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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

DANIKA GISVOLD, On Behalf of Herself
and All Others Similarly Situated,

Plaintiff,

vs.

MERCK & CO., INC, a Delaware
corporation, MSD CONSUMER CARE
INC., a Delaware corporation, MERCK
SHARP & DOHME CORP., a New Jersey
corporation,

Defendants

Case No. '14CV1371 DMS JLB

CLASS ACTION COMPLAINT

1. VIOLATION OF THE UNFAIR COMPETITION LAW, Business and Professions Code §17200 *et seq.*;
2. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, *et seq.*; and
3. BREACH OF EXPRESS WARRANTY.

[DEMAND FOR JURY TRIAL]

1 Plaintiff Danika Gisvold brings this action on behalf of herself and all others
 2 similarly situated against Defendants Merck & Co., Inc., MSD Consumer Care, Inc. and
 3 Merck Sharp & Dohme Corp. (collectively, “Merck” or “Defendants”) and states:

4 NATURE OF ACTION

5 1. Merck distributes, markets and sells several over-the-counter sunscreen
 6 products: 16 products with a Sun Protection Factor (“SPF”) of 55, 70+, 75+, 80 or 100+
 7 (the “Coppertone SPF 55-100+ collection” or “the Products”)¹ and several products with a
 8 SPF of 50 (“the Coppertone SPF 50 Products”).² Aside from claiming a higher SPF
 9 protection, the Coppertone SPF 55-100+ collection make virtually identical
 10 representations and contain virtually identical active ingredients as the Coppertone SPF 50
 11 Products. The Coppertone SPF 55-100+ collection costs more than comparable lower SPF
 12 products, including the Coppertone SPF 50 Products.

13 2. The SPF value indicates the level of sunburn protection provided by the
 14 sunscreen product. All sunscreens must be tested according to a SPF test procedure. The
 15

16 _____
 17 1

18 The Coppertone SPF 55-100+ collection includes: (1) Coppertone SPORT Continuous
 19 Spray SPF 100+ Sunscreen; (2) Coppertone SPORT Continuous Spray SPF 70+
 20 Sunscreen; (3) Coppertone SPORT SPF 100+ Sunscreen Lotion; (4) Coppertone SPORT
 21 SPF 80 Sunscreen Lotion; (5) Coppertone SPORT Stick SPF 55 Sunscreen; (6)
 22 Coppertone ultraGuard Continuous Spray SFP 70+ Sunscreen; (7) Coppertone ultraGuard
 23 SPF 100+ Sunscreen Lotion; (8) Coppertone ultraGuard SPF 70+ Sunscreen Lotion; (9)
 24 Coppertone Oil Free SPF 75 Foaming Lotion; (10) Coppertone Water BABIES SPF 100+
 25 Sunscreen Lotion; (11) Coppertone Water BABIES SPF 70+ Sunscreen Lotion; (12)
 26 Coppertone Water BABIES Foaming Lotion SPF 75 Sunscreen; (13) Coppertone Water
 27 BABIES Stick SPF 55 Sunscreen; (14) Coppertone KIDS Continuous Spray SPF 70+
 28 Sunscreen; (15) Coppertone KIDS SPF 70+ Sunscreen Lotion; and (16) Coppertone KIDS
 Stick SPF 55 Sunscreen. Plaintiff reserves the right to include other products upon
 completion of discovery.

² The Coppertone SPF 50 Products include, but are not limited to: (1) Coppertone SPORT
 PRO Series with DuraFlex Continuous Spray SPF 50 Sunscreen; (2) Coppertone SPORT
 Continuous Spray SPF 50 Sunscreen; (3) Coppertone SPORT SPF 50 Sunscreen Lotion;
 (4) Coppertone ultraGUARD Continuous Spray SPF 50 Sunscreen; (5) Coppertone
 ultraGUARD SPF 50 Sunscreen Lotion; (6) Coppertone Sensitive Skin Faces Lotion SPF
 50 Sunscreen; (7) Coppertone Sensitive Skin SPF 50 Sunscreen Lotion; (8) Coppertone
 Water BABIES Pure & Simple Lotion SPF 50 Sunscreen; (9) Coppertone Water BABIES
 Lotion Spray SPF 50 Sunscreen; (10) Coppertone Water BABIES SPF 50 Sunscreen
 Lotion; (11) Coppertone KIDS Tear Free Lotion SPF 50 Sunscreen; and (12) Coppertone
 KIDS Continuous Spray SPF 50 Sunscreen.

1 test measures the amount of ultraviolet (UV) radiation exposure it takes to cause sunburn
2 when a person is using a sunscreen in comparison to how much UV exposure it takes to
3 cause a sunburn when they do not use a sunscreen. The product is then labeled with the
4 appropriate SPF value indicating the amount of sunburn protection provided by the
5 product. Because SPF values are determined from a test that measures protection against
6 sunburn caused by ultraviolet B (UVB) radiation, SPF values only indicate a sunscreen's
7 UVB protection.

8 3. Consumers have become familiar with SPF values because SPF values have
9 appeared on sunscreen product labels for many decades. Consumers have learned to
10 associate higher SPF values with greater sun protection. Consumers reasonably assume
11 that a product with a SPF of 100+ (like Coppertone SPORT Continuous Spray SPF 100+
12 Sunscreen) provides twice the UVB protection of a sunscreen product with a SPF of 50
13 (like Coppertone SPORT Continuous Spray SPF 50 Sunscreen). It does not. In fact, none
14 of the sunscreen products in the Coppertone SPF 55-100+ collection provide any
15 additional clinical benefit over the Coppertone SPF 50 Products. According to the FDA,
16 who has been examining maximum SPF values since 1978, sunscreen products with SPF
17 values over 50 do not provide any increase in clinical benefit over SPF 50 sunscreen
18 products. The FDA's findings are based on, *inter alia*, scientific tests that demonstrate
19 SPF 100 sunscreens block 99 percent of UV rays, while SPF 50 sunscreens block 98
20 percent – an immaterial difference that provides no additional clinical benefit to
21 consumers against sunburn.

22 4. Merck's SPF 55, 70+, 75+, 80 or 100+ representations (the "superior UVB
23 protection claims") on its Coppertone SPF 55-100+ collection are false, misleading, and
24 reasonably likely to deceive the public. Indeed, the FDA has voiced "concern[] that
25 labeling a product with a specific SPF value higher than 50 would be misleading to the
26 consumer." 76 Fed. Reg. 35672, 35674.³ "[T]he agency is concerned that an average
27 sunscreen consumer may ascribe more to high SPF values than is clinically relevant and
28

³ The FDA has proposed a rule that would cap SPF values at "50+". 76 Fed. Reg. 35672.

1 that such products may further encourage the use of sunscreens as a safe way to prolong
2 exposure.” 65 Fed. Reg. 36319.

3 5. Merck has employed numerous methods to convey its uniform, deceptive
4 superior UVB protection claims to consumers, including advertising inserts, the internet
5 and, importantly, on the Coppertone SPF 55-100+ collection labels where they cannot be
6 missed by consumers. The stated SPF value is the most pertinent information on a
7 sunscreen label.

8 6. The only reason a consumer would purchase a Product from the premium
9 priced Coppertone SPF 55-100+ collection instead of less expensive, lower SPF value but
10 otherwise comparable sunscreen products, including the Coppertone SPF 50 Products, is
11 to obtain a sunscreen product with a proportionally greater sunburn protection, which the
12 Coppertone SPF 55-100+ collection does not provide.

13 7. As a result of Merck’s superior UVB protection claims, consumers –
14 including Plaintiff and members of the proposed Class – have purchased Products that do
15 not perform as advertised.

16 8. Plaintiff brings this action on behalf of herself and other similarly situated
17 consumers who have purchased Products in the Coppertone SPF 55-100+ collection to
18 halt the dissemination of this false, misleading and deceptive advertising message, correct
19 the false and misleading perception it has created in the minds of consumers, and obtain
20 redress for those who have purchased these Products. Based on violations of state unfair
21 competition laws and Merck’s breach of express warranty, Plaintiff seeks injunctive and
22 monetary relief for consumers who purchased Products in the Coppertone SPF 55-100+
23 collection.

24 **JURISDICTION AND VENUE**

25 9. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
26 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
27 \$5,000,000 and is a class action in which there are in excess of 100 class members and
28 many members of the Class are citizens of a state different from Defendants.

1 10. This Court has personal jurisdiction over Defendants because Defendants are
2 authorized to conduct and do conduct business in California. Defendants have marketed,
3 promoted, distributed, and sold the Coppertone SPF 55-100+ collection in California and
4 Defendants have sufficient minimum contacts with this State and/or sufficiently avail
5 themselves of the markets in this State through their promotion, sales, distribution and
6 marketing within this State to render the exercise of jurisdiction by this Court permissible.

7 11. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)
8 because a substantial part of the events or omissions giving rise to Plaintiff's claims
9 occurred while she resided in this judicial district. Venue is also proper under 18 U.S.C.
10 §1965(a) because Defendants transact substantial business in this District.

11 **PARTIES**

12 12. Plaintiff Danika Gisvold resides in San Diego, California. In or around July
13 2013, Plaintiff was exposed to and saw Merck's superior UVB protection claims by
14 reading the Coppertone SPORT SPF 100+ Sunscreen Lotion label. In reliance on the
15 superior UVB protection claim, Plaintiff purchased Coppertone SPORT SPF 100+
16 Sunscreen Lotion at a Wal-Mart near her home in the Mission Valley area of San Diego,
17 California. She paid approximately \$8.99 for the Product. The Coppertone SPORT SPF
18 100+ Sunscreen Lotion Plaintiff purchased did not provide proportionally greater sunburn
19 protection as represented. As a result, Plaintiff suffered injury in fact and lost money.
20 Had Plaintiff known the truth about Merck's misrepresentations and omissions, she would
21 not have purchased the Coppertone SPORT SPF 100+ Sunscreen Lotion.

22 13. Defendant Merck & Co., Inc. is a Delaware corporation headquartered at One
23 Merck Drive, Whitehouse Station, New Jersey 08889. From its headquarters in New
24 Jersey, Merck & Co., Inc. manufactures, distributes, markets and/or sells the Coppertone
25 SPF 55-100+ collection to consumers nationwide and created the superior UVB protection
26 claims, which it caused to be disseminated to consumers nationwide.

27 14. Defendant MSD Consumer Care Inc. is a Delaware corporation with its
28 principal place of business at 3030 Jackson Avenue, Memphis, Tennessee 38151. MSD

1 Consumer Care Inc. is a wholly owned subsidiary of Merck & Co., Inc. From its
2 principal place of business in Tennessee, MSD Consumer Care Inc. manufactures,
3 distributes, markets and/or sells the Coppertone SPF 55-100+ collection to consumers
4 nationwide and created the superior UVB protection claims, which it caused to be
5 disseminated to consumers nationwide.

6 15. Defendant Merck Sharp & Dohme Corp. is a Delaware corporation
7 headquartered at One Merck Drive, Whitehouse Station, New Jersey 08889. Merck Sharp
8 & Dohme Corp. is a subsidiary of Merck & Co., Inc. From its headquarters in New
9 Jersey, Merck Sharp & Dohme Corp. manufactures, distributes, markets and/or sells the
10 Coppertone SPF 55-100+ collection to consumers nationwide and created the superior
11 UVB protection claims, which it caused to be disseminated to consumers nationwide.

12 **FACTUAL ALLEGATIONS**

13 *The Coppertone SPF 55-100+ Collection*

14 16. Merck distributes, markets and sells a variety of products for the skin, hair,
15 and face. This lawsuit concerns the Coppertone SPF 55-100+ collection, a line of 16
16 sunscreen products labeled with a SPF of 55 or greater. The Coppertone SPF 55-100+
17 collection is sold online and at a variety of third-party retailers including Wal-Mart,
18 Target, Walgreens and CVS.

19 17. Since launching the Coppertone SPF 55-100+ collection, Merck has
20 consistently conveyed the message to consumers throughout the United States, including
21 California, that the Coppertone SPF 55-100+ collection provides superior UVB protection
22 compared to comparable lower SPF valued products, including the Coppertone SPF 50
23 Products. They do not. Merck's superior UVB protection claims are false, misleading
24 and deceptive.

25 18. There are only two material differences between the Products in the
26 Coppertone SPF 55-100+ collection and the Coppertone SPF 50 Products: (1) the SPF
27 values; and (2) the price. The Coppertone SPF 55-100+ collection retails for a premium
28 over comparable lower SPF products, including the Coppertone SPF 50 Products. For

1 example, the Coppertone SPORT SPF 100+ Sunscreen Lotion Plaintiff purchased
2 contains all of the active ingredients and provides the same UVB protection as
3 Coppertone SPORT SPF 50 Sunscreen Lotion. Yet, the Coppertone SPORT SPF 100+
4 Sunscreen Lotion Plaintiff bought retails for at least a \$1.00 or more over the same size of
5 the Coppertone SPORT SPF 50 Sunscreen Lotion product.

6 19. A sunscreen's SPF value is calculated by comparing the time needed for a
7 person to burn unprotected with how long it takes for that person to burn wearing
8 sunscreen. So a person who turns red after 20 minutes of unprotected sun exposure is
9 theoretically protected 15 times longer if they adequately apply SPF 15. Importantly, the
10 SPF rating system is non-linear. Also importantly, scientific studies establish that
11 sunscreen products with SPF values over 50 provide no additional clinical benefit to
12 consumers. SPF 100 blocks 99 percent of UV rays, while SPF 50 blocks 98 percent, an
13 immaterial difference that yields no clinical benefit to consumers.

14 20. To stop the false sense of security high numbered SPF products create in the
15 minds of consumers, in June 2011 the FDA proposed a regulation governing the labeling
16 of sunscreen products that would cap SPF values at "SPF 50+." *See* 76 Fed. Reg. 35672.
17 According to the FDA, there is insufficient data "to establish that products with SPF
18 values higher than 50 provide additional clinical benefit over SPF 50 sunscreen products."
19 *Id.* at 35673. In fact, scientific studies establish that there is no added clinical benefit
20 associated with SPF values over 50. The FDA's proposed SPF 50+ rule harmonizes with
21 other countries, including Australia and the European Union, that have imposed similar
22 SPF labeling restrictions to reduce consumer confusion.

23 21. Merck's superior UVB protection claims are designed to take advantage of
24 health conscious consumers seeking protection from the damaging effects of unprotected
25 sun exposure as increasingly expressed by members of the medical community and
26 documented by the media. Each and every consumer who purchases a Product in the SPF
27 55-100+ collection is exposed to the 55, 70+, 75+, 80 or 100+ SPF values, which appear
28 prominently and conspicuously on the front and center of the Product label set-off from

1 the other representations. The front shots of the SPF 55-100+ collection labels appear as
2 follows:

3 **SPORT Continuous**
4 **Spray SPF 100+**



18 **SPORT Continuous**
19 **Spray SPF 70+**



27 **SPORT SPF 100+**
28 **Lotion**



SPORT SPF 80 Lotion



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SPORT Stick
SPF 55



ULTRAGUARD
Continuous Spray SFP
70+



ULTRAGUARD
100+ Lotion



ULTRAGUARD 70+
Sunscreen Lotion



Oil Free SPF 75
Foaming Lotion



Water
BABIES SPF
100+ Lotion



Water BABIES
SPF 70+ Lotion



Water BABIES Foaming
Lotion SPF 75



1 **Water BABIES**
2 **Stick SPF 55**



14 **KIDS Continuous**
15 **Spray SPF 70+**



1 **KIDS SPF 70+**
2 **Sunscreen Lotion**



1 **KIDS Stick SPF 55**



16 ***The Impact of Merck’s Wrongful Conduct***

17 22. Despite the scientific evidence that SPF values higher than 50 provide no
18 additional clinical benefit, Merck continues to claim that the Coppertone SPF 55-100+
19 collection provides superior UVB protection and sells the Products for a price premium
20 over comparable lower value SPF products, including the Coppertone SPF 50 Products.

21 23. As the distributor of the Coppertone SPF 55-100+ collection, Merck
22 possesses specialized knowledge regarding the content and effects of the ingredients
23 contained in its Products, and is in a superior position to learn of the effects – and has
24 learned of the effects – its Products have on consumers.

25 24. Specifically, Merck knew or should have known, but failed to disclose that
26 the Coppertone SPF 55-100+ collection does not provide superior UVB protection
27 compared to less expensive, lower value SPF products, including the Coppertone SPF 50
28 Products.

1 25. Plaintiff and Class members have been and will continue to be deceived or
2 misled by Merck's deceptive superior UVB protection claims. Plaintiff purchased and
3 applied Coppertone SPORT SPF 100+ Sunscreen Lotion during the Class period and in
4 doing so, read and considered the Coppertone SPORT SPF 100+ Sunscreen Lotion label
5 and based her decision to buy and pay a premium for Coppertone SPORT SPF 100+
6 Sunscreen Lotion on the superior UVB protection claims. Merck's superior UVB
7 protection claims were a material factor in influencing Plaintiff's decision to purchase and
8 use Coppertone SPORT SPF 100+ Sunscreen Lotion. Plaintiff would not have purchased
9 Coppertone SPORT SPF 100+ Sunscreen Lotion had she known that the Product does not
10 provide the represented superior UVB protection.

11 26. As a result, Plaintiff and the Class members have been damaged by their
12 purchases of the Coppertone SPF 55-100+ collection and have been deceived into
13 purchasing Products that they believed, based on Merck's representations, provide
14 superior UVB protection compared to less expensive, comparable lower valued SPF
15 products, including the Coppertone SPF 50 Products, when, in fact, they do not.

16 27. Merck has reaped enormous profits from its false marketing and sale of the
17 Coppertone SPF 55-100+ collection.

18 CLASS DEFINITION AND ALLEGATIONS

19 28. Plaintiff brings this action on behalf of herself and all other similarly situated
20 Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil
21 Procedure and seeks certification of the following Class against Merck for violations of
22 California state laws and/or similar laws in other states:

23 **Multi-State Class Action**

24 All consumers who purchased a Product in the Coppertone SPF
25 55-100+ collection, within the applicable statute of limitations,
26 in the United States for personal use until the date notice is
disseminated.

27 Excluded from this Class are Merck and its officers, directors
28 and employees, and those who purchased a Product in the
Coppertone SPF 55-100+ collection for the purpose of resale.

1 29. In the alternative, Plaintiff brings this action on behalf of herself and all other
2 similarly situated California consumers pursuant to Rule 23(a), (b)(2) and (b)(3) of the
3 Federal Rules of Civil Procedure and seeks certification of the following Class:

4
5 **California-Only Class Action**

6 All California consumers who purchased a Product in the
7 Coppertone SPF 55-100+ collection, within the applicable
8 statute of limitations, for personal use until the date notice is
9 disseminated.

8 Excluded from this Class are Merck and its officers, directors
9 and employees and those who purchased a Product in the
Coppertone SPF 55-100+ collection for the purpose of resale.

10 30. *Numerosity.* The members of the Class are so numerous that joinder of all
11 members of the Class is impracticable. Plaintiff is informed and believes that the
12 proposed Class contains thousands of purchasers of the Coppertone SPF 55-100+
13 collection who have been damaged by Merck's conduct as alleged herein. The precise
14 number of Class members is unknown to Plaintiff.

15 31. *Existence and Predominance of Common Questions of Law and Fact.* This
16 action involves common questions of law and fact, which predominate over any questions
17 affecting individual Class members. These common legal and factual questions include,
18 but are not limited to, the following:

19 (a) whether the claims discussed above are true, or are misleading, or
20 objectively reasonably likely to deceive;

21 (b) whether Merck's alleged conduct violates public policy;

22 (c) whether the alleged conduct constitutes violations of the laws
23 asserted;

24 (d) whether Merck engaged in false or misleading advertising;

25 (e) whether Plaintiff and Class members have sustained monetary loss and
26 the proper measure of that loss; and

27 (f) whether Plaintiff and Class members are entitled to other appropriate
28 remedies, including corrective advertising and injunctive relief.

1 32. **Typicality.** Plaintiff's claims are typical of the claims of the members of the
2 Class because, *inter alia*, all Class members were injured through the uniform misconduct
3 described above and were subject to Merck's deceptive superior UVB protection claims
4 that accompanied each and every Product in the Coppertone SPF 55-100+ collection.
5 Plaintiff is advancing the same claims and legal theories on behalf of herself and all
6 members of the Class.

7 33. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the
8 interests of the members of the Class. Plaintiff has retained counsel experienced in
9 complex consumer class action litigation, and Plaintiff intends to prosecute this action
10 vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

11 34. **Superiority.** A class action is superior to all other available means for the
12 fair and efficient adjudication of this controversy. The damages or other financial
13 detriment suffered by individual Class members is relatively small compared to the
14 burden and expense that would be entailed by individual litigation of their claims against
15 Merck. It would thus be virtually impossible for Plaintiff and Class members, on an
16 individual basis, to obtain effective redress for the wrongs done to them. Furthermore,
17 even if Class members could afford such individualized litigation, the court system could
18 not. Individualized litigation would create the danger of inconsistent or contradictory
19 judgments arising from the same set of facts. Individualized litigation would also increase
20 the delay and expense to all parties and the court system from the issues raised by this
21 action. By contrast, the class action device provides the benefits of adjudication of these
22 issues in a single proceeding, economies of scale, and comprehensive supervision by a
23 single court, and presents no unusual management difficulties under the circumstances
24 here.

25 35. The Class also may be certified because Merck has acted or refused to act on
26 grounds generally applicable to the Class thereby making appropriate final declaratory
27 and/or injunctive relief with respect to the members of the Class as a whole.

28

1 36. Plaintiff seeks preliminary and permanent injunctive and equitable relief on
2 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin
3 and prevent Merck from engaging in the acts described, and requiring Merck to provide
4 full restitution to Plaintiff and Class members.

5 37. Unless a Class is certified, Merck will retain monies received as a result of its
6 conduct that were taken from Plaintiff and Class members. Unless a Class-wide
7 injunction is issued, Merck will continue to commit the violations alleged, and the
8 members of the Class and the general public will continue to be misled.

9
10 **COUNT I**
Violation of Business & Professions Code §17200, et seq.

11 38. Plaintiff repeats and re-alleges the allegations contained in the paragraphs
12 above, as if fully set forth herein.

13 39. Plaintiff brings this claim individually and on behalf of the Class.

14 40. As alleged herein, Plaintiff has suffered injury in fact and lost money or
15 property as a result of Merck's conduct because she purchased a Product from the
16 Coppertone SPF 55-100+ collection in reliance on Merck's superior UVB protection
17 claims, but did not receive a Product that provides superior UVB protection as compared
18 to less expensive, comparable lower valued SPF products, including the Coppertone SPF
19 50 Products.

20 41. The Unfair Competition Law, Business & Professions Code §17200, et seq.
21 ("UCL"), and similar laws in other states, prohibits any "unlawful," "fraudulent" or
22 "unfair" business act or practice and any false or misleading advertising. In the course of
23 conducting business, Merck committed unlawful business practices by, *inter alia*, making
24 the superior UVB protection claims (which also constitutes advertising within the
25 meaning of §17200) and omissions of material facts, as set forth more fully herein, and
26 violating Civil Code §§1572, 1573, 1709, 1711, 1770 and Business & Professions Code
27 §§17200, et seq., 17500, et seq., and the common law.
28

1 42. Plaintiff and the Class reserve the right to allege other violations of law,
2 which constitute other unlawful business acts or practices. Such conduct is ongoing and
3 continues to this date.

4 43. Merck's actions also constitute "unfair" business acts or practices because, as
5 alleged above, *inter alia*, Merck engaged in false advertising, misrepresented and omitted
6 material facts regarding the Coppertone SPF 55-100+ collection, and thereby offended an
7 established public policy, and engaged in immoral, unethical, oppressive, and
8 unscrupulous activities that are substantially injurious to consumers.

9 44. As stated in this Complaint, Plaintiff alleges violations of consumer
10 protection, unfair competition and truth in advertising laws in California and other states,
11 resulting in harm to consumers. Merck's acts and omissions also violate and offend the
12 public policy against engaging in false and misleading advertising, unfair competition and
13 deceptive conduct towards consumers. This conduct constitutes violations of the unfair
14 prong of Business & Professions Code §17200, et seq.

15 45. There were reasonably available alternatives to further Merck's legitimate
16 business interests, other than the conduct described herein.

17 46. Business & Professions Code §17200, et seq. also prohibits any "fraudulent
18 business act or practice."

19 47. Merck's actions, claims, nondisclosures and misleading statements, as more
20 fully set forth above, were also false, misleading and/or likely to deceive the consuming
21 public within the meaning of Business & Professions Code §17200, et seq.

22 48. Plaintiff and other members of the Class have in fact been deceived as a
23 result of their reliance on Merck's material representations and omissions, which are
24 described above. This reliance has caused harm to Plaintiff and other members of the
25 Class who each purchased a Product from the Coppertone SPF 55-100+ collection.
26 Plaintiff and the other Class members have suffered injury in fact and lost money as a
27 result of these unlawful, unfair, and fraudulent practices.
28

1 49. As a result of its deception, Merck has been able to reap unjust revenue and
2 profit.

3 50. Unless restrained and enjoined, Merck will continue to engage in the above-
4 described conduct. Accordingly, injunctive relief is appropriate.

5 51. Plaintiff, on behalf of herself, all others similarly situated, and the general
6 public, seeks restitution and disgorgement of all money obtained from Plaintiff and the
7 members of the Class collected as a result of unfair competition, an injunction prohibiting
8 Merck from continuing such practices, corrective advertising and all other relief this Court
9 deems appropriate, consistent with Business & Professions Code §17203.

10
11 **COUNT II**
12 **Violations of the Consumers Legal Remedies Act –**
13 **Civil Code §1750 et seq.**

14 52. Plaintiff repeats and re-alleges the allegations contained in the paragraphs
15 above, as if fully set forth herein.

16 53. Plaintiff brings this claim individually and on behalf of the Class.

17 54. This cause of action is brought pursuant to the Consumers Legal Remedies
18 Act, California Civil Code §1750, et seq. (the “Act”) and similar laws in other states.
19 Plaintiff is a “consumer” as defined by California Civil Code §1761(d). The Products in
20 the SPF 55-100+ collection are “goods” within the meaning of the Act.

21 55. Merck violated and continues to violate the Act by engaging in the following
22 practices proscribed by California Civil Code §1770(a) in transactions with Plaintiff and
23 the Class which were intended to result in, and did result in, the sale of the Coppertone
24 SPF 55-100+ collection:

25 (5) Representing that [the Products] have . . . approval, characteristics, . . . uses
26 [and] benefits . . . which [they do] not have

27 * * *

28 (7) Representing that [the Products] are of a particular standard, quality or
grade . . . if [they are] of another.

* * *

(9) Advertising goods . . . with intent not to sell them as advertised.

* * *

(16) Representing that [the Products have] been supplied in accordance with a previous representation when [they have] not.

56. Merck violated the Act by representing and failing to disclose material facts on the Coppertone SPF 55-100+ collection labeling and packaging and associated advertising, as described above, when it knew, or should have known, that the representations were false and misleading and that the omissions were of material facts it was obligated to disclose.

57. Pursuant to California Civil Code §1782(d), Plaintiff and the Class seek a Court order enjoining the above-described wrongful acts and practices of Merck and for restitution and disgorgement.

58. Pursuant to §1782 of the Act, Plaintiff notified Defendants in writing by certified mail of the particular violations of §1770 of the Act and demanded that Defendants rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendants’ intent to so act. Copies of the letters are attached hereto as Exhibit A.

59. If Merck fails to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to §1782 of the Act, Plaintiff will amend this Complaint to add claims for actual, punitive and statutory damages, as appropriate.

60. Merck’s conduct is fraudulent, wanton and malicious.

61. Pursuant to §1780(d) of the Act, attached hereto as Exhibit B is the affidavit showing that this action has been commenced in the proper forum.

///

///

///

COUNT III
Breach of Express Warranty

1
2
3 62. Plaintiff repeats and re-alleges the allegations contained in the paragraphs
4 above, as if fully set forth herein.

5 63. Plaintiff brings this claim individually and on behalf of the Class.

6 64. The Uniform Commercial Code section 2-313 provides that an affirmation of
7 fact or promise, including a description of the goods, becomes part of the basis of the
8 bargain and creates an express warranty that the goods shall conform to the promise and
9 to the description.

10 65. At all times, California and other states have codified and adopted the
11 provisions in the Uniform Commercial Code governing the express warranty of
12 merchantability.

13 66. As discussed above, Merck expressly warranted on each and every Product
14 label in the Coppertone SPF 55-100+ collection that the Products provide proportionally
15 greater UVB protection than comparable, lower SPF valued products, including the
16 Coppertone SPF 50 Products. The superior UVB protection claims made by Merck are
17 affirmations of fact that became part of the basis of the bargain and created an express
18 warranty that the goods would conform to the stated promise. Plaintiff placed importance
19 on Merck's representations.

20 67. All conditions precedent to Merck's liability under this contract have been
21 performed by Plaintiff and the Class.

22 68. Merck was provided notice of these issues by, *inter alia*, the instant
23 Complaint.

24 69. Merck breached the terms of this contract, including the express warranties,
25 with Plaintiff and the Class by not providing a Product that provides superior UVB
26 protection as represented.

27 70. As a result of Merck's breach of its contract, Plaintiff and the Class have
28 been damaged in the amount of the price of the Products they purchased.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

- A. Certifying the Class as requested herein;
- B. Awarding Plaintiff and the proposed Class members damages;
- C. Awarding restitution and disgorgement of Merck’s revenues to Plaintiff and the proposed Class members;
- D. Awarding injunctive relief as permitted by law or equity, including: enjoining Merck from continuing the unlawful practices as set forth herein, and directing Merck to identify, with Court supervision, victims of its conduct and pay them all money it is required to pay;
- E. Ordering Merck to engage in a corrective advertising campaign;
- F. Awarding attorneys’ fees and costs; and
- G. Providing such further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

Dated: June 4, 2014

PATTERSON LAW GROUP

By: /s/ James R. Patterson
James R. Patterson (CA 211102)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: 619.756.6990
Facsimile: 619.756.6991
jim@pattersonlawgroup.com

Attorneys for Plaintiff

EXHIBIT "A"



JAMES R. PATTERSON
619.756.6993 direct
jim@pattersonlawgroup.com

June 4, 2014

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Merck & Co., Inc.
General Counsel
One Merck Drive,
Whitehouse Station, New Jersey 08889

Re: Danika Gisvold v. Merck & Co., Inc., et al.

Dear Sir or Madam:

Our law firm represents Danika Gisvold and all other consumers similarly situated in an action against Defendants Merck & Co., Inc., MSD Consumer Care, Inc., and Merck Sharp & Dohme Corp. (collectively, “Merck” or “Defendants”), arising out of, *inter alia*, misrepresentations, either express or implied, by Merck to consumers that your Coppertone SPF 55-100+ collection¹ provides greater sun protection than comparable, lower SPF valued products, including the Coppertone SPF 50 products.²

Ms. Gisvold and others similarly situated purchased Products in the SPF Coppertone 55-

¹ The Coppertone SPF 55-100+ collection includes: (1) Coppertone SPORT Continuous Spray SPF 70+ Sunscreen; (2) Coppertone SPORT Continuous Spray SPF 100+ Sunscreen; (3) Coppertone SPORT SPF 80 Sunscreen Lotion; (4) Coppertone SPORT SPF 100+ Sunscreen Lotion; (5) Coppertone SPORT Stick SPF 55 Sunscreen; (6) Coppertone ultraGuard Continuous Spray SFP 70+ Sunscreen; (7) Coppertone ultraGuard SPF 70+ Sunscreen Lotion; (8) Coppertone ultraGuard SPF 100+ Sunscreen Lotion; (9) Coppertone Oil Free SPF 75 Foaming Lotion; (10) Coppertone Water BABIES SPF 70+ Sunscreen Lotion; (11) Coppertone Water BABIES SPF 100+ Sunscreen Lotion; (12) Coppertone Water BABIES Foaming Lotion SPF 75 Sunscreen; (13) Coppertone Water BABIES Stick SPF 55 Sunscreen; (14) Coppertone KIDS Continuous Spray SPF 70+ Sunscreen; (15) Coppertone KIDS SPF 70+ Sunscreen Lotion; and (16) Coppertone KIDS Stick SPF 55 Sunscreen. Plaintiff reserves the right to include other products upon completion of discovery.

² The Coppertone SPF 50 products include: (1) Coppertone SPORT PRO Series with DuraFlex Continuous Spray SPF 50 Sunscreen; (2) Coppertone SPORT Continuous Spray SPF 50 Sunscreen; (3) Coppertone SPORT SPF 50 Sunscreen Lotion; (4) Coppertone ultraGUARD Continuous Spray SPF 50 Sunscreen; (5) Coppertone ultraGUARD SPF 50 Sunscreen Lotion; (6) Coppertone Sensitive Skin Faces Lotion SPF 50 Sunscreen; (7) Coppertone Sensitive Skin SPF 50 Sunscreen Lotion; (8) Coppertone Water BABIES Pure & Simple Lotion SPF 50 Sunscreen; (9) Coppertone Water BABIES Lotion Spray SPF 50 Sunscreen; (10) Coppertone Water BABIES SPF 50 Sunscreen Lotion; (11) Coppertone KIDS Tear Free Lotion SPF 50 Sunscreen; and (12) Coppertone KIDS Continuous Spray SPF 50 Sunscreen.

100+ collection unaware that Merck's SPF 55, 70+, 75, 80 or 100+ representations (the "superior UVB protection claims") are false. SPF 100 blocks 99 percent of UV rays, while SPF 50 blocks 98 percent, an immaterial difference that yields no clinical benefit to consumers. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Merck's superior UVB protection claims are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Merck with the intent to induce the consuming public to purchase the SPF 55-100+ collection. The superior UVB protection claims do not assist consumers; they simply mislead them.

Merck's superior UVB protection claims violate California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that [the SPF 55-100+ collection has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

* * *

- (7) Representing that [the SPF 55-100+ collection is] of a particular standard, quality or grade, . . . if [it is] of another.

* * *

- (9) Advertising goods . . . with the intent not to sell them as advertised.

* * *

- (16) Representing that [the SPF 55-100+ collection has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Merck's superior UVB protection claims also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all others similarly situated that Merck immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Merck should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

Merck & Co., Inc.
June 4, 2014
Page Three

Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted breach of warranty theories, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Merck address these violations immediately.

Merck must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Products;
2. Notify all such purchasers so identified that upon their request, Merck will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such Products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all the SPF 55-100+ collection purchasers who so request; and
4. Cease from expressly or impliedly representing to consumers that these Products provide greater sun protection than lower SPF valued products, including the Coppertone SPF 50 products, when there is no reasonable basis for so claiming, as more fully described in the enclosed Complaint.

We await your response.

Sincerely,

PATTERSON LAW GROUP

A handwritten signature in blue ink, appearing to read "James R. Patterson", is written over a light blue rectangular background.

James R. Patterson

Enclosure



PATTERSON LAW GROUP

JAMES R. PATTERSON
619.756.6993 direct
jim@pattersonlawgroup.com

June 4, 2014

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Merck Sharp & Dohme Corp.
General Counsel
One Merck Drive,
Whitehouse Station, New Jersey 08889

Re: Danika Gisvold v. Merck & Co., Inc., et al.

Dear Sir or Madam:

Our law firm represents Danika Gisvold and all other consumers similarly situated in an action against Defendants Merck & Co., Inc., MSD Consumer Care, Inc., and Merck Sharp & Dohme Corp. (collectively, “Merck” or “Defendants”), arising out of, *inter alia*, misrepresentations, either express or implied, by Merck to consumers that your Coppertone SPF 55-100+ collection¹ provides greater sun protection than comparable, lower SPF valued products, including the Coppertone SPF 50 products.²

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Merck Sharp & Dohme Corp.

June 4, 2014

Page Two

100+ collection unaware that Merck's SPF 55, 70+, 75, 80 or 100+ representations (the "superior UVB protection claims") are false. SPF 100 blocks 99 percent of UV rays, while SPF 50 blocks 98 percent, an immaterial difference that yields no clinical benefit to consumers. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

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* * *

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* * *

- (9) Advertising goods . . . with the intent not to sell them as advertised.

* * *

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Merck Sharp & Dohme Corp.

June 4, 2014

Page Three

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We await your response.

Sincerely,

PATTERSON LAW GROUP

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James R. Patterson

Enclosure



PATTERSON LAW GROUP

JAMES R. PATTERSON
619.756.6993 direct
jim@pattersonlawgroup.com

June 4, 2014

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

MSD Consumer Care, Inc.
General Counsel
3030 Jackson Avenue
Memphis, Tennessee 381151

Re: Danika Gisvold v. Merck & Co., Inc., et al.

Dear Sir or Madam:

Our law firm represents Danika Gisvold and all other consumers similarly situated in an action against Defendants Merck & Co., Inc., MSD Consumer Care, Inc., and Merck Sharp & Dohme Corp. (collectively, “Merck” or “Defendants”), arising out of, *inter alia*, misrepresentations, either express or implied, by Merck to consumers that your Coppertone SPF 55-100+ collection¹ provides greater sun protection than comparable, lower SPF valued products, including the Coppertone SPF 50 products.²

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MSD Consumer Care, Inc.

June 4, 2014

Page Two

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MSD Consumer Care, Inc.
June 4, 2014
Page Three

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4. Cease from expressly or impliedly representing to consumers that these Products provide greater sun protection than lower SPF valued products, including the Coppertone SPF 50 products, when there is no reasonable basis for so claiming, as more fully described in the enclosed Complaint.

We await your response.

Sincerely,

PATTERSON LAW GROUP

A handwritten signature in blue ink, appearing to read "James R. Patterson", is written over a light blue grid background.

James R. Patterson

Enclosure

EXHIBIT "B"

1 JAMES R. PATTERSON (#211102)
2 PATTERSON LAW GROUP
3 402 West Broadway, 29th Floor
4 San Diego, California 92101
5 Telephone: 619.756.6990
6 Facsimile: 619.756.6991
7 jim@pattersonlawgroup.com

8 Attorneys for Plaintiff

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11 DANIKA GISVOLD, On Behalf of Herself
12 and All Others Similarly Situated,

13 Plaintiff,

14 vs.

15 MERCK & CO., INC, a Delaware
16 corporation, MSD CONSUMER CARE
17 INC., a Delaware corporation, MERCK
18 SHARP & DOHME CORP., a New Jersey
19 corporation,

20 Defendants

Case No. '14CV1371 DMS JLB

**DECLARATION OF JAMES R.
PATTERSON RE: JURISDICTION**

21
22 I, JAMES R. PATTERSON, declare as follows:

23 1. I am an attorney duly licensed to practice before all of the courts of the State
24 of California. I am the principle and owner of the Carpenter Law Group, and the counsel
25 of record for plaintiffs in the above-entitled action.

26 2. Defendant Merck & Co., Inc., has done and is doing business in the
27 Southern District of California. Such business includes the marketing, distributing and
28

1 sale of its Coppertone Sunscreen products as referenced in Plaintiff's Class Action
2 Complaint.

3 3. Defendant MSD Consumer Care, Inc., has done and is doing business in the
4 Southern District of California. Such business includes the marketing, distributing and
5 sale of its Coppertone Sunscreen products as referenced in Plaintiff's Class Action
6 Complaint.

7 4. Defendant Merck Sharp & Dohme Corp., has done and is doing business in
8 the Southern District of California. Such business includes the marketing, distributing
9 and sale of its Coppertone Sunscreen products as referenced in Plaintiff's Class Action
10 Complaint.

11 5. Furthermore, Plaintiff Gisvold purchased the referenced sunscreen products
12 in San Diego.

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct.

15 Executed this 4th day of June, 2014 in San Diego, California.

16
17 /s/ James R. Patterson

18 James R. Patterson
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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DANIKA GISVOLD, On Behalf of Herself and All Others Similarly Situated,

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Patterson Law Group
402 W. Broadway, 29th Floor, San Diego, Ca 92101
Tel: (619) 756-6990

DEFENDANTS

MERCK & CO., INC., a Delaware corporation, MSD CONSUMER CARE INC., a Delaware corporation, MERCK SHARP & DOHME CORP., a New Jersey corporation,
County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'14CV1371 DMS JLB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/>
Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/>
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	3	Foreign Nation	<input type="checkbox"/>

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §1332(d)(2); 28:1331 - Federal Question

Brief description of cause:
Violation of the Unfair Competition Law, Violation of the Consumers Legal Remedies Act, and et al

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Exceeds 5M CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: June 4, 2014 SIGNATURE OF ATTORNEY OF RECORD: /s/ James R. Patterson

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____