative, the following based upon personal knowledge as to what occurred to the plaintiffs and their own acts and experiences and as to all other matters upon information and belief including investigation conducted by its attorneys.

## **Index of Counts**

Count I-	Negligent Misrepresentation
Count II-	Fraudulent/Intentional Misrepresentation
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Count IV-	Breach of Contract/ Breach of Express Warranties Under the UCC
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Count VI-	Violation of Texas Deceptive Trade Practices- Consumer Protection Act
Count VII-	Violation of Delaware Consumer Fraud Act

## **Nature of the Case**

1. On and prior to November 2013 and thereafter, Cynosure, Inc. (hereinafter “Cynosure”) advertised and sold the PicoSure Picosecond Aesthetic Workstation (hereinafter the “PicoSure product”) worldwide. The advertised purpose of the PicoSure product was to eliminate tattoos through the use of new laser technology.
2. In the fourth quarter of 2012, the PicoSure product received FDA “clearance” for the removal of tattoos which was set forth in Cynosure’s 10-27-14 News Release re: Expanded FDA Clearance to Market PicoSure for Acne.
3. On and after the fourth quarter of 2012, Cynosure made numerous representations to dermatology practices, including Plaintiffs, and to the public regarding the ability of the PicoSure product to remove and eliminate recalcitrant tattoos. Those representations were disseminated through a variety of means including web-based marketing, color brochures with pictures, flyers, press releases, the operator’s manual and the clinical reference guide for the Picosure product.
4. At no time did Cynosure inform the public, potential customers, customers and/or users of the PicoSure product of the fact that the PicoSure product *did not eliminate* tattoos as it

represented; Cynosure instead affirmatively concealed the fact that the product did not eliminate tattoos as represented.

### **Parties**

5. LDGP, LLC d/b/a Hartsough Dermatology is a dermatology clinic located at 7402 Riverside Blvd, Loves Park, IL, 61111 where a board certified dermatologist practices. Hartsough Dermatology is a licensed Illinois LLC. Dr. Nicole Hartsough is a licensed and board certified dermatologist and principal owner of Hartsough Dermatology.

6. Ritacca Cosmetic Surgery and Med Spa, Ltd. is a Cosmetic Surgery Practice located at 230 Center Drive, Vernon Hills, Illinois. Ritacca Cosmetic Surgery and Med Spa, Ltd. is a licensed Illinois corporation.

7. Black Alsatians, LLC d/b/a Pigment Demographics and Laser Removal is located at 12233 Rand Road, 620 N#111, Austin, TX hereinafter "Pigment Removal". Black Alsatians, LLC is a licensed LLC in the State of Texas. Pigment Removal was a for-profit business which sold services for tattoo treatment. Saxon and Susan Hatchett were and are the sole owners of Black Alsatians, LLC and operate the tattoo treatment service.

8. Burke Dermatology, P.A. has several locations in Delaware including 18947 John J. Williams Highway, Suite 306, Rehoboth, Delaware, 19971, hereinafter "Burke Dermatology." Burke Dermatology, PA is a professional association licensed in the State of Delaware.

9. Defendant Cynosure is a corporation incorporated and existing under the law of Delaware with its principal place of business located at 5 Carlisle Road, Westfield Massachusetts. Defendant Cynosure does significant business in the Northern District of Illinois, nationwide and

worldwide.

### **Jurisdiction and Venue**

10. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. Section 1332(d), because (a) at least one member of the putative class is a citizen of a state different from Defendant, (b) the amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs, (c) over 100 Picosure Workstations were sold nationwide and (d) none of the exceptions under that subsection apply to this action.

11. The court has personal jurisdiction over this action and venue is proper in the Northern District, Western Division under 28 U.S.C. Section 1391 because one plaintiff, Hartsough Dermatology, is located in Loves Park, IL and because the improper conduct alleged herein occurred in the Western Division of this District.

### **Facts Common To All Counts**

#### **A. Cynosure's deceptive and fraudulent practices to sell its tattoo "removal" machine which does not remove tattoos**

12. Cynosure is a corporation which specializes, in part, in the marketing and sale of medical devices including in the field of dermatology.

13. On and after January 1, 2013, Cynosure engaged in an aggressive marketing campaign to sell Cynosure's Picosure product. Cynosure advertised its tattoo removal machine as new technology that would remove or eliminate tattoos. To effectuate this campaign, Cynosure made representations that its product would remove and eliminate tattoos in written advertisements, flyers, brochures, product inserts, press releases and public statements.

14. At no time did the Picosure product have the ability to remove or eliminate tattoos.

What Cynosure represented about its Picosure product was untrue.

15. On and after January 1, 2013, Cynosure made a number of express written statements of fact and/or promises to potential buyers that the Picosure Product would remove or eliminate tattoos.

16. On and after January 1, 2013, Cynosure made the following representations, affirmations of fact, and/or promises regarding what the Cynosure Picosure product would do. Those representations by Cynosure were material for the plaintiffs and class members in deciding to purchase or lease the Picosure product and the plaintiffs and class members relied upon those representations in purchasing the Picosure product. The following representations by Cynosure regarding the Picosure product formed part of the basis of the bargain for the plaintiffs and class members to purchase the Picosure product:

- a. Cynosure distributed the advertisement attached as Exhibit A in written form and on the web represents a total removal of a multicolored tattoo;
- b. Cynosure distributed the flyer attached as Exhibit A which stated in pertinent part, in reference to the "Picosure Picosecond workstation", "Removing tattoos just got faster", "multi-colored tattoos", "black tattoos", "previously treated tattoos";
- c. Cynosure stated in written flyers, brochures and on the web, that the Picosure product "removes recalcitrant tattoos and difficult colors including blue and green inks"; (Exhibit B)
- d. Cynosure distributed the flyer attached as Exhibit C in written form and on the web which stated, "Breakthrough Tattoo Removal with Picosure," "*Erase unwanted tattoos with Picosure the most advanced laser treatment available for safe and effective tattoo removal. Picosure targets unwanted ink more effectively than ever before successfully removing difficult ink colors such as blues and greens, successfully removing difficult ink colors, such as blues and greens, as well as previously treated tattoos. Fewer treatments, faster recovery time and greater results are achievable with Picosure's groundbreaking*

Picosecond technology”; (emphasis added)

- e. In the Picosure Product Operator’s Manual Chapter 8, p. 49 Cynosure stated: “The Picosure workstation is indicated for tattoo and benign pigmented lesion *removal*”; (emphasis added)
- f. In the Picosure Product Operator’s Manual Chapter 8, p. 49 stated: “532- mm wavelength- The Picosure 532 mm delivery system for *tattoo removal* in skin Types I-II”; (emphasis added)
- g. Cynosure stated in the Clinical Reference Guide at page 4 of 30, “Picosure technology combines a dual approach when treating a photothermal process and a photomechanical impact based on ultra-short pulse duration. This combination of photothermolysis and intense photomechanical impact known as Press Wave *breaks up the target*, e.g. ink or targeted pigment, into particles that are *easily eliminated from the body*”;
- h. Cynosure stated in the Clinical Reference Guide at page 5 of 30, “Targeting Tattoos: The basis of laser treatment for the *removal of tattoos* is the destruction of ink particles by absorption of laser energy without damaging surrounding tissue”, “Wavelength: The Picosure, however, will *effectively treat* both epidermal and dermal lesions.”

17. Cynosure did not provide any information or make any disclosure in any of the aforementioned express representations that would dispel the consumers’ beliefs about Cynosure’s deception.

18. Cynosure did not qualify or limit any of the aforementioned express affirmative statements of fact.

19. Each of the above representations were promises or guarantees by Cynosure to prospective buyers that the Picosure Product would remove and eliminate tattoos. They are specific and pointed representations of what the Picosure Product was capable of.

20. None of the aforementioned express representations contained *any* disclaimer that the

Picosure Product would not remove or eliminate tattoos.

21. Cynosure used photographs and YouTube video clips in its marketing materials to demonstrate the purported efficacy and purported results of the PicoSure product in removing tattoos.

22. Cynosure directly markets and advertises its products, including the PicoSure product, through websites, YouTube video clips, marketing materials, brochures and representations made by Cynosure sales representatives that call on dermatology clinics and other clinics across the United States. These prospective consumers relied on and purchased the PicoSure product based upon these false misrepresentations. Substantial evidence exists that Cynosure employed a policy to intentionally misrepresent to consumers that the PicoSure product would remove tattoos.

23. Cynosure intended for its representations regarding the ability of the Picosure product to remove and eliminate tattoos to induce Plaintiffs and the class members to purchase the Picosure product.

24. Cynosure knew that its representations regarding the ability of the Picosure product to remove and eliminate tattoos were false.

25. Cynosure's representations regarding the ability of the Picosure product to remove and eliminate tattoos were likely to induce a reasonable purchaser to purchase the Picosure product.

26. Cynosure knew that its representations regarding the ability of the Picosure product to remove and eliminate tattoos were likely to induce Plaintiffs and the class members to purchase the Picosure product.

27. Cynosure's representations regarding the ability of the Picosure product to remove and eliminate tattoos induced the Plaintiffs and the class members to purchase the Picosure product.

28. At the time of and after the sales of the Picosure product to the Plaintiffs and the class members, Cynosure was aware of the fact that the Picosure product did not conform to Cynosure's representations and promises that the Picosure product would remove and eliminate tattoos.

29. After the sales of the Picosure product to the Plaintiffs and the class members, Plaintiffs and class members notified Cynosure that the Picosure product did not conform to Cynosure's representations and promises that the Picosure product would remove and eliminate tattoos.

30. By selling the Picosure Product under the premise that it would eliminate and remove tattoos when it would not, the conduct of Cynosure offended public policy, was unscrupulous and substantially injurious to consumers who purchased or operated the product on patients.

31. Each of the aforementioned express representations and others by Cynosure that the Picosure Product would remove or eliminate tattoos was a statement of fact as to what the present ability of the product would do.

32. The deceptive conduct of Cynosure was not only exceptionally egregious, but it was deception designed to entice dermatology clinics and tattoo parlors to purchase Cynosure's product.

#### **B. Cynosure sales of the Picosure Product**

33. As to each Picosure product that was sold to the customer, Cynosure presented the customer with a Customer Purchase Agreement. An example of the Customer Purchase Agreement



is attached as Exhibit D. Under the heading “PRODUCT DESCRIPTION”, The Customer Purchase Agreement referred to and contained the following as being provided to the customer with the “Picosure Picosecond Aesthetic Workstation” “Marketing Package: Business Marketing Package including a manual, DVD, patient brochures and table tent. Electronic support for posters, ad slicks, postcards, before and after photos, web graphics and customizable materials online”.

34. The marketing materials referred to and contained in the “PRODUCT DESCRIPTION” were expressly made a part of the Customer Purchase Agreement between Cynosure and its customer, and were sold to the customer by Cynosure as part of the purchase of the PicoSure product.

35. The marketing materials referred to and contained in the “PRODUCT DESCRIPTION” and sold to the customer by Cynosure as part of the purchase of the PicoSure product contained representations and promises that the Picosure product would *inter alia* “remove” and “eliminate” tattoos.

36. Cynosure made no disclaimers to the prospective customers or customers that its Picosure product would not eliminate or remove tattoos as Cynosure had falsely represented or that results may vary from those portrayed in advertising materials, flyers or pictorials.

37. The Customer Service Agreement, including the written documents referred to and contained in the “PRODUCT DESCRIPTION” and sold to the customer by Cynosure as part of the purchase of the PicoSure product, does not contain any disclosure to the customer that the PicoSure product would not remove or eliminate tattoos as represented by Cynosure. To the contrary, the brochures and other materials referred to and contained in the “PRODUCT DESCRIPTION” and

sold to the customer by Cynosure as part of the purchase of the PicoSure product contained material false representations about the product which went to the heart of the reason why the consumers bought this particular machine.

**C. The Picosure Product does not and has never been able to perform as represented by Cynosure**

38. The Picosure Product does not, nor has it ever been able to, remove or eliminate tattoos.

39. The Picosure product does not, nor has it ever been able to remove or eliminate recalcitrant tattoos.

40. The Picosure Product does not, and has never been able to, “successfully remove difficult ink colors.”

41. The Picosure Product does not, and has never been able to, remove multi-colored tattoos.

42. Individuals, clinics and tattoo treatment facilities who purchased or leased the Picosure Product and utilized the Picosure product as recommended by Cynosure have been unable to remove or eliminate tattoos of its customers and patients.

**D. Cynosure was in the business of supplying information**

43. Cynosure was in the business of supplying information regarding the application and effectiveness of its Picosure Product to dermatology and other tattoo clinics.

44. The information Cynosure supplied to the clinics was intended by Cynosure to be used for guidance by the clinics in their business dealings with their patients and customers.

45. Cynosure provided detailed, written information and photographs in the form of marketing materials to clinics stating that the Picosure product would eliminate and remove tattoos. The clinics would in turn provide that information to its patients and customers in the course of their business dealings. Specifically, the clinics would pass along the glossy brochures that Cynosure gave them concerning the Picosure Product. In fact, it was the specific intent of Cynosure that these clinics would promote the Picosure product and distribute the Cynosure flyers in the clinics to increase the sales and use of the Picosure product.

46. The information supplied by Cynosure to the clinics regarding the Picosure product was used as guidance by the clinics to discuss the Picosure product with its patients and customers.

47. The information supplied by Cynosure to the clinics which the clinics passed along to their patients and customers was false and untrue and was intended by Cynosure to increase the profits of Cynosure.

### **Class Representations**

#### **A. Facts Relating to Plaintiff LDGP, LLC, d/b/a Hartsough Dermatology**

48. Prior to purchasing the Picosure Product, LDGP d/b/a Hartsough Dermatology saw, heard, read and relied upon the express representations and promises from Cynosure that the Picosure Product would eliminate and remove tattoos, in making its decision to purchase the product.

49. The belief that the Picosure Product would in fact remove and eliminate tattoos was a material aspect of why LDGP d/b/a Hartsough Dermatology bought the machine, and formed a part of the basis of the bargain.

50. After receiving and relying upon the material false representations of Cynosure,

Plaintiff Hartsough Dermatology purchased a PicoSure product on November 22, 2013, pursuant to a written agreement with Cynosure, Inc. (Attached as Exhibit D is the contract plaintiff entered into with Cynosure).

51. Pursuant to the express contract terms referred to and contained in the “PRODUCT DESCRIPTION” and as part of PicoSure product sold to Plaintiff Hartsough, Cynosure provided Hartsough a number of items as a part of the Customer Purchase Agreement describing the product including, but not limited to: manuals, DVD, patient brochures and table tents, electronic support for posters, ad slicks, postcards, “before and after” photos (of purported patients), web graphics, and customizable materials on-line. As stated earlier, these promotional materials were replete with simple factual assertions that the machine would remove and eliminate tattoos.

52. Plaintiff Hartsough Dermatology purchased and continued to use the PicoSure product because of the false representations and inducement which it received from Cynosure about the PicoSure product, before purchasing the product. Specifically, Plaintiff purchased the product because of Cynosure’s false representation that the PicoSure product removes and eliminates tattoos. At all times relevant, the Plaintiff relied upon the deceptive advertising practices to purchase and use the PicoSure product, and to market in turn the PicoSure product to its customers.

53. The contract signed by the plaintiff concerning the purchase of the PicoSure product specifically states: “Cynosure grants no right of return”. As such, according to the contract, the plaintiff had no right at any time to return the product.

54. At the time it purchased the PicoSure product, Hartsough Dermatology entered into a business to consumer relationship with Cynosure.

55. After Plaintiff purchased the Picosure product and administered the treatment as directed to numerous patients, none of the patient's tattoos were removed or eliminated, contrary to Cynosure's representations and promises. The fact that the tattoos were not removed or eliminated is an objective fact and not subjective.

56. The Picosure Product did not work as the plaintiff expected or as Cynosure had represented and promised.

57. After purchasing the PicoSure product, plaintiff had numerous questions and eventual concerns about the efficacy and safety of the product. As a result, plaintiff and its staff raised these questions and concerns on numerous occasions with representatives of Cynosure over the telephone, in emails and in person. Specifically, Plaintiff Hartsough notified Cynosure that the Picosure product did not conform to Cynosure's representations and promises that the PicoSure product would remove and eliminate tattoos. Following this notification, Cynosure did not provide a machine to the plaintiff that eliminated and removed tattoos.

58. Before, during and after the purchase of the PicoSure product, Cynosure representatives made numerous false representations and promises to plaintiff regarding the PicoSure product's ability to eliminate and remove tattoos in the form of web page, flyers, brochures, owner's manual and clinical reference guide.

59. The PicoSure product which the plaintiff purchased does not remove or eliminate tattoos, nor has it ever, removed or eliminated tattoos.

60. Had the plaintiff known that the PicoSure product does not remove or eliminate tattoos as represented and promised by Cynosure, the Plaintiff would have purchased a much

cheaper tattoo lightening machine.

61. The value of the Picosure Product which Plaintiff purchased is worth dramatically less than what the Plaintiff paid for it and from the machine as represented and promised by Cynosure.

62. The Picosure product purchased by the Plaintiff has diminished dramatically in value because it does not remove or eliminate tattoos as represented and promised by Cynosure.

63. Plaintiff was injured and lost money in the following respects:

- a. the fee paid to purchase the PicoSure product;
- b. by paying more for the product than plaintiff would have paid, had it known that the PicoSure product did not remove tattoos; and
- c. by paying for a purported tattoo removal machine that did not remove tattoos.

**B. Facts relating to Plaintiff Ritacca Cosmetic Surgery and Med Spa**

64. Prior to purchasing the Picosure Product, Ritacca Cosmetic Surgery and Med Spa saw, heard, read and relied upon the express representations and promises from Cynosure that the Picosure Product would eliminate and remove tattoos in making the decision to purchase the Picosure Product.

65. The belief that the Picosure Product would in fact remove and eliminate tattoos was a material aspect of why Ritacca Cosmetic Surgery and Med Spa bought the machine and formed a part of the basis of the bargain.

66. Plaintiff, Ritacca Cosmetic Surgery and Med Spa, purchased the Picosure Product on May 18, 2013 pursuant to a written contract with Cynosure, Inc. (Attached as Exhibit E is the

contract plaintiff Ritacca entered into with Cynosure.)

67. Pursuant to the express contract terms referred to and contained in the “PRODUCT DESCRIPTION” and as part of the PicoSure product sold to Plaintiff, Cynosure provided Plaintiff a number of items as a part of the Customer Purchase Agreement describing the product including, but not limited to: manuals, DVD, patient brochures and table tents, electronic support for posters, ad slicks, postcards, “before and after” photos (of purported patients), web graphics, and customizable materials on-line. As stated earlier, these promotional materials were replete with simple factual assertions that the machine would remove and eliminate tattoos.

68. Plaintiff Ritacca Cosmetic Surgery and Med Spa purchased and continued to use the PicoSure product because of the false representations and inducement which it received from Cynosure about the PicoSure product, before purchasing the product. Specifically, Plaintiff purchased the product because of Cynosure’s false representation that the PicoSure product removes and eliminates tattoos. At all times relevant, the Plaintiff relied upon the deceptive advertising practices to purchase and use the PicoSure product, and to market the PicoSure product to its customers. Following this notification, Cynosure did not provide a machine to the plaintiff that eliminated and removed tattoos.

69. The contract signed by the Plaintiff concerning the purchase of the PicoSure product specifically states: “Cynosure grants no right of return”. As such, according to the contract, the Plaintiff had no right at any time to return the product.

70. At the time it purchased the PicoSure product, Ritacca Cosmetic Surgery and Med Spa entered into a business to consumer relationship with Cynosure.

71. After Plaintiff purchased the product and administered the treatment as directed to numerous patients, none of the patient's tattoos were removed or eliminated, contrary to Cynosure's representations and promises. The fact that the tattoos were not removed or eliminated is an objective fact and not subjective.

72. The Picosure Product did not work as the plaintiff expected or as Cynosure had represented and promised.

73. After purchasing the PicoSure product, plaintiff had numerous questions and eventual concerns about the efficacy and safety of the product. As a result, plaintiff and its staff raised these questions and concerns on numerous occasions with representatives of Cynosure over the telephone and in person. Specifically, plaintiff notified Cynosure that the Picosure product did not conform to Cynosure's representations and promises that the PicoSure product would remove and eliminate tattoos. Following this notification, Cynosure did not provide a machine to the plaintiff that eliminated and removed tattoos.

74. Before, during and after the purchase of the PicoSure product, Cynosure representatives made numerous false representations and promises to plaintiff regarding the PicoSure product's ability to eliminate and remove tattoos in the form of webpages, flyers, brochures, pamphlets, owner's manual and clinical reference guide.

75. The PicoSure product which the plaintiff purchased does not, nor has it ever, removed or eliminated tattoos.

76. Had the Plaintiff known that the PicoSure product does not remove or eliminate tattoos as represented and promised by Cynosure, the plaintiff would have purchased a much



cheaper tattoo lightening machine.

77. The value of the Picosure Product which Plaintiff purchased is worth dramatically less than what the plaintiff paid for it and from the machine as represented and promised by Cynosure.

78. The Picosure product purchased by the Plaintiff has diminished in value because of Cynosure's intentional misrepresentation.

79. Plaintiff was injured and lost money in the following respects:

- a. the fee paid to purchase the PicoSure product;
- b. by paying more for the product than plaintiff would have paid, had it known that the PicoSure product did not remove tattoos; and
- c. by paying for a purported tattoo removal machine that did not remove tattoos.

### **C. Facts Relating to Plaintiff Pigment Demographics and Laser Removal**

80. Prior to purchasing the Picosure Product, Pigment Demographics and Laser Removal saw, heard, read and relied upon the express representations and promises from Cynosure that the Picosure Product would eliminate and remove tattoos in making its decision to purchase the product.

81. The belief that the Picosure product would in fact remove and eliminate tattoos was a material aspect of why Pigment Demographics and Laser Removal bought the machine and formed a part of the basis of the bargain.

82. Plaintiffs, Saxon and Susan Hatchett on behalf of their business, Pigment Demographics and Laser Removal, purchased a Picosure Product on October 22, 2014 pursuant to a written contract with Cynosure, Inc. (Attached as Exhibit F is the contract plaintiff Pigment Dermatology entered into with Cynosure.)

83. Pursuant to the express contract terms referred to and contained in the “PRODUCT DESCRIPTION” and as part of the PicoSure product sold to Plaintiffs, Cynosure provided Plaintiffs a number of items as a part of the Customer Purchase Agreement describing the product including, but not limited to: manuals, DVD, patient brochures and table tents, electronic support for posters, ad slicks, postcards, “before and after” photos (of purported patients), web graphics, and customizable materials on-line. As stated earlier, these promotional materials were replete with simple factual assertions that the machine would remove and eliminate tattoos.

84. Plaintiff Pigment Tattoo Removal purchased and continued to use the PicoSure product because of the false representations and inducement which it received from Cynosure about the PicoSure product, before purchasing the product. Specifically, Plaintiff purchased the product because of Cynosure’s false representation that the PicoSure product removes and eliminates tattoos. At all times relevant, the Plaintiff relied upon the deceptive advertising practices to purchase and use the PicoSure product, and to market the PicoSure product to its customers.

85. The contract signed by the plaintiff concerning the purchase of the PicoSure product specifically states: “Cynosure grants no right of return”. As such, according to the contract, the plaintiff had no right at any time to return the product.

86. At the time Plaintiff purchased the PicoSure product, Pigment Removal entered into a business to consumer relationship with Cynosure.

87. After Plaintiff purchased the product and administered the treatment as Cynosure recommended to numerous patients, none of the patient’s tattoos were removed or

eliminated, contrary to Cynosure's representations and promises. The fact that the tattoos were not removed or eliminated is an objective fact and not subjective.

88. The Picosure Product did not work as the plaintiff expected or Cynosure had represented and promised.

89. After purchasing the PicoSure product, plaintiff had numerous questions and eventual concerns about the efficacy and safety of the product. As a result, plaintiff and its staff raised these questions and concerns on numerous occasions with representatives of Cynosure over the telephone and in person. Specifically, plaintiff notified Cynosure that the PicoSure product did not conform to Cynosure's representations and promises that the PicoSure product would remove and eliminate tattoos. Following this notification, Cynosure did not provide a machine to the plaintiff that eliminated and removed tattoos.

90. Before, during and after the purchase of the PicoSure product, Cynosure representatives made numerous false representations and promises to plaintiff regarding the PicoSure product's ability to remove and eliminate tattoos.

91. The PicoSure product which the Plaintiff bought does not, nor has it ever, removed or eliminated tattoos.

92. Had the Plaintiff known that the PicoSure product does not remove or eliminate tattoos as represented and promised by Cynosure, the plaintiff would have purchased a much cheaper tattoo lightening machine.

93. The value of the Picosure Product which Plaintiff purchased is worth dramatically less than what the plaintiff paid for it and from the machine as represented and promised by Cynosure.

94. The Picosure product purchased by the plaintiff has diminished in value because it does not remove or eliminate tattoos as represented and promised by Cynosure.

95. Plaintiff was injured and lost money in the following respects:

- a. the fee paid to purchase the PicoSure product;
- b. by paying more for the product than plaintiff would have paid, had it known that the PicoSure product did not remove tattoos; and
- c. by paying for a purported tattoo removal machine that did not remove tattoos.

**D. Facts Relating to Plaintiff Burke Dermatology, P.A.**

96. Prior to entering into a purchase for the Picosure Product, Burke Dermatology, P.A. saw, heard, read and relied upon the express representations and promises from Cynosure that the Picosure Product would eliminate and remove tattoos.

97. The belief that the Picosure Product would in fact remove and eliminate tattoos was a material aspect of why Burke Dermatology, P.A. purchased the Picosure Product and formed a part of the basis of the bargain. Upon information and belief, Burke Dermatology, P.A. entered into the same form contract as the other plaintiffs. At this time, plaintiff is unable to locate the document.

98. Pursuant to the express contract terms referred to and contained in the “PRODUCT DESCRIPTION” and as part of the PicoSure product leased to Plaintiff Burke Dermatology, P.A., Cynosure provided Plaintiff a number of items as a part of the Customer Lease Agreement describing the product including, but not limited to: manuals, DVD, patient brochures and table tents, electronic support for posters, ad slicks, postcards, “before and after” photos (of purported patients), web graphics, and customizable materials on-line. As stated earlier, these promotional materials were

replete with simple factual assertions that the machine would remove and eliminate tattoos.

99. Plaintiff, Burke Dermatology, P.A. purchased and continued to use the PicoSure product because of the false representations and inducement which it received by Cynosure about the PicoSure product, before and after leasing the product. Specifically, Plaintiff purchased the product because of Cynosure's false representation that the PicoSure product removes and eliminates tattoos. At all times relevant, the Plaintiff relied upon the deceptive advertising practices to lease and use the PicoSure product, and to market the PicoSure product to its customers.

100. After purchasing the PicoSure product, Burke Dermatology, P.A. entered into a business to consumer relationship with Cynosure.

101. After Plaintiff purchased the Picosure product and administered the treatment as Cynosure recommended to numerous patients, none of the patient's tattoos were removed or eliminated, contrary to Cynosure's representations and promises. The fact that the tattoos were not removed or eliminated is objective and not subjective.

102. The Picosure Product did not work as the plaintiff expected or as Cynosure represented and promised.

103. After purchasing the PicoSure product, plaintiff had numerous questions and eventual concerns about the efficacy and safety of the product. As a result, plaintiff and its staff raised these questions and concerns on numerous occasions with representatives of Cynosure over the telephone and in person. Specifically, plaintiff notified Cynosure that the PicoSure product did not conform to Cynosure's representations and promises that the PicoSure product would remove and eliminate

tattoos. Following this notification, Cynosure did not provide a machine to the plaintiff that eliminated and removed tattoos.

104. Before, during and after purchasing of the PicoSure product, Cynosure made numerous false representations and promises to plaintiff regarding the PicoSure product's ability to eliminate and remove tattoos in the form of webpages, flyers, brochures, owner's manual and clinical reference guide.

105. The PicoSure product which the Plaintiff purchased does not, nor has it ever, removed or eliminated tattoos.

106. Had the Plaintiff known that the PicoSure product does not remove or eliminate tattoos as represented and promised by CynoSure, the Plaintiff would have purchased a cheaper machine.

107. The value of the Picosure Product which the Plaintiff leased is worth dramatically less than what the plaintiff purchased it for and from the machine as represented and promised by Cynosure.

108. The Picosure product purchased by the Plaintiff has diminished in value because it does not remove or eliminate tattoos as represented and promised by Cynosure.

109. Plaintiff was injured and lost money in the following respects:

- a. the fee paid to purchase the PicoSure product;
- b. by paying more for the purchase of the product than plaintiff would have paid, had it known that the PicoSure product did not remove tattoos; and
- c. by purchasing a purported tattoo removal machine that did not remove tattoos as represented.

### III. Class Allegations

110. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), on behalf of itself and a class of similarly situated individuals (the “Class”) defined as follows:

- a. All individuals and entities in the United States, except those within the State of Louisiana, who purchased a PicoSure Picosecond Aesthetic Workstation.

Excluded from the Class are: (1) Defendant, its legal representatives, assigns, and successors, and any entity in which Defendant has a controlling interest, (2) the Judge or Magistrate Judge to whom this case is assigned and the Judge’s s24 or Magistrate Judge’s immediate family, (3) persons who execute and file a timely request for exclusion, (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released, and (5) the legal representatives, successors, or assigns{plain