

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
TIMBA BIMONT,	:
SYLVIA BETHEA,	:
LOURDES ROSADO,	:
ROSEMARY ARELLANO,	:
BRENDA STARR,	:
RONALD BRINKLEY,	:
WENDY SYROKA,	:
DAWN KELLEY,	:
SERRENA UPTON,	:
KENDRA ANGEL and	:
MARK MCINTIRE,	:
<i>on behalf of themselves and others similarly</i>	:
<i>situated,</i>	:
	:
Plaintiffs,	:
	:
- against -	:
	:
	:
UNILEVER UNITED STATES, INC.,	:
	:
Defendant.	:
-----X	

Case No. 14-cv-07749 (JPO)(AJP)

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

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Plaintiffs, TIMBA BIMONT, SYLVIA BETHEA, LOURDES ROSADO, ROSEMARY ARELLANO, BRENDA STARR, RONALD BRINKLEY, WENDY SYROKA, DAWN KELLEY, SERRENA UPTON, KENDRA ANGEL and MARK MCINTIRE (“Plaintiffs”), on behalf of themselves and other persons similarly situated, by and through their undersigned attorneys, as and for their First Amended Complaint against the Defendant, allege the following:

NATURE OF THE ACTION

1. This action seeks redress on a class-wide basis for deceptive and otherwise improper business practices that Defendant, UNILEVER UNITED STATES, INC. (hereinafter the “Defendant” or “UNILEVER”), engages in with respect to the labeling and packaging of its AXE® and Degree® antiperspirants and deodorants (herein referred to as the “Products” as such term is defined in Paragraph 26 below).

2. Defendant, with the intent to induce consumers to purchase its Products for a premium, manufactures, markets and sells the Products (i) with labels that list a false and misleading net weight of actual usable deodorant/antiperspirant, (ii) with labels that list a false and misleading total net weight of deodorant/antiperspirant (whether usable or unusable) and (iii) with non-functional slack-fill, in violation of consumer protection laws of the 50 states and District of Columbia.

3. Plaintiffs bring this proposed consumer class action on behalf of themselves and all other persons nationwide, who from the applicable limitations period up to and including the present (the “Class Period”), purchased for consumption and not resale the Products.

4. During the Class Period, Defendant purposefully sold the Products with (i) labels that list a false and misleading net weight and (ii) non-functional slack-fill, throughout the United States. Defendants’ misrepresentations include advertising and packaging the Products in containers which had:

- a) Net weight statements that were greater than the actual weight of usable product therein, referred to as “short weight” (in industry parlance) which, when displayed for sale to Plaintiffs and other reasonable consumers, caused false representations as to the correct weight of the Products;
- b) Net weight statements that were greater than the total net weight (including usable and unusable portions of deodorant/antiperspirant) in the containers thereof, which when displayed for sale to Plaintiffs and other reasonable consumers, caused false representations as to the correct weight of the Products; and
- c) Void space not visible by consumers, referred to as “non-functional slack-fill.” This non-functional slack-fill packaging, when displayed for sale to Plaintiffs and other reasonable consumers, caused the false impression that there was more product than actually packaged.

5. Plaintiffs and Class members viewed Defendant’s misleading labeling and Product packaging, relied on the representations and were thereby deceived in deciding to purchase the Products for a premium price.

6. Defendant violated statutes enacted in each of the fifty states and the District of Columbia that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes are:

- a) Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.*;
- b) Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code § 45.50.471, *et seq.*;
- c) Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.*;
- d) Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
- e) California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
- f) Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.*;
- g) Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;

- h) Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
- i) District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.*;
- j) Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
- k) Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;
- l) Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480 1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.*;
- m) Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;
- n) Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.*;
- o) Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.*;
- p) Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.*;
- q) Kansas Consumer Protection Act, Kan. Stat. Ann. §§ 50 626, *et seq.*;
- r) Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann. §§ 365.020, *et seq.*;
- s) Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § § 51:1401, *et seq.*;
- t) Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*;
- u) Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;
- v) Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
- w) Michigan Consumer Protection Act, § § 445.901, *et seq.*;
- x) Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68, *et seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;
- y) Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.*;
- z) Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
- aa) Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.*;
- bb) Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;
- cc) Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*;
- dd) New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.* ;
- ee) New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et seq.*;
- ff) New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 1, *et seq.* ;
- gg) New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.*;
- hh) North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.*;
- ii) North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.*;
- jj) Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.*;
- kk) Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
- ll) Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;
- mm) Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. § § 201-1, *et seq.*;
- nn) Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- oo) South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.*;
- pp) South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, *et seq.*;
- qq) Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.*;
- rr) Texas Stat. Ann. §§ 17.41, *et seq.*, Texas Deceptive Trade Practices Act, *et seq.*;

- ss)* Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.*;
- tt)* Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.*;
- uu)* Virginia Consumer Protection Act, Virginia Code Ann. §§59.1-196, *et seq.*;
- vv)* Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et seq.*;
- ww)* West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.*;
- xx)* Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100. 18, *et seq.*;
- yy)* Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§40-12-101, *et seq.*

7. Defendant has deceived Plaintiffs and other consumers nationwide by mischaracterizing the volume and quantity of deodorant and antiperspirant in its Products. Defendant has been unjustly enriched as a result of its conduct. Through these unfair and deceptive practices, Defendant has collected hundreds of millions of dollars from the sale of its Products that it would not have otherwise earned. Plaintiffs bring this action to stop Defendant's misleading practice.

JURISDICTION AND VENUE

8. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C. § 1332(d)(1)(B), whereby: (i) the proposed class consists of over 100 class members, (ii) a member of the putative class is a citizen of a different state than Defendant, and (iii) the amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2).

9. The Court has jurisdiction over the federal claims alleged herein pursuant to 28 U.S.C. § 1331 because it arises under the laws of the United States.

10. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.

11. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different states.

12. The Court has personal jurisdiction over the Defendant because its Products are advertised, marketed, distributed and sold throughout the United States; Defendant engaged in the wrongdoing alleged in this Complaint throughout the United States, including in New York State; Defendant is authorized to do business in New York State; and Defendant has sufficient minimum contacts with New York and/or otherwise has intentionally availed itself of the markets in New York State, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendant is engaged in substantial and not isolated activity within New York State.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) and (b), because a substantial part of the events giving rise to Plaintiffs' claims occurred in this District, and Defendant is subject to personal jurisdiction in this District. Plaintiffs BIMONT and BETHEA purchased and used Defendant's Products in New York County.

PARTIES

New York Plaintiffs

14. Plaintiff, TIMBA BIMONT, is a citizen of the State of New York and resides in New York County. Plaintiff BIMONT has purchased the Products for personal consumption within the State of New York within the past year. Plaintiff BIMONT has purchased Products from the AXE® Gold Temptation™ line, including the AXE® Gold Temptation™ antiperspirant for the purchase price of approximately \$6.49 (or more). He has also purchased Products from the Degree® Dry Protection line, including Degree® Dry Protection antiperspirant/deodorant for the purchase price of approximately \$4.05 (or more). Plaintiff BIMONT has purchased the products from convenience stores and pharmacies located throughout New York County, including but not limited to Duane Reade and Hilltop Pharmacy. Plaintiff BIMONT purchased

the Product(s) at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

15. Plaintiff, SYLVIA BETHEA, is a citizen of the State of New York and resides in New York County. Plaintiff BETHEA has purchased the Products for personal consumption within the State of New York within the past year. Plaintiff BETHEA has purchased Products from the Degree® line, including Degree® Dry Protection antiperspirant/deodorant for the purchase price of approximately \$3.39 (or more). Plaintiff BETHEA has purchased the products from convenience stores and supermarkets located throughout New York County, including but not limited to Pathmark. Plaintiff BETHEA purchased the Product(s) at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

New Jersey Plaintiff

16. Plaintiff, LOURDES ROSADO, is a citizen of and resides in the State of New Jersey. Plaintiff ROSADO was exposed to Defendant's Product packaging, and, in reliance on such packaging, purchased the slack-filled Product(s) for personal consumption in the State of New Jersey within the past six months. Plaintiff ROSADO has purchased Products from the Degree® line, including Degree® Dry Protection antiperspirant/deodorant for the purchase price of approximately \$5.59 (or more). Plaintiff ROSADO has purchased the Products from various stores, including but not limited to ShopRite. Plaintiff ROSADO purchased the Product(s) at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

California Plaintiff

17. Plaintiff, ROSEMARY ARELLANO, is a citizen of and resides in the State of California. Plaintiff ARELLANO was exposed to Defendant's Product packaging, and, in

reliance on such packaging, purchased the slack-filled Product(s) for personal consumption in the State of California for the past year. Plaintiff ARELLANO has purchased Products from the Degree® line, including Degree® Dry Protection antiperspirant/deodorant for the purchase price of approximately \$5.49 (or more). She has also purchased Products from the AXE® Gold Temptation™ line, including the AXE® Gold Temptation™ antiperspirant for the purchase price of approximately \$5.49 (or more). Plaintiff ARELLANO purchased the Products from various stores, including but not limited to Target and Walmart. Plaintiff ARELLANO purchased the Product(s) at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

Florida Plaintiff

18. Plaintiff, BRENDA STARR, is a citizen of and resides in the State of Florida. Plaintiff STARR has purchased the Products for personal consumption in the State of Florida within the past year. Plaintiff STARR was exposed to Defendant's Product packaging, and, in reliance on such packaging, purchased the slack-filled Product(s) for personal consumption in the State of Florida. Plaintiff STARR purchased the Product(s) for the purchase price of approximately \$3.79 (or more). Plaintiff STARR purchased the Product(s) at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

Pennsylvania Plaintiff

19. Plaintiff, RONALD BRINKLEY, is a citizen of and resides in the State of Pennsylvania. Plaintiff BRINKLEY was exposed to Defendant's Product packaging, and, in reliance on such packaging, purchased the slack-filled Product(s) for personal consumption in the State of Pennsylvania within the past year. Plaintiff BRINKLEY has purchased Products from the Degree® line, including Degree® Dry Protection antiperspirant/deodorant for the

purchase price of approximately \$2.47 (or more). Plaintiff BRINKLEY purchased the Products from various stores, including but not limited to Walmart. Plaintiff BRINKLEY purchased the Product(s) at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

Ohio Plaintiff

20. Plaintiff, WENDY SYROKA is a citizen of and resides in the State of Ohio. Plaintiff SYROKA was exposed to Defendant's Product packaging, and, in reliance on such packaging, purchased the slack-filled Product(s) for personal consumption in the State of Ohio within the past six months. Plaintiff SYROKA has purchased Products from the Degree® line, including Degree® Dry Protection antiperspirant/deodorant for the purchase price of approximately \$3.99 (or more). She has also purchased Products from the AXE® Gold Temptation™ line, including the AXE® Gold Temptation™ antiperspirant for the purchase price of approximately \$3.54 (or more). Plaintiff SYROKA purchased the Products from various stores, including but not limited to K-Mart and Dollar General. Plaintiff SYROKA purchased the Product(s) at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

Georgia Plaintiff

21. Plaintiff, DAWN KELLEY, is a citizen of and resides in the State of Georgia. Plaintiff KELLEY was exposed to Defendant's Product packaging, and, in reliance on such packaging, purchased the slack-filled Product(s) for personal consumption in the State of Georgia for the past four years. Plaintiff KELLEY has purchased Products from the Degree® line, including Degree® Dry Protection antiperspirant/deodorant for the purchase price of approximately \$4.99 (or more). She has also purchased Products from the AXE® Gold

Temptation™ line, including the AXE® Gold Temptation™ antiperspirant for the purchase price of approximately \$4.99 (or more). Plaintiff KELLEY purchased the Products from various stores, including but not limited to Walmart, Target, CVS and Publix. Plaintiff KELLEY purchased the Product(s) at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

Alabama Plaintiff

22. Plaintiff, SERRENA UPTON, is a citizen of and resides in the State of Alabama. Plaintiff UPTON was exposed to Defendant's Product packaging, and, in reliance on such packaging, purchased the slack-filled Product(s) for personal consumption in the State of Alabama within the past year. Plaintiff UPTON purchased the Product(s) for the purchase price of approximately \$3.79 (or more). Plaintiff UPTON purchased the Product(s) at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

Indiana Plaintiff

23. Plaintiff, KENDRA ANGEL is a citizen of and resides in the State of Indiana. Plaintiff ANGEL was exposed to Defendant's Product packaging, and, in reliance on such packaging, purchased the slack-filled Product(s) for personal consumption in the State of Indiana within the past year. Plaintiff ANGEL purchased the Product(s) for the purchase price of approximately \$3.79 (or more). Plaintiff ANGEL purchased the Product(s) at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

Oklahoma Plaintiff

24. Plaintiff, MARK MCINTIRE, is a citizen of and resides in the State of Oklahoma. Plaintiff MCINTIRE was exposed to Defendant's Product packaging, and, in reliance on such packaging, purchased the slack-filled Product(s) for personal consumption in the State of

Oklahoma within the past year. Plaintiff MCINTIRE purchased the Product(s) for the purchase price of approximately \$3.79 (or more). Plaintiff MCINTIRE purchased the Product(s) at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

Defendant

25. Defendant, UNILEVER UNITED STATES INC., is a subsidiary of the dual-listed company consisting of Unilever N.V. in Rotterdam, Netherlands and Unilever PLC in London, United Kingdom. UNILEVER UNITED STATES INC. is a corporation organized under the laws of Delaware with headquarters at 800 Sylvan Avenue, Englewood Cliffs, New Jersey 07632 and an address for service of process at The Corporation Trust Company, Corporation Trust center, 1209 Orange St., Wilmington, DE 19801. UNILEVER manufactures, markets, sells and distributes AXE® and Degree® deodorants and antiperspirants throughout the United States.

26. Defendant owns the AXE® and Degree® brands, as well as the trademarks for various product lines under the brands. Defendant sells the following misbranded products, depicted in **EXHIBIT A**, (herein, the "Products"):

AXE®	Degree®
Axe® Dark Temptation™	Degree® Dry Protection (Clean)
Axe® Gold Temptation™ (Regular)	Degree® Dry Protection (Cool Comfort)
Axe® Gold Temptation™ (Fresh)	Degree® Dry Protection Cool Rush®
Axe® Peace™	Degree® Dry Protection Extreme Blast®
Axe® Phoenix®	Degree® Dry Protection (Power)
Axe® Dry Essence™	Degree® Dry Protection (Sport)
Axe® Dry Apollo™	Degree® Fresh Deodorant (Arctic Edge)
Axe® Black Chill™ (Antiperspirant)	Degree® Fresh Deodorant (Intense Sport®)
Axe® Black Chill™ (Deodorant)	Degree® Fresh Deodorant (Ever Fresh)
Axe® Dry Anarchy™	Degree® MotionSense™ (Adventure)
Axe® Dry Harmony™	Degree® MotionSense™ (Ironman)
Axe® Dry Kilo	Degree® MotionSense™ (Overtime)
Axe® White Label™	Degree® MotionSense™ (Sport Defense)

	Degree® MotionSense™ (Everest™)
	Degree® MotionSense™ (Extreme)
	Degree® Extra Fresh (Extreme)
	Degree® Extra Fresh (Adventure)
	Degree® Extra Fresh (Sport Defense)

FACTUAL ALLEGATIONS

Federal Regulations Regarding Misbranded Drugs and Cosmetics

27. Drug and cosmetic manufacturers are required to comply with federal and state laws and regulations that govern the labeling and packaging of their products.

28. The FDCA, 21 U.S.C. §§ 301 *et seq.*, governs the sale of foods, drugs and cosmetics in the United States. The classification of a product as a food, drug, or cosmetic, affects the regulations by which the product must abide. In general, a product is characterized according to its intended use, which may be established, among other ways, by: (a) claims stated on the product's labeling, in advertising, on the Internet, or in other promotional materials; (b) consumer perception established through the product's reputation, for example by asking why the consumer is buying it and what the consumer expects it to do; or (c) the inclusion of ingredients well-known to have therapeutic use, for example fluoride in toothpaste.¹

29. The FDCA defines drugs, in part, by their intended use, as “articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease,” or “articles (other than food) intended to affect the structure or function of the body of man or other animals,” 21 U.S.C. § 321(g)(1).

¹ <http://www.fda.gov/Cosmetics/GuidanceRegulation/LawsRegulations/ucm074201.htm>, *see also* 21 C.F.R. § 201.128 (The words intended uses or words of similar import . . . refer to the objective intent of the persons legally responsible for the labeling of drugs. The intent is determined by such persons' expressions or may be shown by the circumstances surrounding the distribution of the article. This objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives. . . . But if a manufacturer knows, or has knowledge of facts that would give him notice, that a drug introduced into interstate commerce by him is to be used for conditions, purposes, or uses other than the ones for which he offers it, he is required to provide adequate labeling for such a drug which accords with such other uses to which the article is to be put.)

30. Under 21 U.S.C. §§ 352(a) and 352(i)(1), respectively, “[a] drug or device shall be deemed to be misbranded. . . [i]f its labeling is false or misleading in any particular” and “[i]f it is a drug and its container is so made, formed, or filled as to be misleading. . . .”

31. The FDCA defines cosmetics by their intended use, as “articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body . . . for cleansing, beautifying, promoting attractiveness, or altering appearance,” 21 U.S.C. § 321(i)(1). Among the products included in this definition are deodorants.²

32. Under 21 U.S.C. §§ 362(a) and 362(d), respectively, “[a] cosmetic shall be deemed to be misbranded. . . [i]f its labeling is false or misleading in any particular” and [i]f its container is so made, formed, or filled as to be misleading. . . .”

33. The FDA has explained that “[s]ome products meet the definitions of both cosmetics and drugs,” for example, “when a product has two intended uses” as with “deodorants that are also antiperspirants. . . [s]uch products must comply with the requirements for both cosmetics and drugs.”³

State Regulations Regarding Misbranded Drugs and Cosmetics

34. Courts have recognized that federal law does not preempt state law causes of action for labeling violations if they “seek to impose requirements that are identical to those imposed by the FDCA.” *Ackerman v. Coca Cola*, No. 09-0395, 2010 WL 2925955, at *6 (E.D.N.Y. July 21, 2010). This is so because “a state statute mirroring its federal counterpart does not impose any additional requirement merely by providing a damage remedy for conduct that would otherwise violate federal law, even if the federal statute provides no private right of action.” *Ackerman*, 2010 WL 2925955, at *6 (citing *Bates*, 544 U.S. at 432).

² See <http://www.fda.gov/Cosmetics/GuidanceRegulation/LawsRegulations/ucm074201.htm>

³ *Id.*

35. Numerous states forbid the misbranding of drugs and cosmetics in language identical or similar to its federal counterparts, including the following:

a) New York

Drug: “A drug or device shall be deemed to be misbranded: a. If its labeling is false or misleading in any particular. . . h.(1)If it is a drug and its container is so made, formed or filled as to be misleading. . . .” New York Edn. Law § 6815.⁴

Cosmetic: “A cosmetic shall be deemed to be misbranded: a. If its labeling is false or misleading in any particular. . . d. (1) [i]f its container is so made, formed, or filled as to be misleading. . . .” New York Edn. Law § 6818.

b) New Jersey

Drug: “For the purposes of this subtitle a drug or device shall also be deemed to be misbranded: a. If its labeling is false or misleading in any particular. . . i. (1) If it is a drug and its container is so made, formed or filled as to be misleading” NJ Rev Stat § 24:5-18.

Cosmetic: “For the purposes of this subtitle a cosmetic shall also be deemed to be misbranded: a. If its labeling is false or misleading in any particular. . . i. (1) If it is a drug and its container is so made, formed or filled as to be misleading” NJ Rev Stat § 24:5-18.1.

c) California

Drug: “Any drug or device is misbranded if its labeling is false

⁴ See also Title 24 of the Rules of the City of New York § 71.05 which provides that “[a] drug shall be deemed misbranded as set forth in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §352) or the State Education Law (§6815). . . .”

or misleading in any particular.” California Health & Safety Code § 111330.

“Any drug or device is misbranded if its container is so made, formed, or filled as to be misleading.” California Health & Safety Code § 111390.

Cosmetic: “Any cosmetic is misbranded if its labeling is false or misleading in any particular.” California Health & Safety Code § 111730.

“Any cosmetic is misbranded if its container is so made, formed, or filled as to be misleading.” California Health & Safety Code § 111750.

d) Florida

Drug: “A drug or device is misbranded: (1) If its labeling is in any way false or misleading. . . (9) If it is: (a) A drug and its container or finished dosage form is so made, formed, or filled as to be misleading. . . .” Florida Drug and Cosmetic Act, § 499.007, Fla. Stat. Ann.

Cosmetic: “A cosmetic is misbranded: (1) If its labeling is false or misleading in any particular. . . (4) If its container is so made, formed, or filled as to be misleading. . . .” Florida Drug and Cosmetic Act, § 499.009, Fla. Stat. Ann.

e) Pennsylvania

Drug and Cosmetic: “Section 8. Misbranding- A controlled substance, other drug or device or cosmetic shall be deemed to be misbranded (1) If its labeling is false or misleading in any particular. . . (11) If it is a drug, device or cosmetic and its container is so made, formed or filled as to be misleading.” The Controlled Substances, Drugs, Device, and Cosmetic Act, Act of 1972, P.L. 233, No. 64.

f) Ohio

Drug: “A drug or device is misbranded within the meaning of sections 3715.01 and 3715.52 to 3715.72 of the Revised Code, if: (1) Its labeling is false or misleading in any particular. . . (10) (a) It is a drug and its container is so made, formed, or filled as to be misleading.” Ohio Rev. Code Ann. § 3715.64.

Cosmetic: “A cosmetic is misbranded within the meaning of sections 3715.01 and 3715.52 to 3715.72, inclusive, of the Revised Code, if: (A) Its labeling is false or misleading in any particular. . . (D) Its container is so made, formed, or filled as to be misleading.” Ohio Rev. Code Ann. § 3715.67.

g) Georgia

Drug: “A drug or device shall be deemed to be misbranded (1) If its labeling is false or misleading in any particular. . . (9)(A) If it is a drug and its container is so made, formed, or filled as to be misleading. . . .” O.C.G.A. § 26-3-8 (2010).

Cosmetic: “A cosmetic shall be deemed to be misbranded (1) If its labeling is false or misleading in any particular. . . (4) If its container is so made, formed, or filled as to be misleading.” O.C.G.A. § 26-3-12 (2010).

h) Alabama

Cosmetic: “A cosmetic shall be deemed misbranded (1) If its labeling is false or misleading in any particular. . . (4) If its container is so made, formed or filled as to be misleading.” AL Code § 20-1-52 (2013).

i) Indiana

Drug: “A drug or device is considered to be misbranded under any of the following conditions: (1) If the labeling of the drug or device is false or

misleading in any way. . . (9) If a drug's container is made, formed, or filled as to be misleading.” Ind. Code § 16-42-3-4.

Cosmetic: “A cosmetic is considered to be misbranded under the following conditions (1) If the cosmetic's labeling is false or misleading in any way. . . (4) If the container of the cosmetic is so made, formed, or filled as to be misleading.” Ind. Code § 16-42-4-3.

Defendant’s Products Are Misbranded Because They Are Packaged with False and Misleading Net Weight Statements and with Non-Functional Slack-Fill

36. Defendant manufactures, markets, sells and distributes, *inter alia*, various consumer products under the well-known household brand names AXE® and Degree®. Defendant sells its Products at most supermarket chains, convenience stores and major retail outlets throughout the United States, including but not limited to Duane Reade, ShopRite, K-Mart, Dollar General, Pathmark, Costco, Publix, Target, Wal-Mart, Walgreens, CVS and Rite Aid.

37. The Products are sold as follows:

Product	Approximate Price
Axe® Dark Temptation™	\$4.99 (or more)
Axe® Gold Temptation™ (Regular)	\$4.99 (or more)
Axe® Gold Temptation™ (Fresh)	\$4.99 (or more)
Axe® Peace™	\$4.99 (or more)
Axe® Phoenix®	\$4.99 (or more)
Axe® Essence™	\$4.99 (or more)
Axe® Apollo™	\$4.99 (or more)
Axe® Black Chill™ (Antiperspirant)	\$4.99 (or more)
Axe® Black Chill™ (Deodorant)	\$4.99 (or more)
Axe® Anarchy™	\$4.99 (or more)
Axe® Harmony™	\$4.99 (or more)
Axe® Kilo	\$4.99 (or more)
Axe® White Label™	\$4.99 (or more)

Product	Approximate Price
Degree® Dry Protection (Clean)	\$3.79 (or more)
Degree® Dry Protection (Cool Comfort)	\$3.79 (or more)
Degree® Dry Protection Cool Rush®	\$3.79 (or more)
Degree® Dry Protection Extreme Blast®	\$3.79 (or more)
Degree® Dry Protection (Power)	\$3.79 (or more)
Degree® Dry Protection (Sport)	\$3.79 (or more)
Degree® Fresh Deodorant (Arctic Edge)	\$3.29 (or more)
Degree® Fresh Deodorant (Intense Sport®)	\$3.29 (or more)
Degree® Fresh Deodorant (Ever Fresh)	\$3.29 (or more)
Degree® MotionSense™ (Adventure)	\$3.99 (or more)
Degree® MotionSense™ (Ironman)	\$3.99 (or more)
Degree® MotionSense™ (Overtime)	\$3.99 (or more)
Degree® MotionSense™ (Sport Defense)	\$3.99 (or more)
Degree® MotionSense™ (Everest™)	\$3.99 (or more)
Degree® MotionSense™ (Extreme)	\$3.99 (or more)
Degree® MotionSense™ (Cool Rush)	\$3.99 (or more)
Degree® Extra Fresh (Extreme)	\$3.79 (or more)
Degree® Extra Fresh (Adventure)	\$3.79 (or more)
Degree® Extra Fresh (Sport Defense)	\$3.79 (or more)

38. Defendant has routinely packaged the Products with a false and misleading net weight and in containers with non-functional slack-fill. Non-functional slack-fill is the difference between the actual capacity of a container and the volume of product contained within. Defendant's misrepresentations also include advertising and packaging the Products in containers with net weight statements that are greater than the actual weight of usable product therein, referred to as "short weight," as well as net weight statements that are greater than the total weight of usable and unusable deodorant/antiperspirant therein.

False and Misleading Net Weight Statements

39. All of the Products come in containers that list the net weight as either 2.7 or 3.0 ounces. However, the actual deodorant/antiperspirant that is accessible by consumers for usage in the Products is less than the amount advertised due to a significant portion of the deodorant/antiperspirant being embedded under the plastic platform (“bed”) on which the deodorant sticks stand. *See* **EXHIBIT B** for size of the bed in the Products.

40. As Defendant has deceived Plaintiffs and consumers nationwide by mischaracterizing the usable quantity of deodorant/antiperspirant in the Products, Defendant’s net weight labels are false and deceptive. *See* **EXHIBIT C** for the Products whose usable weight fall short of the net weight listed on the Product labels.

41. Defendant also sold and continues to sell certain Products in which even the total net weight of the deodorant/antiperspirant (whether usable or not) is below the amount advertised on the labels as net weight. For such Product lines, even the sum of (i) the usable portion of deodorant/antiperspirant and (ii) the unusable portion located under the bed, are below the net weight as advertised on the Product labels. As such, Defendant’s net weight labels are false and deceptive. *See* **EXHIBIT D** for the Products whose total net weight fall short of the net weight listed on the Product labels.

42. Plaintiffs and Class members were misled about the quantity of deodorant/antiperspirant in the Products.

43. Both the usable and total net weights in the AXE® Products fall short of the net weight listed on the labels. *See* **EXHIBIT C** and **EXHIBIT D**. As a result, Plaintiffs and other consumers have purchased Products with less deodorant/antiperspirant than they believed they were purchasing. Similarly, the usable and total net weights in the Degree® Products fall short of

the net weight listed on the labels. *See* **EXHIBIT C** and **EXHIBIT D**. As a result, Plaintiffs and Class members have purchased the Products with less deodorant/antiperspirant than they believed they were purchasing.

Non-Functional Slack-Fill

44. Plaintiffs and Class members were misled about the volume of the Products contained within the containers in comparison to the size of the Product packaging. The Products are sold in a container which is approximately 5 $\frac{3}{4}$ inches in height and approximately 2 $\frac{3}{4}$ inches wide. The actual size of the deodorant/antiperspirant stick in the container is approximately 2 $\frac{1}{2}$ inches wide and 3 inches long. Thus, the size of the container has nearly 3 inches of slack-fill in height and makes it appear to Plaintiffs and Class members that the consumer is buying more than what is actually being sold. As such, Defendant's Products are packaged in containers made, formed or filled as to be misleading. *See* **EXHIBIT A** for the AXE® and Degree® Products with non-functional slack-fill. Plaintiffs and Class members only received 52% of what Defendants represented they would be getting due to the 48% non-functional slack-fill in the Products.

45. There is no functional reason to package the Products with slack-fill. The Products are designed with a propel/repel mechanism. The propel/repel mechanism utilized in the containers, which pushes up the deodorant stick, does not require an abundant amount of space to function. For example, a fully functioning travel-size deodorant container using a similar standard propel/repel mechanism is only 3 inches tall in its entirety with the propelling mechanism taking up only $\frac{3}{8}$ of an inch. *See* **EXHIBIT E** for Defendant's travel size products with a similar propel/repel mechanism.

46. Additionally, a brand new Product can be repelled to show that in its starting position, it has already been propelled to bring the deodorant/antiperspirant up to the top of the body of the container. There is no doubt that there is no practical business purpose for the non-functional slack-fill used to package the Products other than to mislead consumers as to the actual volume of usable deodorant/antiperspirant in the Products.

47. Defendant's Products are also uniquely deceptive because consumers never actually see the amount of deodorant/antiperspirant they are using until the Product is used up, whereupon Plaintiffs and reasonable consumers will assume they used up all 5 $\frac{3}{4}$ inches of deodorant/antiperspirant bought when in fact, they only use 3 inches of height.

Defendants' Products are Misbranded

48. Defendant's failure to (i) state the correct net weight of usable deodorant/antiperspirant in the Products and (ii) properly package the Products without non-functional slack-fill constitute misbranding under federal and state laws because the Products are being sold (i) with labels that are false and misleading and (ii) in containers that are made, formed or filled as to be misleading. As a result of such conduct, Plaintiffs and Class members were misled (and Class members will continue to be misled) into believing that they were receiving more deodorant/antiperspirant than they actually were. Defendant lacked any lawful justification for doing so.

49. In making their purchases, Plaintiffs and Class members relied on the net weight listed on the Product labels in evaluating how much deodorant/antiperspirant was in the Products. Plaintiffs and Class members also relied on the size of the container to believe that the entire volume of the packaging would be filled to capacity with deodorant/antiperspirant, exclusive of the container's functional elements. Labeling and packaging the Products

misleadingly constitutes unlawful business acts and practices and are geared toward making consumers believe that they are buying more of the Product than what is being sold.

50. Plaintiffs and Class members paid the full price of the Products and received less than the amount advertised. Additionally, they only received 52% of what Defendant represented they would be getting due to the 48% non-functional slack-fill in the Products. In order for Plaintiffs and Class members to be made whole, Plaintiffs and Class members would have to receive (i) the amount of usable deodorant/antiperspirant equal to or exceeding the net weight listed on the Products, (ii) the amount of usable and unusable deodorant/antiperspirant equal to or exceeding the net weight listed on the Products and (iii) enough of the deodorant/antiperspirant so that there is no non-functional slack-fill or have paid 48% less for each of the Products.

51. The Products are designed with a propel/repel mechanism. The propel/repel mechanism utilized in the containers, which pushes up the deodorant stick, does not require an abundant amount of space to function. For example, a fully functioning travel-size deodorant container using a similar standard propel/repel mechanism is only 3 inches tall in its entirety with the propelling mechanism taking up only $\frac{3}{8}$ of an inch. See **EXHIBIT E** for Defendant's travel size products with a similar propel/repel mechanism.

52. Additionally, a brand new Product can be repelled to show that in its starting position, it has already been propelled to bring the deodorant/antiperspirant up to the top of the body of the container. There is no doubt that there is no practical business purpose for the non-functional slack-fill used to package the Products other than to mislead consumers as to the actual volume of usable deodorant/antiperspirant in the Products.

53. Defendant's Products are also uniquely deceptive because consumers never actually see the amount of deodorant/antiperspirant they are using until the Product is used up, whereupon Plaintiffs and reasonable consumers will assume they used up all 5 ¾ inches of deodorant/antiperspirant bought when in fact, they only use 3 inches of height.

54. Defendant could provide consumers with clarification as to the volume of the Products and usable quantity being sold simply by (i) properly listing the correct weight of usable deodorant/antiperspirant on the labels, and either of the following:

- a) Adding a line marking the height/actual dimensions of the Product on the labels, or
- b) Using a clear see-through package or using a see-through strip to allow consumers to discern the actual volume of deodorant/antiperspirant being sold.

Plaintiffs and Class Members Were Injured as a Result of Defendant's Misleading and Deceptive Conduct

55. Defendant has violated federal and state laws against misbranding of drug and cosmetic products because it misled Plaintiffs and Class members about the actual net weight and volume of the Products in comparison to the size of the Products' packaging. The quantity of deodorant/antiperspirant accessible for usage in the containers is less than the net weight listed on the Product labels. For certain Product lines, even the total weight of both usable and non-usable deodorant/antiperspirant contained in such products is less than the net weight advertised by Defendant. Further, the size of the containers in relation to the actual amount of the Products contained therein give the false impression that the consumer is buying more than they are actually receiving.

56. Plaintiffs and Class members were exposed to Defendant's false Product labels and deceptive Product packaging.

57. Defendant's labeling and Product packaging were material factors in Plaintiffs' and Class members' decisions to purchase the Products. Based on Defendant's labeling and Product packaging, Plaintiffs and Class members believed that they were getting more of the Products than was actually being sold or at the very least, believed they were getting the amount stated on the Product labels. Had Plaintiffs known Defendant's labeling was false and its packaging slack-filled, they would not have bought the Products.

58. Plaintiffs did not know, and had no reason to know, that the Products contained less deodorant/antiperspirant than advertised or that the Products were packaged with non-functional slack-fill.

59. Defendant's Product labeling and packaging as alleged herein is deceptive and misleading and was designed to increase sales of the Products. Defendant's misrepresentations are part of its systematic Product packaging practice.

60. A reasonable consumer when deciding to purchase the Products, would consider the types of misrepresentations alleged herein. A reasonable person would (and Plaintiffs did) attach importance to whether Defendant's Products are "misbranded," *i.e.*, not legally salable, or capable of legal possession, and/or contain false labels and non-functional slack-fill.

61. Plaintiffs and Class members relied on the labeling and representations on Defendant's Product packaging.

62. At the point of sale, Plaintiffs and Class members did not know, and had no reason to know, that the Products were misbranded as set forth herein, and would not have bought the Products had they known the truth about them.

63. Defendant's net weight misrepresentations and non-functional slack-fill packaging are misleading and in violation of FDA and consumer protection laws of each of the

fifty states and the District of Columbia, and the Products at issue are misbranded as a matter of law. Misbranded products cannot be legally manufactured, advertised, distributed, held or sold in the United States. Plaintiffs and Class members would not have bought the Products had they known they were misbranded and illegal to sell or possess.

64. As a result of Defendant's misrepresentations, Plaintiffs and thousands of others throughout the United States purchased the Products.

65. Plaintiff and the Class (defined below) have been damaged by Defendant's deceptive and unfair conduct in that they purchased Products with non-functional slack-fill and paid prices they otherwise would not have paid had Defendant not misrepresented the Products' quantity or actual size.

66. Plaintiffs have standing to sue in this case because Plaintiffs have a personal injury in fact, which is caused by Defendant's misleading packaging and labeling practices alleged herein, and which a favorable decision will likely redress. *See Mahon v. Ticor Title Ins. Co.*, 683 F.3d 59, 62 (2d Cir.2012). Courts have routinely held that economic injury is sufficient for the standing requirement. *See, e.g., In re Frito-Lay N. Am., Inc. All Natural Litig.*, No. 12-MD-2413 RRM RLM, 2013 WL 4647512, at *11 (E.D.N.Y. Aug. 29, 2013)

CLASS ACTION ALLEGATIONS

The Nationwide Class

67. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class (the "Class"):

All persons or entities in the United States who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The New York Class

68. Plaintiffs TIMBA BIMONT and SYLVIA BETHEA seek to represent a class consisting of the following subclass (the “New York Class”):

All New York residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The New Jersey Class

69. Plaintiff LOURDES ROSADO seeks to represent a class consisting of the following subclass (the “New Jersey Class”):

All New Jersey residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The California Class

70. Plaintiff ROSEMARY ARELLANO seeks to represent a class consisting of the following subclass (the “California Class”):

All California residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The Florida Class

71. Plaintiff BRENDA STARR seeks to represent a class consisting of the following subclass (the “Florida Class”):

All Florida residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The Pennsylvania Class

72. Plaintiff RONALD BRINKLEY seeks to represent a class consisting of the following subclass (the “Pennsylvania Class”):

All Pennsylvania residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The Ohio Class

73. Plaintiff WENDY SYROKA seeks to represent a class consisting of the following subclass (the “Ohio Class”):

All Ohio residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The Georgia Class

74. Plaintiff DAWN KELLEY seeks to represent a class consisting of the following subclass (the “Georgia Class”):

All Georgia residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The Alabama Class

75. Plaintiff SERRENA UPTON seeks to represent a class consisting of the following subclass (the “Alabama Class”):

All Alabama residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The Indiana Class

76. Plaintiff KENDRA ANGEL seeks to represent a class consisting of the following subclass (the “Indiana Class”):

All Indiana residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The Oklahoma Class

77. Plaintiff MARK MCINTIRE seeks to represent a class consisting of the following subclass (the “Oklahoma Class”):

All Oklahoma residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The proposed Classes exclude current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants’ legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest, and the judicial officer to whom this lawsuit is assigned.

78. Plaintiffs reserve the right to revise the Class definition based on facts learned in the course of litigating this matter.

79. Numerosity: This action has been brought and may properly be maintained as a class action against Defendant under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class members are unknown to Plaintiffs at this time, Plaintiffs are informed and believe that there are hundreds of thousands of members in the Nationwide Class, New York Class, New Jersey Class, California Class, Florida Class, Pennsylvania Class, Ohio Class, Georgia Class, Alabama Class, Indiana Class and Oklahoma Class. Based on sales of the Products, it is estimated that each Class is composed of more than 10,000 persons. Furthermore, even if subclasses need to be created for these consumers, it is estimated that each subclass would have thousands of members. The persons in each of the Classes are so numerous that joinder of all such persons is impracticable and the disposition of their claims in a class action rather than in individual actions will benefit the parties and the courts.

80. Common Questions Predominate: Questions of law and fact arise from Defendant's conduct described herein. Such questions are common to all Classes because each Class member's claim derives from the same false, misleading and deceptive misconduct. The common questions of law and fact involved predominate over any questions affecting only Plaintiffs or individual Class members. Thus, proof of a common or single set of facts will establish the right of each member of the Classes to recover. Among the questions of law and fact common to the Classes are:

- i. Whether Defendant labeled, packaged, marketed, advertised and/or sold Products to Plaintiffs, and those similarly situated, using false, misleading and/or deceptive packaging and labeling;
- ii. Whether Defendant's actions constitute violations of Section 502 (21 U.S.C. § 352(i)), Section 602 (21 U.S.C. § 362(d)) of the FDCA;
- iii. Whether Defendant's actions constitute violations of misbranding laws in the fifty states and District of Columbia;
- iv. Whether Defendant's actions constitute deceptive and unfair practices and/or violations of consumer protection laws in the fifty states and the District of Colombia;
- v. Whether Defendant omitted and/or misrepresented material facts in connection with the labeling, packaging, marketing, advertising and/or sale of Products;
- vi. Whether Defendant's labeling, packaging, marketing, advertising and/or selling Products constituted an unfair, unlawful or fraudulent practice;
- vii. Whether Defendant's net weight disclosures on the Products' labels accurately reflect the net weight that can be used by the Class;

- viii. Whether Defendants' net weight disclosures on the Products' labels accurately reflect the gross weight of deodorant/antiperspirant in the Products;
- ix. The extent that the packaging of the Products during the relevant statutory period constituted unlawful slack-fill;
- x. Whether, and to what extent, injunctive relief should be imposed on Defendant to prevent such conduct in the future;
- xi. Whether the members of the Class have sustained damages as a result of Defendant's wrongful conduct;
- xii. The appropriate measure of damages and/or other relief;
- xiii. Whether Defendant has been unjustly enriched by its scheme of using false, misleading and/or deceptive labeling, packaging or misrepresentations; and
- xiv. Whether Defendant should be enjoined from continuing its unlawful practices.

81. Typicality: Plaintiffs' claims are typical of those of the Class members because Plaintiffs and the other Class members sustained damages arising out of the same wrongful conduct, as detailed herein. Plaintiffs purchased the Products during the Class Period and sustained similar injuries arising out of Defendant's conduct in violation of the consumer protection laws of each of the fifty states and the District of Columbia. Defendant's unlawful, unfair and fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. The injuries of the Class were caused directly by Defendant's wrongful misconduct. In addition, the factual underpinning of Defendant's misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiffs' claims arise from the same practices

and course of conduct that give rise to the claims of the members of the Class and are based on the same legal theories.

82. Adequacy: Plaintiffs will fairly and adequately represent and pursue the interests of the Class and have retained competent counsel experienced in prosecuting nationwide class actions. Plaintiffs understand the nature of their claims herein, have no disqualifying conditions, and will vigorously represent the interests of the Class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and those of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

83. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages sustained by individual Class members may be relatively small, the expense and burden of individual litigation make it impracticable for the members of the Class to individually seek redress for the wrongful conduct alleged herein. If Class treatment of these claims were not available, Defendant would likely unfairly receive millions of dollars or more in improper charges.

84. The class is readily definable, and prosecution of this action as a Class action will reduce the possibility of repetitious litigation. Plaintiffs know of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a Class action.

85. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

86. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

87. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions.

88. Defendant's conduct is generally applicable to the Class as a whole and Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

COUNT I

INJUNCTION FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

89. Plaintiffs BIMONT and BETHEA repeat and reallege each and every allegation contained above as if fully set forth herein and further allege the following:

90. Plaintiffs BIMONT and BETHEA bring this claim individually and on behalf of other members of the Class for an injunction for violations of New York’s Deceptive Acts or Practices Law, Gen. Bus. Law § 349 (“NY GBL § 349”).

91. NY GBL § 349 provides that “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are . . . unlawful.”

92. Under NY GBL § 349, it is not necessary to prove justifiable reliance. (“To the extent that the Appellate Division order imposed a reliance requirement on General Business Law [§] 349 . . . claims, it was error. Justifiable reliance by the plaintiff is not an element of the statutory claim.” *Koch v. Acker, Merrall & Condit Co.*, 18 N.Y.3d 940, 941 (N.Y. App. Div. 2012) (internal citations omitted)).

93. Any person who has been injured by reason of any violation of NY GBL § 349 may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion; increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney’s fees to a prevailing plaintiff.

94. The practices employed by Defendant, whereby Defendant advertised, promoted, marketed and sold its Products with false net weight statements and in packaging resulting in non-functional slack-fill are unfair, deceptive, and misleading and are in violation of the NY GBL § 349. Moreover, New York State law broadly prohibits the misbranding of drugs and cosmetics in language identical to that found in regulations 21 U.S.C. § 352 *et seq* and 21 U.S.C. § 362 *et seq*, promulgated pursuant to the Federal, Food, Drug, and Cosmetic Act.

95. Under New York Edn. Law § 6815, “[a] drug or device shall be deemed to be misbranded: a. If its labeling is false or misleading in any particular . . . h. (1) If it is a drug and its container is so made, formed or filled as to be misleading. . .” New York Edn. Law § 6818 similarly states, “[a] cosmetic shall be deemed to be misbranded: a. If its labeling is false or misleading in any particular . . . d. (1) [i]f its container is so made, formed, or filled as to be misleading . . .” The Rules of the City of New York also prohibit the misbranding of drugs and cosmetics and explicitly incorporate New York State and federal misbranding laws by reference. Under 24 R.C.N.Y. Health Code § 71.05 (f), drugs are deemed misbranded “as set forth in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 352) or the State Education Law (§ 6815) . . .” Cosmetics are deemed misbranded “as set forth in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 362) or the State Education Law (§ 6818) . . .” 24. *See* 24 R.C.N.Y. Health Code § 71.05 (h).

96. Defendant should be enjoined from labeling its Products with false and misleading representations including, (i) labels that list a false and misleading net weight of actual usable product; (ii) labels that list a total net weight (whether usable or unusable product) that is false and misleading; and (iii) packaging the Products in a way that misleads consumers about the volume of usable Product within the containers in comparison to the size of the Products’ packaging, as described above pursuant to NY GBL § 349, New York Edn. Law § 6815, New York Edn. Law § 6818, 24 R.C.N.Y. Health Code § 71.05, 21 U.S.C. § 352, and 21 U.S.C. § 362.

97. The foregoing deceptive acts and practices were directed at consumers.

98. Defendants should be enjoined from packaging their Products with false net weight statements and non-functional slack-fill or Plaintiffs and members of the Class will be

harmred in that they will continue to be unable to rely on Defendants' packaging and net weight representations.

99. Plaintiffs BIMONT and BETHEA, individually and on behalf of all others similarly situated, respectfully demand a judgment enjoining Defendant's conduct, awarding costs of this proceeding and attorneys' fees, as provided by NY GBL, and such other relief as this Court deems just and proper.

COUNT II

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

100. Plaintiffs BIMONT and BETHEA repeat and reallege each and every allegation contained above as if fully set forth herein and further alleges the following:

101. Plaintiffs BIMONT and BETHEA bring this claim individually and on behalf of other members of the New York Class for violations of NY GBL § 349.

102. Defendant's business acts and practices and/or omissions alleged herein constitute deceptive acts or practices under NY GBL § 349, which were enacted to protect the consuming public from those who engage in unconscionable, deceptive or unfair acts or practices in the conduct of any business, trade or commerce.

103. The practices employed by Defendant, whereby Defendant advertised, promoted, marketed and sold its Products with false and misleading representations including, (i) labels that list a false and misleading net weight of actual usable product; (ii) labels that list a total net weight (whether usable or unusable product) that is false and misleading; and (iii) packaging the Products in a way that misleads consumers about the volume of usable Product within the containers in comparison to the size of the Products' packaging, are unfair, deceptive and misleading and are in violation of New York Edn. Law § 6815, New York Edn. Law § 6818, 24

R.C.N.Y. Health Code § 71.05, 21 U.S.C. § 352, and 21 U.S.C. § 362 in that said Products are misbranded. The practices of Defendant also violate NY GBL § 349 for, inter alia, one or more of the following reasons:

- a) Defendant engaged in deceptive, unfair and unconscionable commercial practices in failing to reveal material facts and information about the Products, which did, or tended to, mislead Plaintiffs BIMONT, BETHEA and the New York Class about facts that could not reasonably be known by them;
- b) Defendant knowingly and falsely represented and advertised the amount of usable Product in its Product packaging with an intent to cause Plaintiffs BIMONT, BETHEA and members of the New York Class to believe that they were receiving more Product than they actually were;
- c) Defendant failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;
- d) Defendant caused Plaintiffs BIMONT, BETHEA and the New York Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations and/or remedies by and through its conduct;
- e) Defendant failed to reveal material facts to Plaintiffs BIMONT, BETHEA and the New York Class with the intent that Plaintiffs BIMONT, BETHEA and the New York Class members rely upon the omission;
- f) Defendant made material representations and statements of fact to Plaintiffs BIMONT, BETHEA and the New York Class that resulted in Plaintiffs BIMONT, BETHEA and the New York Class reasonably believing the

represented or suggested state of affairs to be other than what they actually were; and

- g) Defendant intended that Plaintiffs BIMONT and BETHEA and members of the New York Class rely on its misrepresentations and omissions, so that Plaintiffs BIMONT, BETHEA and the New York Class members would purchase the Products.

104. The foregoing deceptive acts and practices were directed at consumers.

105. Under all of the circumstances, Defendant's conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton, and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

106. Defendant's actions impact the public interest because Plaintiffs BIMONT, BETHEA and members of the New York Class were injured in exactly the same way as thousands of others purchasing the Products as a result of and pursuant to Defendant's generalized course of deception.

107. By committing the acts alleged in this First Amended Complaint, Defendant has misled Plaintiffs BIMONT, BETHEA and the New York Class into purchasing the Products, in part or in whole, due to the erroneous belief that the Product packaging accurately depicts a container that is filled to capacity with usable Product, exclusive of the container's functional elements. In some instances, the Products fall short of the advertised net weight based on (i) the usable portion of deodorant/antiperspirant, or (ii) the usable and even when taking the unusable portion of deodorant/antiperspirant. These are deceptive business practices that violate NY GBL § 349.

108. Defendant's deceptive Product packaging misled Plaintiffs BIMONT and BETHEA, and is likely in the future to mislead reasonable consumers. Had Plaintiffs BIMONT, BETHEA and members of the New York Class known of the true facts about the Products, they would not have purchased the Products and/or paid substantially less for another product.

109. Plaintiffs BIMONT, BETHEA and the other Class members suffered a loss as a result of Defendant's deceptive and unfair trade acts. Plaintiffs BIMONT and BETHEA purchased the Product(s) at a premium price and were financially injured as a result of Defendant's deceptive conduct as alleged herein.

110. As a result of Defendant's deceptive and unfair acts and practices, Plaintiffs and the other Class members suffered monetary losses associated with the purchase of Products with net weight misrepresentations and non-functional slack-fill, i.e., receiving less than the advertised amounts and only approximately 52% of the capacity of the packaging. The foregoing deceptive acts, omissions and practices set forth in connection with Defendant's violations of NY GBL § 349 proximately caused Plaintiffs BIMONT, BETHEA and other members of the New York Class to suffer actual damages in the form of, inter alia, monies spent to purchase the Products. Plaintiffs BIMONT, BETHEA and other members of the New York Class are entitled to recover such damages, together with equitable and declaratory relief, appropriate damages, including punitive damages, attorneys' fees and costs.

COUNT III

NEW JERSEY CONSUMER FRAUD ACT, N.J.S.A.56: 8-1, *et seq.*

111. Plaintiff LOURDES ROSADO repeats and realleges each and every allegation contained above as if fully set forth herein and further alleges the following:

112. Plaintiff ROSADO brings this claim individually and on behalf of the other members of the New Jersey Class for violations of New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*

113. At all relevant times, Plaintiffs and Defendant were and are a "person[]," as defined by N.J.S.A. 56:8-1(d).

114. At all relevant times, Defendant's Products constituted "merchandise," as defined by N.J.S.A. 56:8-1(c).

115. At all relevant times, Defendant's manufacturing, marketing, advertising, sales and/or distribution of the Products at issue met the definition of "advertisement" set forth by N.J.S.A. 56:8-1(a).

116. At all relevant times, Defendant's manufacturing, marketing, advertising, sales and/or distribution of the Products at issue met the definition of "sale" set forth by N.J.S.A. 56:8-1(e).

117. N.J.S.A. 56:8-2 provides that "[t]he act, use or employment by any person of any unconscionable practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of material fact with the intent that others rely upon such concealment, suppression or omission, ...is declared to be an unlawful practice..."

118. Plaintiffs and members of the Class are consumers who purchased consumer goods – the Axe and Degree Products – pursuant to a consumer transaction for personal use and are, therefore, subject to protection under the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*

119. Defendant has made and continues to make deceptive, false and misleading representations including, (i) labels that list a false and misleading net weight of actual usable

product; (ii) labels that list a total net weight (whether usable or unusable product) that is false and misleading; and (iii) packaging the Products in a way that misleads consumers about the volume of usable Product within the containers in comparison to the size of the Products' packaging, as alleged herein.

120. As described in detail above, Defendant uniformly misrepresented to Plaintiff ROSADO and each member of the New Jersey Class, by means of its advertising, marketing and Product packaging, that they were getting more of the Products than was actually being sold, or at the very least, the quantity advertised.

121. Defendant has therefore engaged in practices which are unconscionable, deceptive and fraudulent and which are based on false pretenses, false promises, misrepresentations, and the knowing concealment, suppression, or omission of material fact with the intent that others rely upon such concealment, suppression or omission in their manufacturing, advertising, marketing, selling and distribution of the Products. Defendant has therefore violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*

122. As a direct and proximate result of Defendant's improper conduct, Plaintiff ROSADO and other members of the New Jersey Class have suffered damages and ascertainable losses of moneys and/or property, by paying more for the Products than they would have, and/or by purchasing the Products which they would not have purchased, if the volume of such Products had not been misrepresented, in amounts to be determined at trial.

COUNT IV

VIOLATIONS OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT, Cal. Civ. Code § 1750, *et seq.*

123. Plaintiff ROSEMARY ARELLANO repeats and realleges each and every allegation contained above as if fully set forth herein and further alleges the following:

124. Plaintiff ROSEMARY ARELLANO brings this claim individually and on behalf of the other members of the California Class for Defendant's violations of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1761(d).

125. This cause of action is brought pursuant to the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* (the "CLRA"). This cause of action seeks monetary damages and injunctive relief pursuant to California Civil Code § 1782.

126. A demand letter was sent to Defendants prior to the filing of this Complaint. A copy of Plaintiffs' notice and demand letter sent to Defendants is attached hereto as **EXHIBIT F**. Defendants did not correct the misrepresentations identified in the demand letter.

127. Defendants' actions, representations, and conduct have violated, and continue to violate, the CLRA because they extend to transactions that are intended to result, or that have resulted, in the sale of goods to consumers.

128. Plaintiff ARELLANO and California Class members are consumers who purchased the Products for personal, family or household purposes. Plaintiff ARELLANO and the California Class members are "consumers" as that term is defined by the CLRA in Cal. Civ. Code § 1761(d). Plaintiff ARELLANO and the California Class members are not sophisticated experts with independent knowledge of the manufacturing or packaging of the Products.

129. Products that Plaintiff ARELLANO and other California Class members purchased from Defendant were "goods" within the meaning of Cal. Civ. Code § 1761(a).

130. Defendant's actions, representations, and conduct have violated, and continue to violate the CLRA, because they extend to transactions that intended to result, or which have resulted in, the sale of goods to consumers.

131. Defendant's labeling and Product packaging violates federal and California law because it misleads consumers about (i) the actual amount of deodorant/antiperspirant accessible for usage; (ii) the total net weight (whether usable or unusable product); and (iii) the volume of the Products contained within the containers in comparison to the size of the Products' packaging. The reasonable consumer is given the false impression that he/she is buying more product than they are actually receiving.

132. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have." By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(5) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it misrepresents that the Products have characteristics, benefits or quantities which they do not have.

133. Cal. Civ. Code § 1770(a)(9) further prohibits "[a]dvertising goods or services with intent not to sell them as advertised." By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(9), because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it advertises goods with the intent not to sell the goods as advertised.

134. Plaintiff ARELLANO and the California Class members are not sophisticated experts about the manufacturing process or packaging of the Products. Plaintiff ARELLANO and the California Class acted reasonably when they purchased the Products based on their belief that Defendant's representations were true and lawful.

135. Plaintiff ARELLANO and the California Class suffered injuries caused by Defendant because (a) they would not have purchased the Products on the same terms absent Defendant's illegal and misleading conduct as set forth herein, or if the true facts were known concerning Defendant's representations; (b) they paid a price premium for the Products due to Defendant's misrepresentations and deceptive Product packaging; and (c) the Products did not have the characteristics, benefits, or quantities as promised.

136. Plaintiffs request that this Court enjoin Defendants from continuing to employ the unlawful methods, acts, and practices alleged herein pursuant to California Civil Code § 1780(a)(2). If Defendants are not restrained from engaging in these types of practices in the future, Plaintiffs and the members of the California Class will be harmed in that they will continue to be unable to rely on Defendants' packaging and net weight representations.

137. Wherefore, Plaintiff ARELLANO seeks damages, restitution, and injunctive relief for these violations of the CLRA.

COUNT V

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW, California Business & Professions Code §§ 17200, *et seq.*

138. Plaintiff ROSEMARY ARELLANO repeats and realleges each and every allegation contained above as if fully set forth herein and further alleges the following:

139. Plaintiff ARELLANO brings this claim individually and on behalf of the members of the proposed California Class for Defendant's violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*

140. The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising"

141. Defendant's Product packaging violates federal and California law because it misleads consumers about (i) the actual amount of deodorant/antiperspirant accessible for usage; (ii) the total net weight (whether usable or unusable product); and (iii) the volume of the Products contained within the containers in comparison to the size of the Products' packaging. The reasonable consumer is given the false impression that he/she is buying more product than they are actually receiving.

142. Defendant's business practices, described herein, violated the "unlawful" prong of the UCL by violating Sections 502 and 602 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 352, 21 U.S.C. § 362, California Health & Safety Code § 111390, the CLRA, and other applicable law as described herein.

143. Defendant's business practice, described herein, violated the "unfair" prong of the UCL in that conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any alleged benefits. Defendant's advertising is of no benefit to consumers, and its failure to comply with the FDCA and parallel California laws concerning misleading product packaging offends the public policy advanced by the FDCA "to promote the public health" by "taking appropriate action on the marketing of regulated products." 21 U.S.C. § 393(b).

144. Defendant violated the "fraudulent" prong of the UCL by misleading Plaintiff ARELLANO and the California Class to believe that quantity representations about the Products were lawful, true and not intended to deceive or mislead the consumers.

145. Plaintiff ARELLANO and the California Class members are not sophisticated experts about the characteristics, benefits, or quantities of the Products. Plaintiff ARELLANO

and the California Class acted reasonably when they purchased the Products based on their belief that Defendant's representations were true and lawful.

146. Plaintiff ARELLANO and the California Class lost money or property as a result of Defendant's UCL violations because (a) they would not have purchased the Products on the same terms absent Defendant's illegal conduct as set forth herein, or if the true facts were known concerning Defendant's representations; (b) they paid a price premium for the Products due to Defendant's deceptive and misleading net weight statements and Product packaging; and (c) the Products did not have the characteristics, benefits, or quantities as promised.

COUNT VI

VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW, California Business & Professions Code §§ 17500, *et seq.*

147. Plaintiff ROSEMARY ARELLANO repeats and realleges each and every allegation contained above as if fully set forth herein and further alleges the following:

148. Plaintiff ARELLANO brings this claim individually and on behalf of the members of the proposed California Class for Defendant's violations of California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, *et seq.*

149. Under the FAL, the State of California makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state... in any advertising device ... or in any other manner or means whatever... any statement, concerning ... personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

150. Defendant engaged in a scheme of offering misbranded Products for sale to Plaintiff ARELLANO and the California Class members by way of product packaging and

labeling. These materials misrepresented the true content and nature of the misbranded Products. Defendant's advertisements and inducements were made in California and come within the definition of advertising as contained in Bus. & Prof. Code § 17500, *et seq.* in that the Product packaging and labeling were intended as inducements to purchase Defendant's Products, and are representations disseminated by Defendant to Plaintiff ARELLANO and the California Class members. Defendant knew that these representations were unauthorized, inaccurate, and misleading.

151. Defendant's Product packaging violates federal and California law because it misleads consumers about (i) the actual amount of deodorant/antiperspirant accessible for usage; (ii) the total net weight (whether usable or unusable product); and (iii) the volume of the Products contained within the containers in comparison to the size of the Products' packaging. The reasonable consumer is given the false impression that he/she is buying more product than they are actually receiving.

152. Defendant violated § 17500, *et seq.* by misleading Plaintiff ARELLANO and the California Class about the net weight and volume of the Products as described herein.

153. Defendant knew or should have known, through the exercise of reasonable care that the Products were and continue to be misbranded, and that its representations about the quantity of usable Product were untrue and misleading.

154. Plaintiff ARELLANO and the California Class lost money or property as a result of Defendant's FAL violations because (a) they would not have purchased the Products on the same terms absent Defendant's illegal conduct as set forth herein, or if the true facts were known concerning Defendant's representations; (b) they paid a price premium for the Products due to

Defendant's deceptive and misleading net weight statements and Product packaging; and (c) the Products did not have the characteristics, benefits, or quantities as promised.

COUNT VII

**VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT,
Fla. Stat. Ann. § 501.201, *et seq.***

155. Plaintiff BRENDA STARR repeats and realleges each and every allegation contained above as if fully set forth herein and further alleges the following:

156. Plaintiff STARR brings this claim individually and on behalf of the Florida Class for Defendant's violations of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*

157. Section 501.204(1) of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") makes "unfair or deceptive acts or practices in the conduct or any trade or commerce" in Florida unlawful.

158. Throughout the Class Period, by advertising, marketing, distributing, and/or selling the Products with net weight misrepresentations and non-functional slack-fill, to Plaintiff STARR and other Florida Class members, Defendant violated the FDUTPA by engaging in false advertising concerning the usable quantity and volume of the Products.

159. Defendant has made and continues to make deceptive, false and misleading statements concerning the net weight and volume of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning the amount of usable Product being sold, as alleged herein. In some instances, the Products fall short of the advertised net weight even when taking the unusable portion of deodorant/antiperspirant into account. Defendant also falsely represented the volume of the Products contained within the containers in comparison to the size of the Products' packaging,

which they intended to deceive and/or mislead and did deceive and/or mislead the consumers into believing that the consumer is buying more Product than they are actually receiving.

160. Plaintiff STARR and other Florida Class members seek to enjoin such unlawful acts and practices as described above. Each of the Florida Class members will be irreparably harmed unless the unlawful actions of Defendant is enjoined in that they will continue to be unable to rely on the Defendant's Product labeling and packaging

161. Had Plaintiff STARR and the Florida Class members known the misleading and/or deceptive nature of Defendant's claims, they would not have purchased the Products.

162. Plaintiff STARR and the Florida Class members were injured in fact and lost money as a result of Defendant's conduct of improperly misleading consumers about the volume of the Products. Plaintiff STARR and the Florida Class members paid for Defendant's premium priced Products, but received Products that were worth less than the Products for which they paid.

163. Plaintiff STARR and the Florida Class seek declaratory relief, enjoining Defendant from continuing to disseminate its false and misleading statements, actual damages plus attorney's fees and court costs, and other relief allowable under the FDUTPA.

COUNT VIII

PENNSYLVANIA'S UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW, 73 Penn. Stat. Ann. § § 201-1, *et seq.*

164. Plaintiff RONALD BRINKLEY repeats and realleges each and every allegation contained above as if fully set forth herein and further alleges the following:

165. Plaintiff BRINKLEY brings this claim individually and on behalf of the Pennsylvania Class.

166. This is a claim for violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 P.S. § 201-2(xxi).

167. At all relevant times material hereto, Defendant conducted trade and commerce within the meaning of the UTPCPL.

168. Plaintiff BRINKLEY and the Pennsylvania Class are “persons” as defined and construed under the UTPCPL.

169. Defendant has made and continues to make deceptive, false and misleading representations concerning the volume of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with non-functional slack-fill, as alleged herein. Defendant misleads consumers about (i) the actual amount of deodorant/antiperspirant accessible for usage; (ii) the total net weight (whether usable or unusable product); and (iii) the volume of the Products contained within the containers in comparison to the size of the Products’ packaging. The reasonable consumer is given the false impression that he/she is buying more product than they are actually receiving.

170. Defendant’s conduct as set forth herein constitutes an unconscionable commercial practice comprised of deceptive acts or practices in violation of the UTPCPL, 73 P.S. § 201-2(xxi), including its practice of misleading consumers in the promotion, marketing, advertising, packaging and labeling of its Products as described herein. Specifically, Defendant packages the Products using non-functional slack-fill in an effort to deceive or mislead Plaintiff BRINKLEY and other members of the Pennsylvania Class.

171. Defendant’s conduct as set forth herein has been unfair in violation of the UTPCPL because the acts or practices violate established public policy, and because the harm

they cause to consumers in Pennsylvania greatly outweighs any benefits associated with those practices.

172. As a direct and proximate result of Defendant's statutory violations, Plaintiff BRINKLEY and the Pennsylvania Class members have been injured and suffered actual and ascertainable losses of money as a result of Defendant's unconscionable, deceptive, and/or unfair trade practices.

173. As a result of the harm caused by Defendant's violation of Pennsylvania consumer protection law, Plaintiff BRINKLEY and Pennsylvania Class members are entitled to recover compensatory damages, punitive damages, and attorneys' fees as set forth below.

COUNT XI

OHIO DECEPTIVE TRADE PRACTICES ACT, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.*

174. Plaintiff WENDY SYROKA repeats and realleges each and every allegation contained above as if fully set forth herein and further alleges the following:

175. Plaintiff SYROKA brings this claim individually and on behalf of the Ohio Class for violations of Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.*

176. Defendant has made and continues to make deceptive, false and misleading representations concerning the volume of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with non-functional slack-fill, as alleged herein. Defendant misleads consumers about (i) the actual amount of deodorant/antiperspirant accessible for usage; (ii) the total net weight (whether usable or unusable product); and (iii) the volume of the Products contained within the containers in comparison to the size of the Products' packaging. The reasonable consumer is given the false impression that he/she is buying more product than they are actually receiving.

177. Defendant's conduct as set forth herein constitutes deceptive representations in connection with its goods or services in violation of Ohio Rev. Code § 4165.02(A)(7). Defendant has also advertised goods or services with intent not to sell them as advertised, in violation of Ohio Rev. Code § 4165.02(A)(11).

178. By making such representations, individually and collectively, Defendant willfully engaged in a deceptive trade practice.

179. The information intentionally misrepresented was material in that it was information that was important to consumers and likely to affect their choice of, or conduct regarding, the purchase of the Products. Misbranding the Products was likely to mislead consumers acting reasonably under the circumstances.

180. Defendant's conduct has caused or is to cause a substantial injury that is not reasonably avoided by consumers, and the harm is not outweighed by a countervailing benefit to consumers or competition.

181. Plaintiff SYROKA and members of the Ohio class have been injured as a direct and proximate result of Defendant's commission of a Deceptive Trade Practice listed in Ohio Rev. Code § 4165.02(A)(7) and Ohio Rev. Code § 4165.02(A)(11).

182. As a result of Defendant's deceptive and unfair practices, Plaintiff SYROKA and the Ohio Class have suffered ascertainable losses. Plaintiff SYROKA and the Ohio Class paid for Defendant's premium priced Products, but received Products that were worth less than the Products for which they paid.

183. Plaintiff SYROKA and the Ohio Class are entitled to actual damages, restitution and such other equitable relief, including an injunction, as the Court determines to be necessary and proper.

COUNT X

**VIOLATIONS OF GEORGIA FAIR BUSINESS PRACTICES ACT,
Ga. Code § 10-1-390 *et seq.***

184. Plaintiff DAWN KELLEY repeats and realleges each and every allegation contained above as if fully set forth herein and further alleges the following:

185. Plaintiff KELLEY brings this claim individually and on behalf of the Georgia Class for violations of Georgia Fair Business Practices Act, Ga. Code § 10-1-390 *et seq.* (the “Georgia Act”).

186. Throughout the Class Period, by advertising, marketing, distributing, and/or selling the Products with the non-functional slack-fill, to Plaintiff KELLEY and other Georgia Class members, Defendant violated the Georgia Act by engaging in false advertising concerning the volume and usable quantity of the Products.

187. Defendant has made and continues to make deceptive, false and misleading representations by way of product packaging and labeling of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning (i) the actual amount of deodorant/antiperspirant accessible for usage; (ii) the total net weight (whether usable or unusable product); and (iii) the volume of the Products contained within the containers in comparison to the size of the Products’ packaging, which they intended to deceive and/or mislead and did deceive and/or mislead the consumers into believing that the consumer is buying more Product than they are actually receiving.

188. By engaging in the above-described conduct, Defendant perpetrated unfair competition or unfair or deceptive acts or practices in violation of the Georgia Fair Business Practices Act of 1975, Ga. Code Ann. §10-1-390, *et seq.* In particular, Georgia law provides, “(a) a person engages in a deceptive trade practice when, in the course of his business, vocation, or

occupation, he . . . (5) Represents that goods or services have characteristics, ingredients, uses, benefits, or quantities that they do not have. . . (9) Advertises goods or services with intent not to sell them as advertised.” Ga. Code Ann. § 10-1-372.

189. Georgia law further provides, “(a) Unfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce are declared unlawful. (b) By way of illustration only and without limiting the scope of subsection (a) of this Code section, the following practices are declared unlawful: . . . (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have. . . (9) Advertising goods or services with intent not to sell them as advertised” Ga. Code Ann. § 10-1-393(a).

190. The information intentionally misrepresented was material in that it was information that was important to consumers and likely to affect their choice of, or conduct regarding, the purchase of the Products. Misbranding the Products was likely to mislead consumers acting reasonably under the circumstances.

191. Defendant’s conduct has caused or is to cause a substantial injury that is not reasonably avoided by consumers, and the harm is not outweighed by a countervailing benefit to consumers or competition.

192. As a result of Defendant’s deceptive and unfair practices, Plaintiff KELLEY and the Georgia Class have suffered ascertainable losses. Plaintiff and the Georgia Class paid for Defendant’s premium priced Products, but received Products that were worth less than the Products for which they paid.

193. Plaintiff KELLEY and the Georgia Class are entitled to actual damages, restitution and such other equitable relief, including an injunction, as the Court determines to be necessary and proper.

COUNT XI

**ALABAMA DECEPTIVE TRADE PRACTICES ACT,
Ala. Statutes Ann. §§ 8-19-1, *et seq.***

194. Plaintiff SERRENA UPTON repeats and realleges each and every allegation contained above as if fully set forth herein and further alleges the following:

195. Plaintiff UPTON brings this claim individually and on behalf of the Alabama Class for violations of Alabama Deceptive Trade Practices Act, Ala. Statutes Ann. §§ 8-19-1, *et seq.*

196. Plaintiff UPTON and the Alabama Class are “persons” within the meaning of Ala. Code § 8-19-3(5).

197. Defendant’s Products are “goods” within the meaning of Ala. Code §8-19 3(3).

198. Defendant is engaged in “trade or commerce” within the meaning of Ala. Code §8-19-3(8).

199. The Alabama Deceptive Trade Practices Act (“Alabama DTPA”) declares several specific actions to be unlawful, including: “(5) Representing that goods or services have characteristics, benefits, or qualities that they do not have,” “(9) Advertising goods or services with intent not to sell them as advertised” and “(27) Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.” Ala. Code § 8-19-5.

200. Throughout the Class Period, by advertising, marketing, distributing, and/or selling the Products with false net weight statements and non-functional slack-fill, to Plaintiff

UPTON and other Alabama Class members, Defendant violated the Alabama Deceptive Trade Practices Act by engaging in misleading packaging and false and deceptive advertising concerning the volume and quantity of the Products.

201. Defendant has made and continues to make deceptive, false and misleading representations by way of product packaging and labeling of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning (i) the actual amount of deodorant/antiperspirant accessible for usage; (ii) the total net weight (whether usable or unusable product); and (iii) the volume of the Products contained within the containers in comparison to the size of the Products' packaging. The reasonable consumer is given the false impression that he/she is buying more product than they are actually receiving.

202. The information intentionally misrepresented was material in that it was information that was important to consumers and likely to affect their choice of, or conduct regarding, the purchase of the Products. Misbranding the Products was likely to mislead consumers acting reasonably under the circumstances.

203. Defendant's conduct has caused or is to cause a substantial injury that is not reasonably avoided by consumers, and the harm is not outweighed by a countervailing benefit to consumers or competition.

204. As a result of Defendant's deceptive and unfair practices, Plaintiff UPTON and the Alabama Class have suffered ascertainable losses. Plaintiff and the Alabama Class paid for Defendant's premium priced Products, but received Products that were worth less than the Products for which they paid.

205. Plaintiff UPTON and the Alabama Class are entitled to actual damages, restitution and such other equitable relief, including an injunction, as the Court determines to be necessary and proper.

COUNT XII

**INDIANA DECEPTIVE CONSUMER SALES ACT,
Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.***

206. Plaintiff KENDRA ANGEL repeats and realleges each and every allegation contained above as if fully set forth herein and further alleges the following:

207. Plaintiff ANGEL brings this claim individually and on behalf of the Indiana Class for violations of Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.*

208. The Indiana Deceptive Consumer Sales Act is designed to “protect consumers from suppliers who commit deceptive and unconscionable sales acts.” Ind. Code § 24-5-0.5-1(b).

209. Plaintiff ANGEL and the other Indiana Class members are “persons” who engaged in a “consumer transaction” under Ind. Code § 24-5-0.5-2(a)(2) because they bought or acquired the Products by purchase. Ind. Code § 24-5-0.5-2(a)(1).

210. Defendant’s violations of the Indiana Deceptive Consumer Sales Act were made in connection with the purchase of the Products by Plaintiff ANGEL and the Indiana Class members.

211. The allegations set forth herein constitute deceptive trade acts or practices in violation of the Indiana Deceptive Consumer Sales Act.

212. Throughout the Class Period, Defendant advertised, marketed, distributed, and/or sold the Products with false net weight statements and non-functional slack-fill, to Plaintiff ANGEL and other Indiana Class members. Defendant violated the Indiana Deceptive Consumer

Sales Act by engaging in misleading packaging and false and deceptive advertising concerning the volume and usable quantity of the Products.

213. Defendant's use of false net weight statements and non-functional slack-fill in its Products constitutes a deceptive act or practice because Defendant misleads consumers about (i) the actual amount of deodorant/antiperspirant accessible for usage; (ii) the total net weight (whether usable or unusable product); and (iii) the volume of the Products contained within the containers in comparison to the size of the Products' packaging. The reasonable consumer is given the false impression that he/she is buying more product than they are actually receiving.

214. Defendant intended that Plaintiff ANGEL and other members of the Indiana Class rely on its deceptive act or practice. As described herein, the only purpose of labeling and packaging the Products with net weight misrepresentations and non-functional slack-fill is to deceive or mislead consumers into relying on the misinformation and give the false impression that there is more Product than actually packaged.

215. The information intentionally misrepresented was material in that it was information that was important to consumers and likely to affect their choice of, or conduct regarding, the purchase of the Products. Misbranding the Products was likely to mislead consumers acting reasonably under the circumstances.

216. Defendant's conduct has caused or is to cause a substantial injury that is not reasonably avoided by consumers, and the harm is not outweighed by a countervailing benefit to consumers or competition.

217. As a result of Defendant's deceptive and unfair practices, Plaintiff ANGEL and the Indiana Class have suffered ascertainable losses. Plaintiff and the Indiana Class paid for

Defendant's premium priced Products, but received Products that were worth less than the Products for which they paid.

218. Plaintiff ANGEL and the Indiana Class members relied to their detriment on those false, misleading, and deceptive acts or practices, therefore they are entitled to damages under Ind. Code § 24-5-0.5-4(a). Further, due to the willful nature of the violations, Plaintiff ANGEL and the Indiana Class are entitled to treble damages under Ind. Code § 24-5-0.5-4(a).

219. Plaintiff ANGEL and the Indiana Class are entitled to actual damages, restitution and such other equitable relief, including an injunction, as the Court determines to be necessary and proper.

COUNT XIII

VIOLATIONS OF OKLAHOMA CONSUMER PROTECTION ACT, Okla. Stat. 15 § 751, *et seq.*

220. Plaintiff MARK MCINTIRE repeats and realleges each and every allegation contained above as if fully set forth herein and further alleges the following:

221. Plaintiff MCINTIRE brings this claim individually and on behalf of the Oklahoma Class for violations of Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*

222. Defendant is a "person" within the meaning of the Oklahoma Consumer Protection Act. 15 O.S. § 752(1).

223. Plaintiffs and all the members of the Class are "consumers" as that term is used in 15 O.S. § 761.1(A).

224. Plaintiffs and the other members of the Class and Defendant were engaged in "consumer transactions" within the meaning of the Act. *Id.* at § 752(2).

225. Throughout the Class Period, by advertising, marketing, distributing, and/or selling the Products with net weight misrepresentations and non-functional slack-fill, to Plaintiff MCINTIRE and other Oklahoma Class members. Defendant violated the Oklahoma Consumer Protection Act by engaging in misleading packaging and false and deceptive advertising concerning the volume and usable quantity of the Products.

226. Defendant has made and continues to make deceptive, false and misleading representations by way of product packaging and labeling of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements, as alleged herein. Defendant misleads consumers about (i) the actual amount of deodorant/antiperspirant accessible for usage; (ii) the total net weight (whether usable or unusable product); and (iii) the volume of the Products contained within the containers in comparison to the size of the Products' packaging. The reasonable consumer is given the false impression that he/she is buying more product than they are actually receiving.

227. The actions stated herein and carried out by the Defendant were violations of Oklahoma State and federal law, and are therefore unfair and/or deceptive trade practices as defined by 15 O.S. §§ 753 and 761.1.

228. Unfair and/or deceptive trade practices are a violation of the Oklahoma Deceptive and Unfair Trade Practices Act pursuant to §§ 753 and 761.1.

229. The information intentionally misrepresented was material in that it was information that was important to consumers and likely to affect their choice of, or conduct regarding, the purchase of the Products. Misbranding the Products was likely to mislead consumers acting reasonably under the circumstances.

230. Defendant's conduct has caused or is to cause a substantial injury that is not reasonably avoided by consumers, and the harm is not outweighed by a countervailing benefit to consumers or competition.

231. As a result of Defendant's deceptive and unfair practices, Plaintiff MCINTIRE and the Oklahoma Class have suffered ascertainable losses. Plaintiff MCINTIRE and the Oklahoma Class paid for Defendant's premium priced Products, but received Products that were worth less than the Products for which they paid.

232. Plaintiff MCINTIRE and the Oklahoma Class are entitled to actual damages, restitution and such other equitable relief, including an injunction, as the Court determines to be necessary and proper.

COUNT XIV

BREACH OF EXPRESS WARRANTIES (All States)

233. Plaintiffs reallege and incorporate herein by reference the allegations contained in all preceding paragraphs of this Complaint as if fully set forth herein and further allege the following:

234. Plaintiffs bring this claim individually and on behalf of the nationwide Class.

235. Defendant, as the manufacturer, marketer, distributor and seller of the Products, provided Plaintiffs and other members of the Class with written express warranties, including, but not limited to, warranties that the Products have a particular net weight. The weight listed on the Products' labels is inaccurate because the amount of deodorant/antiperspirant that is accessible for usage in the Products is significantly less than the net weight stated on the Products' labels. In some instances, the Products fall short of the advertised net weight even when taking the unusable portion of deodorant/antiperspirant into account. The net weight claims

made by Defendant are an affirmation of fact that became part of the basis of the bargain and created an express warranty that the good would conform to the stated promise. Plaintiff placed importance on Defendant's net weight claims.

236. Defendant breached the terms of this contract, including the express warranties, with Plaintiffs and the Class by not providing Products with the amount of deodorant as promised.

237. As a proximate result of Defendant's breach of warranties, Plaintiffs and Class members have suffered damages in an amount to be determined by the Court and/or jury, in that, among other things, they purchased and paid for products that did not conform to what Defendant promised in its promotion, marketing, advertising, packaging and labeling, and they were deprived of the benefit of their bargain and spent money on products that did not have any value or had less value than warranted or products that they would not have purchased and used had they known the true facts about them.

COUNT XV

NEGLIGENT MISREPRESENTATION (All States and the District of Columbia)

238. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

239. Defendant, directly or through its agents and employees, made false representations, concealment and nondisclosures to Plaintiffs and members of the Class. Defendant, through its labeling, advertising and marketing of the Products, makes uniform representations regarding the Products.

240. Defendant, as the manufacturer, packager, labeler and initial seller of the Products purchased by Plaintiffs and members of the Class, is in the unique position of being able to

provide accurate information about its Products. Therefore, there is a special and privity-like relationship between Defendants and Plaintiffs and members of the Class. *See Ebin v. Kangadis*, 297 F.R.D. 561 (S.D.N.Y. March 24, 2014) (granting class certification on negligent misrepresentation claim where plaintiffs purchased olive oil with misrepresentations in a commercial transaction).

241. Defendant had a duty to disclose the true nature of the Products and not sell them with false and misleading representations including, (i) labels that list a false and misleading net weight of actual usable product; (ii) labels that list a total net weight (whether usable or unusable product) that is false and misleading; and (iii) packaging the Products in a way that misleads consumers about the volume of usable Product within the containers in comparison to the size of the Products' packaging.

242. Defendant had exclusive knowledge of material facts not known or reasonably accessible to the Plaintiffs; Defendant actively concealed material facts from the Plaintiffs and Defendants made partial representations that are misleading because some other material fact has not been disclosed. Defendant's failure to disclose the information it had a duty to disclose constitutes material misrepresentations and materially misleading omissions which misled the Plaintiffs who relied on Defendant in this regard to disclose all material facts accurately and truthfully and fully.

243. Plaintiffs and members of the Class reasonably relied on Defendant's representation that its Products contain more deodorant/antiperspirant than actually packaged or at the very least, the advertised net weight.

244. In making the representations of fact to Plaintiffs and members of the Class described herein, Defendant has failed to fulfill its duties to disclose the material facts set forth

above. The direct and proximate cause of this failure to disclose was Defendant's negligence and carelessness.

245. Defendant, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true. Defendant made and intended the misrepresentations to induce the reliance of Plaintiffs and members of the Class.

246. Plaintiffs and members of the Class would have acted differently had they not been misled – i.e. they would not have paid money for the Product in the first place.

247. Defendant has a duty to correct the misinformation it disseminated through its labeling and packaging of the Products. By not informing Plaintiffs and members of the Class of the correct usable and total net weights, or that the containers are packaged with non-functional slack-fill, Defendant breached its duty. Defendant also profited financially as a result of this breach.

248. Plaintiffs and members of the Class relied upon these false representations and nondisclosures when purchasing Products, upon which reliance was justified and reasonably foreseeable.

249. As a direct and proximate result of Defendant's wrongful conduct, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for Products, and any interest that would have been accrued on all those monies, all in an amount to be determined according to proof at time of trial.

250. Defendant acted with intent to defraud, or with reckless or negligent disregard of the rights of Plaintiffs and members of the Class.

251. Plaintiffs and members of the Class are entitled to punitive damages. Therefore, Plaintiffs pray for relief as set forth below.

COUNT XVI

**UNJUST ENRICHMENT
(All States and the District of Columbia)**

252. Plaintiffs reallege and incorporate by reference the above paragraphs as if set forth herein and further allege the following:

253. Plaintiffs bring this claim individually and on behalf of the nationwide Class.

254. Plaintiffs are entitled, under Rule 8(d), to plead unjust enrichment as an alternative theory of liability. *See St. John's Univ., New York*, 757 F. Supp. 2d. at 183-84 (E.D.N.Y. 2010).

255. Defendant misled consumers about (i) the actual amount of deodorant/antiperspirant accessible for usage; (ii) the total net weight (whether usable or unusable product); and (iii) the volume of the Products contained within the containers in comparison to the size of the Products' packaging. The reasonable consumer is given the false impression that he/she is buying more product than they are actually receiving.

256. As a result of Defendant's deceptive, fraudulent and misleading labeling, packaging, advertising, marketing and sales of Products, Defendant was enriched, at the expense of Plaintiffs and members of the Class, through the payment of the purchase price for Defendant's Products.

257. Plaintiffs and members of the Class conferred a tangible benefit on Defendant, without knowledge that the Products contained false net weight statements and non-functional slack-fill. Defendant accepted and retained the non-gratuitous benefits conferred by Plaintiffs and members of the Class with full knowledge and awareness of that, as a result of Defendant's unconscionable wrongdoing, Plaintiff and members of the Class were not receiving the Products

as they had been represented by Defendant, and which reasonable consumers would have expected.

258. Defendant will be unjustly enriched if it is allowed to retain the non-gratuitous benefits conferred by Plaintiffs and members of the Class, and each Class member is entitled to an amount equal to the amount they enriched Defendant and for which Defendant has been unjustly enriched.

259. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that it received from Plaintiffs and the Class, in light of the fact that the quantity and volume of the Products purchased by Plaintiffs and members of the Class, was not what Defendant purported it to be by its labeling and packaging. Thus, it would be unjust or inequitable for Defendant to retain the benefit without restitution to Plaintiffs, and all others similarly situated, of compensation proportionate to the shortfall in the amount of deodorant/antiperspirant which Plaintiffs and the Class thought they would receive, but did not, based on the purchase price of the Products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and members of the Class pray for relief and judgment against Defendant as follows:

- A. For an Order certifying the nationwide Class and under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Plaintiffs' attorneys as Class Counsel to represent members of the Class;
- B. For an order certifying the New York Class, appointing Plaintiffs BIMONT and BETHEA representatives of the New York Class, and designating their counsel as counsel for the New York Class;

- C. For an order certifying the New Jersey Class, appointing Plaintiff ROSADO representative of the New Jersey Class, and designating her counsel as counsel for the New Jersey Class;
- D. For an order certifying the California Class, appointing Plaintiff ARELLANO representative of the California Class, and designating her counsel as counsel for the California Class;
- E. For an order certifying the Florida Class, appointing Plaintiff STARR representative of the Florida Class, and designating her counsel as counsel for the Florida Class;
- F. For an order certifying the Pennsylvania Class, appointing Plaintiff BRINKLEY representative of the Pennsylvania Class, and designating his counsel as counsel for the Pennsylvania Class;
- G. For an order certifying the Ohio Class, appointing Plaintiff SYROKA representative of the Ohio Class, and designating her counsel as counsel for the Ohio Class;
- H. For an order certifying the Georgia Class, appointing Plaintiff KELLEY representative of the Georgia Class, and designating her counsel as counsel for the Georgia Class;
- I. For an order certifying the Alabama Class, appointing Plaintiff UPTON representative of the Alabama Class, and designating her counsel as counsel for the Alabama Class;

- J. For an order certifying the Indiana Class, appointing Plaintiff ANGEL representative of the Indiana Class, and designating her counsel as counsel for the Indiana Class;
- K. For an order certifying the Oklahoma Class, appointing Plaintiff MCINTIRE representative of the Oklahoma Class, and designating his counsel as counsel for the Oklahoma Class;
- L. For an Order declaring the Defendant's conduct violates the statutes referenced herein;
- M. For an Order finding in favor of Plaintiffs and the nationwide Class;
- N. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- O. For prejudgment interest on all amounts awarded;
- P. For an Order of restitution and all other forms of equitable monetary relief;
- Q. For injunctive relief as pleaded or as the Court may deem proper;
- R. For an Order awarding Plaintiffs and the Class their reasonable attorneys' fees and expenses and costs of suit; and
- S. For such other and further relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury trial on all claims so triable.

Dated: February 13, 2015

Respectfully submitted,

LEE LITIGATION GROUP, PLLC

C.K. Lee (CL 4086)

ShanShan Zheng (SZ 3301)

30 East 39th Street, Second Floor

New York, NY 10016

Tel.: 212-465-1188

Fax: 212-465-1181

Attorneys for Plaintiffs and the Class

/s/ C.K. Lee

BY: C.K. Lee, Esq.

EXHIBIT A

AXE Dry Dark Temptation 2.7oz



AXE Gold Temptation (Regular) 3oz



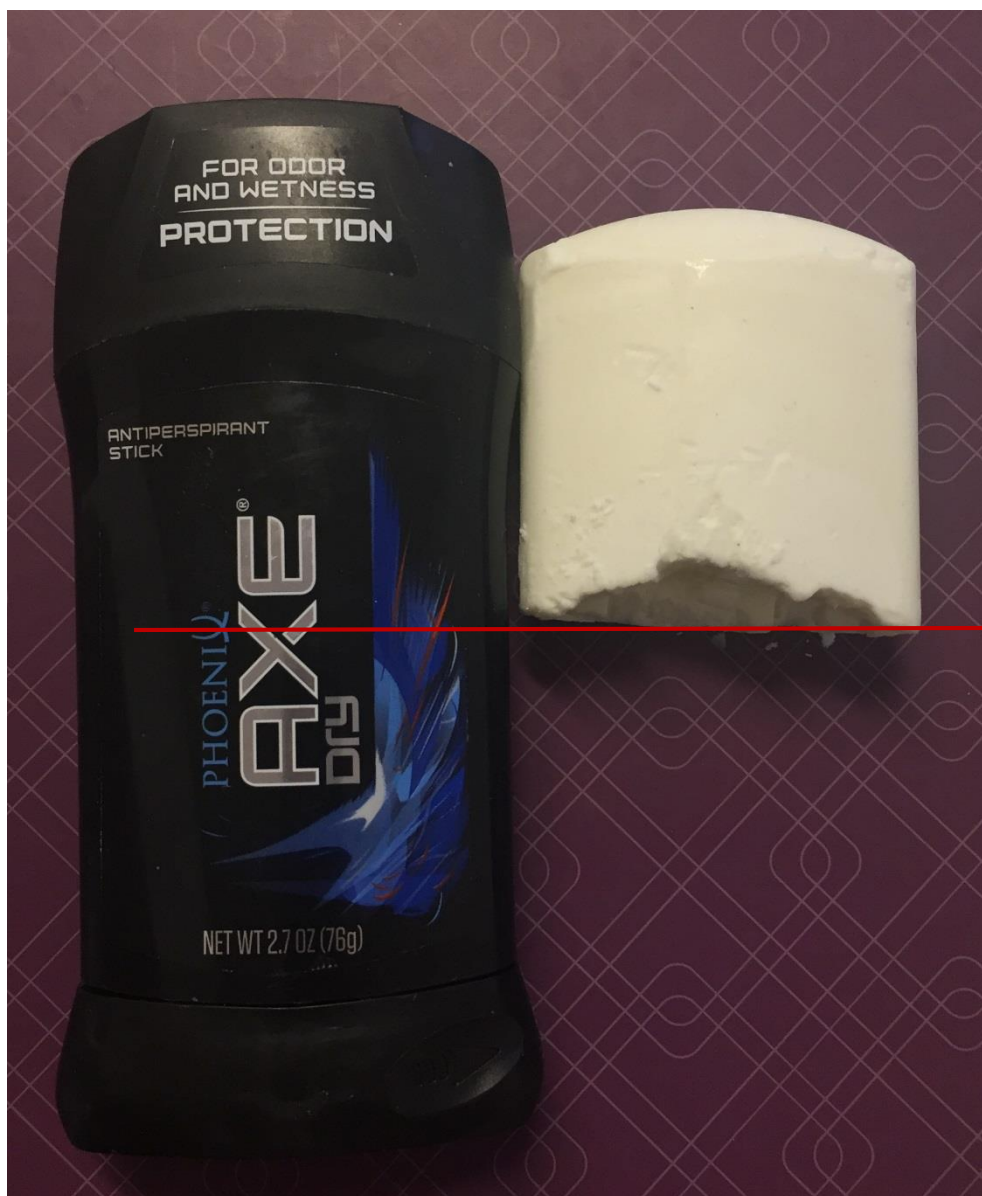
AXE Gold Temptation (Fresh) 3oz



AXE Dry Peace 2.7oz



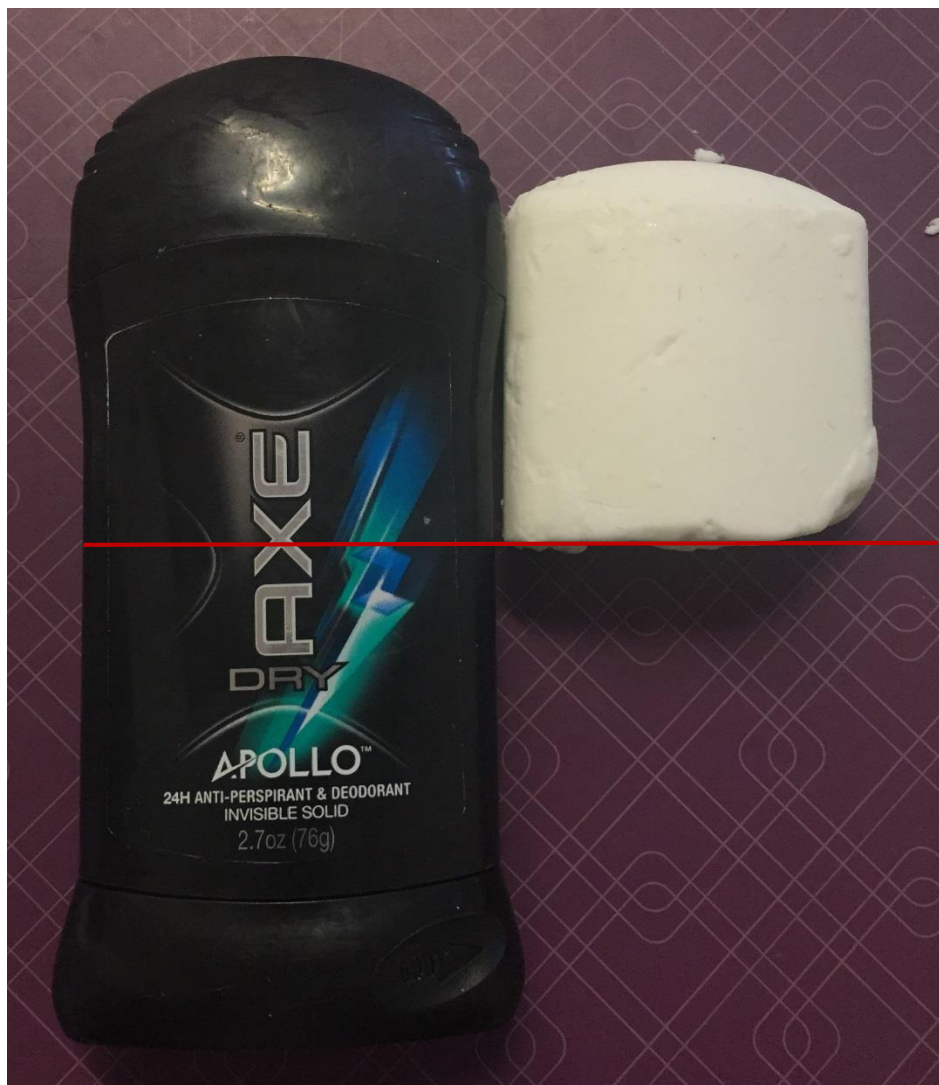
AXE Dry Phoenix 2.7oz



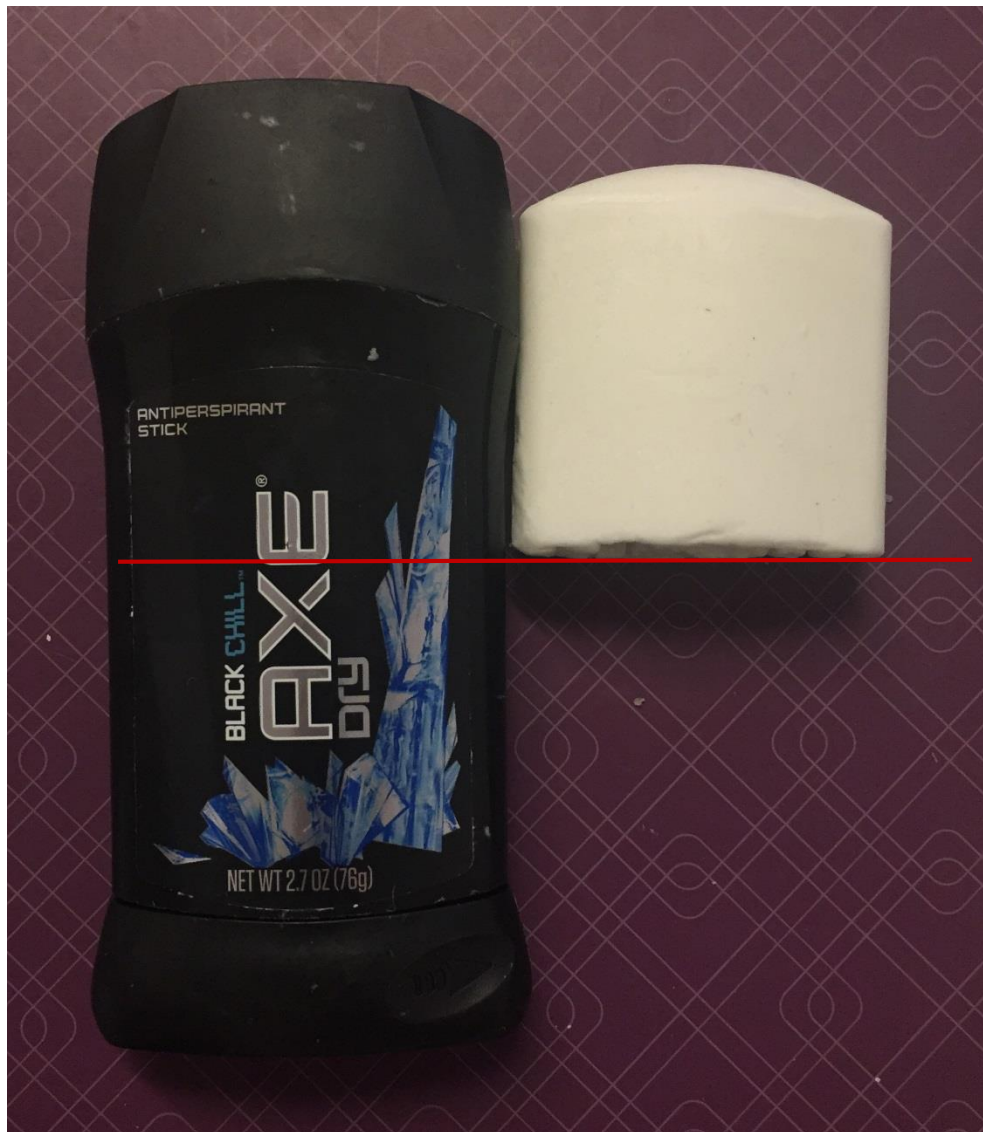
AXE Dry Essence 2.7oz



AXE Dry Apollo 2.7oz



AXE Dry Black Chill 2.7oz (Antiperspirant)



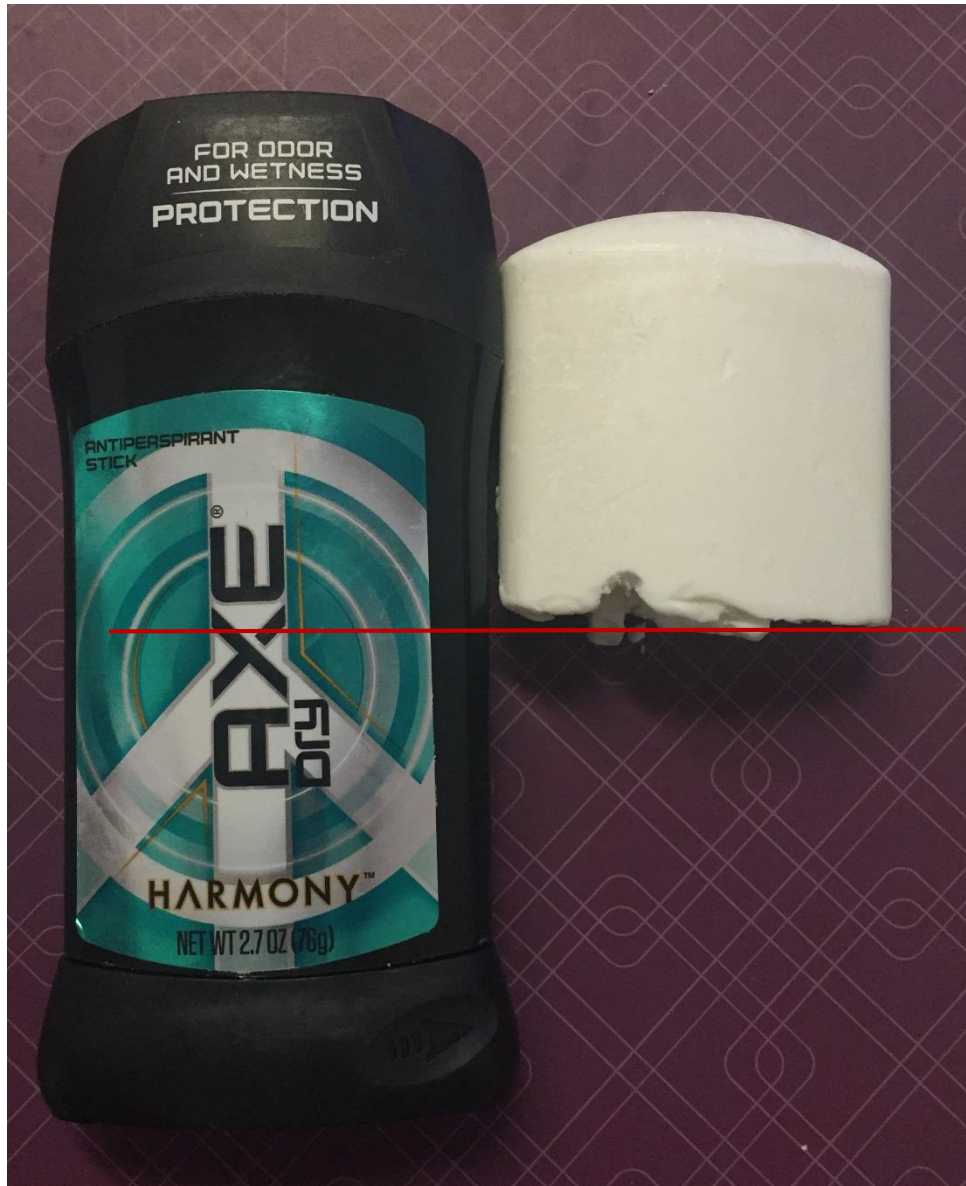
AXE Black Chill 3oz (Deodorant)



AXE Dry Anarchy 2.7oz



AXE Dry Harmony 2.7oz



Axe Dry Kilo 2.7oz



Axe White Label



Degree Dry Protection (Clean) 2.7oz



Degree Dry Protection (Cool Comfort) 2.7oz



Degree Dry Protection Cool Rush® 2.7oz



Degree Dry Protection Extreme Blast® 2.7oz



Degree Dry Protection (Power) 2.7oz



Degree Dry Protection (Sport) 2.7oz



Degree Fresh Deodorant (Arctic Edge) 3oz



Degree Fresh (Intense Sport®) 3oz



Degree Fresh (Ever Fresh) 3oz



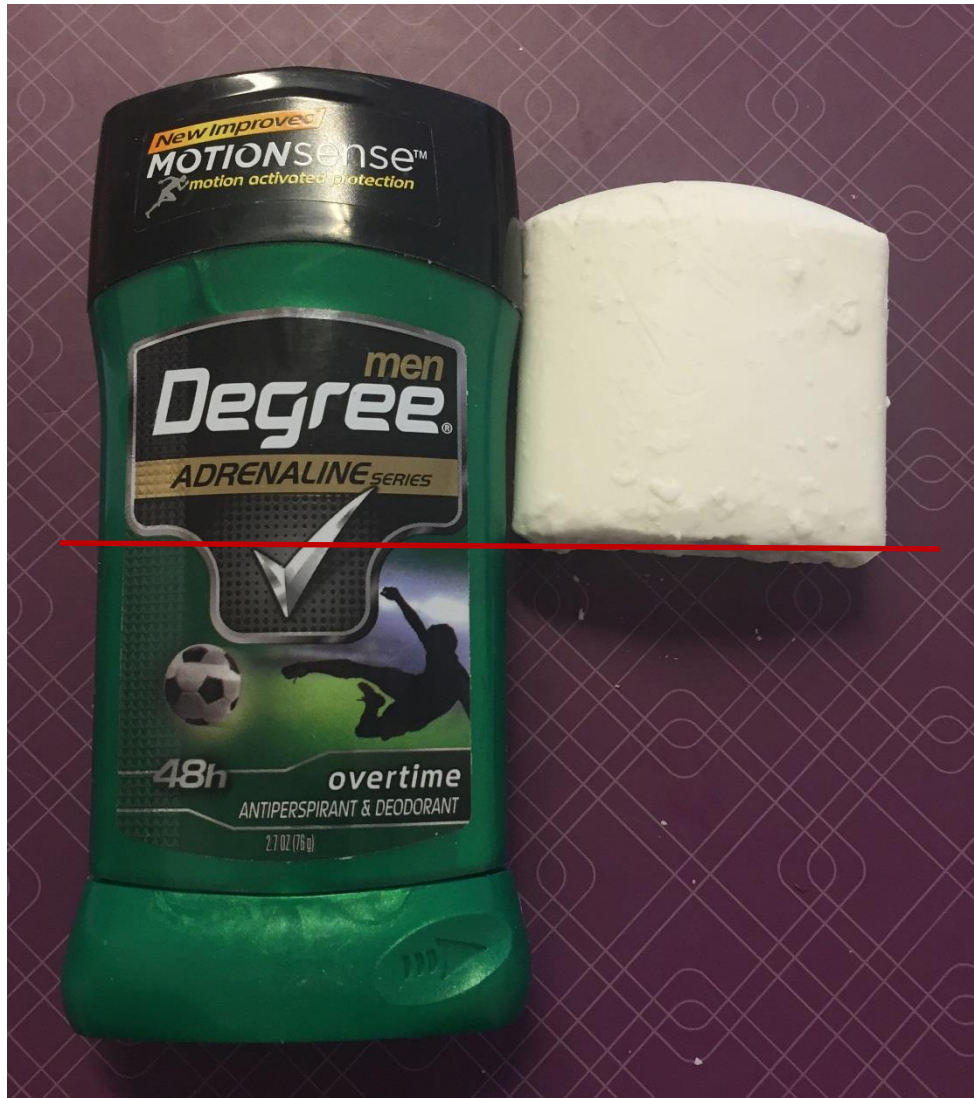
Degree MotionSense (Adventure) 2.7oz



Degree MotionSense (Ironman) 2.7oz



Degree MotionSense (Overtime) 2.7oz



Degree MotionSense (Sport Defense) 2.7oz



Degree MotionSense (Everest) 27oz



Degree MotionSense (Extreme) 2.7oz



Degree MotionSense (Cool Rush) 2.7oz



Degree Extra Fresh (Extreme) 3oz



Degree Extra Fresh (Adventure) 3oz



Degree Extra Fresh (Sport Defense) 3oz



EXHIBIT B

Plastic platform on which deodorant sticks stand
is shown below on the right:



Plastic platform on which deodorant sticks stand
is shown below on the right:



EXHIBIT C

AXE® NET WEIGHT SHORTFALL BASED ON ACTUAL USABLE PRODUCT

Product	Net Weight as Advertised	Net Weight of Usable Product	Usable Net Weight Shortfall Percentage
Axe® Dark Temptation™	2.7 oz.	2.45 oz.	9.26%
Axe® Gold Temptation™ (Regular)	2.7 oz.	2.5 oz.	7.41%
Axe® Gold Temptation™ (Fresh)	3.0 oz.	2.95 oz.	1.67%
Axe® Peace™	2.7 oz.	2.55 oz.	5.56%
Axe® Phoenix®	2.7 oz.	2.45 oz.	9.26%
Axe® Essence™	2.7 oz.	2.5 oz.	7.41%
Axe® Apollo™	2.7 oz.	2.55 oz.	5.56%
Axe® Black Chill™ (Anti-perspirant)	2.7 oz.	2.55 oz.	5.56%
Axe® Black Chill™ (Deodorant)	3.0 oz.	2.9 oz.	3.33%
Axe® Anarchy™	2.7 oz.	2.5 oz.	7.41%
Axe® Harmony™	2.7 oz.	2.5 oz.	7.41%
Axe® Kilo	2.7 oz.	2.45 oz.	9.26%
Axe® White Label™	2.7 oz.	2.55 oz.	5.56%

DEGREE® NET WEIGHT SHORTFALL BASED ON ACTUAL USABLE PRODUCT

Product	Net Weight as Advertised	Net Weight of Usable Product	Usable Net Weight Shortfall Percentage
Degree® Dry Protection (Clean)	2.7 oz.	2.55 oz.	5.56%
Degree® Dry Protection (Cool Comfort)	2.7 oz.	2.55 oz.	5.56%
Degree® Dry Protection Cool Rush®	2.7 oz.	2.45 oz.	9.26%
Degree® Dry Protection Extreme Blast®	2.7 oz.	2.5 oz.	7.41%
Degree® Dry Protection (Power)	2.7 oz.	2.5 oz.	7.41%
Degree® Dry Protection (Sport)	2.7 oz.	2.45 oz.	9.26%
Degree® Fresh Deodorant (Arctic Edge)	3.0 oz.	2.85 oz.	5.0%
Degree® Fresh Deodorant (Intense Sport®)	3.0 oz.	2.8 oz.	6.67%
Degree® Fresh Deodorant (Ever Fresh)	3.0 oz.	2.8 oz.	6.67%
Degree® MotionSense™ (Adventure)	2.7 oz.	2.55 oz.	5.56%
Degree® MotionSense™ (Ironman)	2.7 oz.	2.55 oz.	5.56%
Degree® MotionSense™ (Overtime)	2.7 oz.	2.5 oz.	7.41%
Degree® MotionSense™ (Sport Defense)	2.7 oz.	2.55 oz.	5.56%
Degree® MotionSense™ (Everest™)	2.7 oz.	2.55 oz.	5.56%
Degree® MotionSense™ (Extreme)	2.7 oz.	2.45 oz.	9.26%
Degree® Extra Fresh (Extreme)	3.0 oz.	2.8 oz.	6.67%
Degree® Extra Fresh (Adventure)	3.0 oz.	2.8 oz.	6.67%
Degree® Extra Fresh (Sport Defense)	3.0 oz.	2.8 oz.	6.67%

EXHIBIT D

**AXE® NET WEIGHT SHORTFALL BASED ON
TOTAL NET WEIGHT OF THE PRODUCTS**

Product	Net Weight As Advertised	Weight of Usable Product	Weight of Unusable Product	Total Net Weight (Usable + Unusable)	Total Net Weight Shortfall Percentage
Axe® Dark Temptation™	2.7 oz.	2.45 oz.	0.1 oz.	2.55 oz.	5.56%
Axe® Gold Temptation™ (Regular)	2.7 oz.	2.5 oz.	0.1 oz.	2.6 oz.	3.70%
Axe® Peace™	2.7 oz.	2.55 oz.	0.1 oz.	2.65 oz.	1.85%
Axe® Phoenix®	2.7 oz.	2.45 oz.	0.05 oz.	2.5 oz.	7.41%
Axe® Black Chill™ (Anti-perspirant)	2.7 oz.	2.55 oz.	0.1 oz.	2.65 oz.	1.85%
Axe® Anarchy™	2.7 oz.	2.5 oz.	0.05 oz.	2.55 oz.	5.56%
Axe® Harmony™	2.7 oz.	2.5 oz.	0.1 oz.	2.6 oz.	3.70%
Axe® Kilo	2.7 oz.	2.45 oz.	0.1 oz.	2.55 oz.	5.56%

**DEGREE® NET WEIGHT SHORTFALL BASED ON
TOTAL NET WEIGHT OF THE PRODUCTS**

Product	Net Weight As Advertised	Net Weight of Usable Product	Weight of Unusable Product	Total Weight (Usable + Unusable)	Total Net Weight Shortfall Percentage
Degree® Dry Protection (Clean)	2.7 oz.	2.55 oz.	0.05 oz.	2.6 oz.	3.70%
Degree® Dry Protection (Cool Comfort)	2.7 oz.	2.55 oz.	0.05 oz.	2.6 oz.	3.70%
Degree® Dry Protection Cool Rush®	2.7 oz.	2.45 oz.	0.15 oz.	2.6 oz.	3.70%
Degree® Dry Protection Extreme Blast®	2.7 oz.	2.5 oz.	0.15 oz.	2.65 oz.	1.85%
Degree® Dry Protection (Power)	2.7 oz.	2.5 oz.	0.1 oz.	2.6 oz.	3.70%
Degree® Dry Protection (Sport)	2.7 oz.	2.45 oz.	0.15 oz.	2.6 oz.	3.70%
Degree® Fresh Deodorant (Arctic Edge)	3.0 oz.	2.85 oz.	0.1 oz.	2.95 oz.	1.67%
Degree® Fresh Deodorant (Intense Sport®)	3.0 oz.	2.8 oz.	0.1 oz.	2.9 oz.	3.33%
Degree® Fresh Deodorant (Ever Fresh)	3.0 oz.	2.8 oz.	0.1 oz.	2.9 oz.	3.33%
Degree® MotionSense™ (Adventure)	2.7 oz.	2.55 oz.	0.05 oz.	2.6 oz.	3.70%
Degree® MotionSense™ (Ironman)	2.7 oz.	2.55 oz.	0.05 oz.	2.6 oz.	3.70%
Degree® MotionSense™ (Overtime)	2.7 oz.	2.5 oz.	0.15 oz.	2.65 oz.	1.85%
Degree® MotionSense™ (Everest™)	2.7 oz.	2.55 oz.	0.1 oz.	2.65 oz.	1.85%
Degree® MotionSense™ (Extreme)	2.7 oz.	2.45 oz.	0.1 oz.	2.55 oz.	5.56%
Degree® Extra Fresh (Extreme)	3.0 oz.	2.8 oz.	0.15 oz.	2.95 oz.	1.67%
Degree® Extra Fresh (Adventure)	3.0 oz.	2.8 oz.	0.1 oz.	2.9 oz.	3.33%
Degree® Extra Fresh (Sport Defense)	3.0 oz.	2.8 oz.	0.1 oz.	2.9 oz.	3.33%

EXHIBIT E

Travel Size AXE® Dry Anti-Perspirant & Deodorant



ACTUAL SIZE

Travel Size Degree® Dry Anti-Perspirant & Deodorant



ACTUAL SIZE

EXHIBIT F

LEE LITIGATION GROUP, PLLC

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FAX: 212-465-1181
INFO@LEELITIGATION.COM

WRITER'S DIRECT: 212-465-1188
cklee@leelitigation.com

January 13, 2015

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Legal Department
Unilever United States, Inc.
800 Sylvan Avenue
Englewood Cliffs, NJ 07632

Thomas J. Quigley, Esq.
Winston & Strawn LLP
200 Park Avenue
New York, NY 10166-4193

Re: Demand Letter re: AXE® Gold Temptation™ Products and
Degree® Dry Protection Products
(together, the “Products”)

To Whom It May Concern:

This demand letter serves as a notice and demand for corrective action on behalf of my client, Rosemary Arellano and all other persons similarly situated, arising from breaches of warranty under the Magnuson-Moss Warranty Act, violations of numerous provisions of California law including the Consumers Legal Remedies Act, Civil Code § 1770, including but not limited to subsections (a)(5) and (a)(9) and violations of consumer protection laws of each of the fifty states and the District of Columbia. This demand letter serves as notice pursuant to state laws concerning the breaches of express and implied warranties.

You have participated in the manufacture, marketing and sale of the AXE® Gold Temptation™ and Degree® Dry Protection Products. The Products come in containers which list the net weight as 2.7 ounces. However, the actual amount of deodorant/anti-perspirant that is accessible by consumers for usage in the Products is less than 2.7 ounces. The Products also contain non-functional slack-fill and violate consumer protection laws of each of the fifty states and the District of Columbia as well as Sections 502 and 602 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 352, 21 U.S.C. § 362, respectively. As a result, the Products are misbranded.

Rosemary Arellano, a resident of California, purchased the AXE® Gold Temptation™ and Degree® Dry Protection Products and is acting on behalf of a class

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defined as all persons in each of the fifty states and the District of Columbia who purchased the Products (hereafter, the "Class").

To cure the defects described above, we demand that you (i) cease and desist from continuing to package the Products with a false and misleading net weight and non-functional slack-fill; (ii) issue an immediate recall on any Products with a false and misleading net weight and non-functional slack-fill; and (iii) make full restitution to all purchasers throughout the United States of all purchase money obtained from sales thereof.

We further demand that you preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to the following:

- (i) All documents concerning the manufacture and packaging process for the Products;
- (ii) All communications with the U.S. Food and Drug Administration concerning the product development, packaging, marketing and sales of the Products;
- (iii) All documents concerning the advertisement, marketing, or sale of the Products; and
- (iv) All communications with customers concerning complaints or comments concerning the Products.

We are willing to negotiate to attempt to resolve the demands asserted in this letter. If you wish to enter into such discussions, please contact me immediately. If I do not hear from you promptly, I will conclude that you are not interested in resolving this dispute short of litigation. If you contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents promptly.

Very truly yours,

C.K. Lee, Esq.



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Legal Dept. Unilever United States Inc. 800 Sylvan Avenue Englewood Cliffs NJ 07632</p>		<p>B. Received by (Printed Name) Roni Hershkovitz</p> <p>C. Date of Delivery JAN 16 2015</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7014 2870 0000 2952 8728</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>PS Form 3811, July 2013</p>		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p>	
<p>Domestic Return Receipt</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only		
For delivery information, visit our website at www.usps.com ®.		
ENGLEWOOD CLIFFS NJ 07632		
Postage	\$ 00.49	0016
Certified Fee	\$3.30	04
Return Receipt Fee (Endorsement Required)	\$2.70	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 06.49	01/13/2015
<p>Sent To Legal Dept (Unilever United States)</p> <p>Street & Apt. No., or PO Box No. 800 Sylvan Avenue</p> <p>City, State, ZIP+4 Englewood Cliffs NJ 07632</p>		
PS Form 3800, July 2014 See Reverse for Instructions		