

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CAROLYN BEVINS, On Behalf of Herself
and All Others Similarly Situated;

Plaintiff,

v.

EOS PRODUCTS, LLC, a New York
Limited Liability Company,
ATTN Jonathan Teller
19 West 44th Street
Suite 811
New York, NY 10036,

and

DOES 1-10;

Defendants.

Case No.: _____

Judge _____

CLASS ACTION COMPLAINT

Jury Demand Endorsed Hereon

For her complaint against Defendants EOS Products, LLC (“EOS”) and Does 1-10, Plaintiff Carolyn Bevins (“Bevins”) alleges based upon personal knowledge, information and belief, and the investigation of her counsel as follows:

PRELUDE

1. Plaintiff Bevins brings this class action on behalf of herself and a class of hundreds of thousands of similarly situated victims of the Defendants’ actions and inactions relating to the development, marketing, distribution, sale and servicing of EOS Lip Balm products.

2. EOS formulates, develops, markets, advertises, brands, promotes, distributes, and sells – through retail and online – one of the highest-grossing lip balm products on the market

today called EOS Visibly Soft Lip Balm (“EOS Lip Balm” or “Lip Balm”). EOS Lip Balms come in a variety of colors and “flavors,” with over-the-top and misleading names like Barbados Heat-Wildberry, Medicated Tangerine, and Honeysuckle Honeydew, just to name a few.

3. EOS Lip Balms come in attractive bright circular pods that stand out from the typical oblique-shaped lip balms in the market place. The different shape is all part of EOS’ masterful marketing plan that is designed to make consumers believe that EOS Lip Balms are a new, safer lip balm that stands out from others in the market place and therefore is worth the additional cost charged to consumers.

4. EOS is an acronym for “evolution of smooth.” The use of the term “evolution” is also a part of EOS’ masterful marketing designed to make consumers believe EOS Lip Balms are a better, safer new form of lip balm that is worth the additional cost.

5. EOS’ marketing has been wildly successful. EOS has achieved meteoric growth through its massive marketing campaign that includes print marketing, social media marketing, online advertising, and other forms of advertising such as using celebrity power to market its Lip Balms.

6. EOS uses and pays celebrity “brand ambassadors” such as Kim Kardashian, Britney Spears, Miley Cyrus, Hillary Duff, and other celebrities to post pictures on Instagram and other social media websites. The posts of celebrities using EOS Lip Balms created a viral marketing frenzy around EOS Lip Balms. This marketing frenzy is targeted at consumers such as the named Plaintiff. The EOS website, www.evolutionofsmooth.com has an entire page called “EOS BUZZ-CELEBRITY FANS” which contains hundreds of celebrity endorsements and sponsored content on social media with hashtags including “#YUMMY” and “#EOSOBSESSED” along with posts treating EOS Lip Balm as a travel companion, a cure for

health and hygiene problems, and a product that consumers cannot live without. The false message EOS clearly conveys is that EOS Lip Balm is a safe, daily necessity that improves health, diet and appearance, and requires constant application regardless of the actual condition of a consumer's lips.

7. EOS's marketing and advertisements emphasize that the EOS Lip Balms are "organic" and "gluten free," aligning the EOS Lip Balms with popular dietary trends, despite the fact that the EOS Lip Balms have no consumable value.

8. Hundreds of thousands of consumers have fallen prey to EOS' false marketing and advertisements that rely on consumers' desire for safe products. The consumers purchasing EOS Lip Balms include a wide ranging group of varied ages, races and genders who have purchased what they believed to be a safe product, only to experience devastating adverse reactions to EOS Lip Balms. The devastating adverse reactions suffered by consumers include, mild to severe rashes, dryness, bleeding, blistering, cracking, loss of pigmentation and an inability to ever use lipstick or any other type of lip covering after the use of EOS Lip Balms. The adverse reactions suffered by consumers such as the Plaintiff exist for a substantial amount of time and some of the adverse reactions are permanent.

9. EOS is, and has been since the development of its lip balms, aware of the potential for and actual serious adverse effects of its Lip Balms. EOS knew or should have known during the development of its Lip Balms that the ingredients in its Lip Balms posed a danger to consumers. In fact, many of the ingredients in EOS Lip Balms have a substantial risk of adverse reactions. Moreover, EOS Lip Balm purchasers have made EOS well aware of the actual adverse reactions to its Lip Balms. The EOS Facebook page and email are replete with consumer complaints describing in great detail the adverse impact of EOS Lip Balms.

Consumers have written to EOS to share their complaints about the similar adverse health issues caused by the use of EOS Lip Balms. Consumers have even provided photos and medical records to demonstrate the veracity of their communications with EOS. Furthermore, EOS has been sued in California and New York over the same adverse reactions suffered by the Plaintiff and thousands of other EOS Lip Balm purchasers. Nevertheless, EOS has dismissed all of the complaints as being “without merit.”

10. Despite being on notice that its products are physically harming consumers who purchased the lip balm, EOS has:

- a. Failed to refund consumer’s purchase price.
- b. Failed to provide any warning on the product.
- c. Failed to provide any warning on its website or advertising material.
- d. Failed to recall the product.
- e. Failed to commission a study regarding the adverse effects of its proprietary formula.

11. Class Representative Carolyn Bevins purchased EOS Lip Balm sometime around December 2013 at a Target retail store in Columbus, Ohio. Bevins was aware of the social media advertising and mass marketing of EOS Lip Balms and attracted to the fact that EOS advertised that it’s lip balms were “95% organic” and would provide safe extensive moisturizing for her lips.

12. As with all of EOS packaging, the packaging of the EOS Lip Balm purchased by Plaintiff contained no warnings about potential adverse side-effects from the use of EOS Lip Balms. Indeed, the EOS packaging only promoted the safety of EOS Lip Balms with no mention of the critical need to immediately discontinue use upon the appearance of certain symptoms.

13. Plaintiff began using the EOS Lip Balm that she purchased sometime after the purchase. Within days, Plaintiff's lips became substantially dry and coarse, similar to sandpaper, causing Plaintiff to apply more of the EOS balm on her lips in an effort to achieve the results marketed by EOS such as the "sensationally smooth" effect touted by EOS.

14. Plaintiff's lips did not become smooth, and began severely cracking on the edges causing flaking and bleeding from the cracks. Within days, Plaintiff's lips and surrounding skin area had severe blistering and rashes causing her to seek medical care.

15. The Plaintiff's use of EOS Lip Balm on her lips resulted in painful, embarrassing adverse effects that required and still require medical care and delicate treatment even to this day.

16. Plaintiff brings this class action to compel EOS to be a transparent and responsible corporate citizen by (1) publically addressing and curing the overwhelming health concerns it has received from consumers, (2) warning consumers of the adverse effects caused by the product on its packaging, website, and marketing materials, and (3) making whole the consumers who have been injured by EOS Lip Balms.

JURISDICTION AND VENUE

17. This Court has diversity jurisdiction over this class action pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy, exclusive of interest and costs, exceeds \$5,000,000 and is a class action in which some members of the class are citizens of states different from the States where Defendants are citizens.

18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because many of the acts and transactions giving rise to this action occurred in this District as Defendant: (a) is authorized to conduct business in this District and has intentionally availed itself to the laws and

markets within this District through the promotion, marketing, distribution and sale of its products in this District: (b) currently does substantial business in this District; and (c) is subject to personal jurisdiction in this District.

PARTIES

19. At all times relevant to this matter, Plaintiff Carolyn Bevins was a resident of Columbus, Ohio in Franklin County. Plaintiff purchased EOS products from a Target retail store located in Columbus, Ohio, within the territorial district of this Court. Plaintiff purchased and used Defendant's EOS Lip Balm product because she saw and relied on the purported beauty and health benefits described by the EOS website, advertising, and in the store where she purchased EOS Lip Balm. As a result of the Plaintiff's purchase of Defendants' lip balm, Plaintiff has been damaged in that Plaintiff has paid for a product she would not have purchased had she known the true facts concerning Defendants' products, and EOS Lip Balm caused the injuries described above.

20. Defendant EOS Products, LLC ("EOS") is a New York limited liability company. EOS develops, manufactures, markets and sells beauty products including lip balms, hand lotions, body lotions, and shave creams. EOS advertises and sells its lip balm and products through online stores and retailers in the United States and Canada, including the EOS Lip Balm brands that are the subject of this lawsuit. Specifically, the lip balm brands included in this lawsuit include: Blackberry Nectar, Coconut Milk, Strawberry Sorbet, Blueberry Acai, Pomegranate Raspberry, Summer Fruit, Sweet Mint, Honeysuckle Honeydew, Lemon Drop, and Medicated Tangerine.

21. Each of the DOES 1-10 is the agent, retailer, servant, partner, joint-venturer, co-venturer, principal, director, officer, manager, employee, or shareholder of one or more of its co-

defendant(s) who aided, abetted, controlled, and directed or conspired with and acted in furtherance of said conspiracy with one or more of its co-defendant(s) in said co-defendant(s) performance of the acts and omissions described below. Plaintiff sues each of these Doe Defendants by these fictitious names because Plaintiff does not know these Defendants' true names and capacities. Despite reasonable efforts, Plaintiff has not been able to ascertain the identity of DOES 1-10.

FACTS

22. EOS was founded in 2006 by a former commodity trader, and “start-up guru,” named Craig Dubitsky who is no longer affiliated with the company.

23. Defendants placed EOS Lip Balm products, including Blackberry Nectar, Coconut Milk, Strawberry Sorbet, Blueberry Acai, Pomegranate Raspberry, Summer Fruit, Sweet Mint, Honeysuckle Honeydew, Lemon Drop, and Medicated Tangerine, into the stream of commerce.

24. EOS has promoted the use of its Visibly Soft Lip Balm and lip balm products to consumers as safe, and possessing special beauty and health benefits. EOS promotes EOS Lip Balms as being enriched with natural conditioning oils, moisturizing shea butter and antioxidant vitamin C & E which nourishes for immediately softer, more beautiful lips. EOS promotes that its product is “healthy” “organic” and “gluten free.”

25. EOS pursued an aggressive marketing campaign, utilizing product placement as well as celebrity endorsements in magazines, Twitter, Pinterest, and Instagram. EOS markets heavily through its website “evolutionofsmooth.com.” EOS advertises its products on its website and permits users to purchase products on the website. The website promotes the products in the following ways:

NEW! Get noticed with visibly softer lips. Nourish your lips with the delicious flavor of blackberry nectar.

Treat your lips to an all-natural lip balm that’s bursting with moisture and the refreshing flavors of strawberry, blueberry and peach.

Delight your lips with the irresistible flavor of fresh honeydew and with moisture that keeps your lips feeling soft and smooth all day long.

26. For example, EOS website includes the following sections:





Smooth Sphere Lip Balm

Honeysuckle Honeydew

Delight your lips with the irresistible flavor of fresh honeydew and with moisture that keeps your lips feeling soft and smooth all day long.

OTHER FLAVORS



\$3.29

QTY:

 ADD TO CART



Visibly Soft Lip Balm

Blackberry Nectar

NEW! Get noticed with visibly softer lips. Nourish your lips with the delicious flavor of blackberry nectar.

OTHER FLAVORS

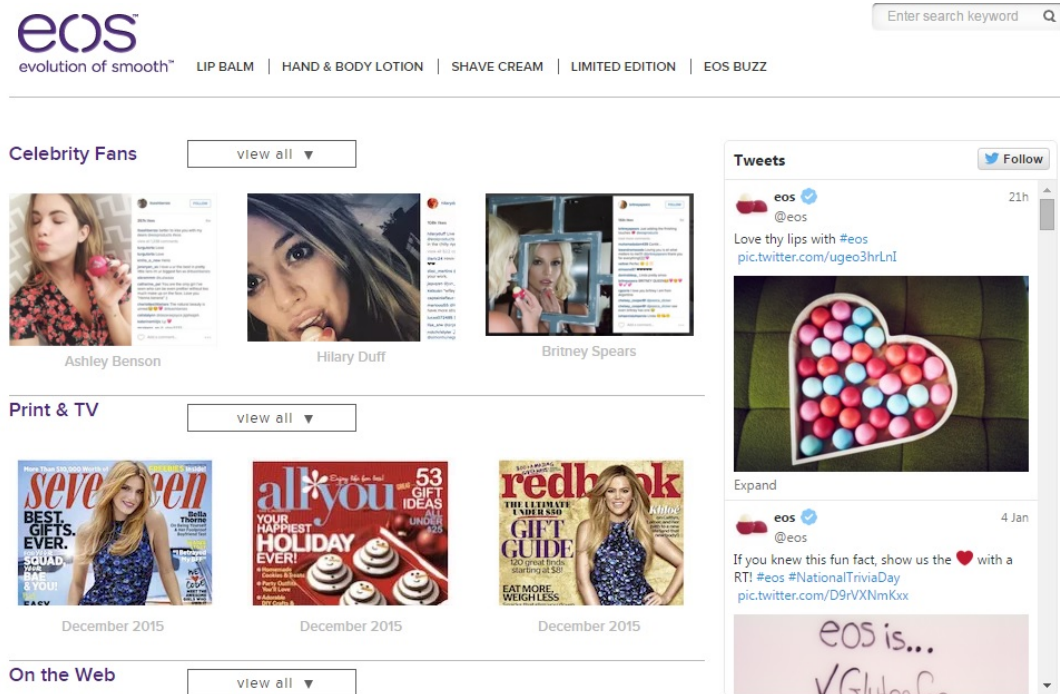


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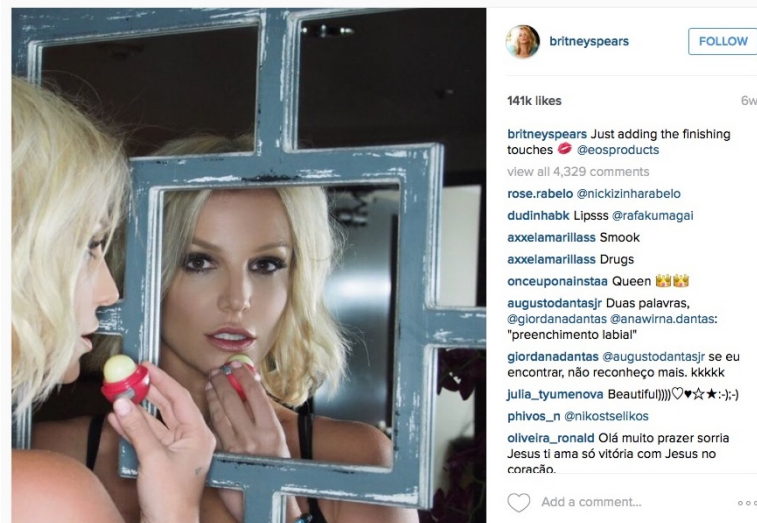
QTY:

 ADD TO CART

27. There is also an entire section on the EOS website called “EOS BUZZ” which displays celebrity endorsements from the biggest names in entertainment today including Kim Kardashian and Britney Spears. The EOS BUZZ section presents as follows:



28. Examples of EOS viral marketing campaigns include the following social media efforts involving celebrities, which promote the product as healthy, as a cure for celebrity problems, and as a travel companion:



29. While boasting celebrity endorsements and magazine advertisements, and while making lofty representations regarding the health and curative effects of their lip balm products, EOS provides no warnings on its product, packaging, labeling, or anywhere on the website regarding health problems which are caused by the mix and use of ingredients used in its products, and the lack of instruction regarding the appropriate amount of use of the product. The photo below is an example of the nearly uniform EOS Lip Balm packaging that contains no warnings.



30. In reality, EOS Lip Balm has caused a massive health crisis among purchasers for which EOS has been on notice of for a substantial period of time. EOS Lip Balms have caused

consumers' lips to crack, bleed, itch, burn, flake, and generate severe boiling and blistering on and around the lips. Moreover, EOS Lip Balm purchasers continue to suffer extremely tender lips long after discontinuing the use of EOS Lip Balms. Purchasers are unable to use little or any lip coverings after suffering the adverse effects of EOS Lip Balms.

31. Plaintiff, and putative class representative, Bevins, purchased EOS Lip Balm from a Columbus, Ohio Target store sometime around December 2013, and progressively developed substantial health problems thereafter, including but not limited to dryness, cracking, bleeding of lips, and breaking out in boils and blisters on and around her lips requiring medical attention. The adverse effects were so terrible that the Plaintiff suffered pain and embarrassment. Plaintiff even avoided going in public or photos due to the severity of the adverse effects on her lips as a result of her use of EOS Lip Balm.

32. Some purchasers who contacted EOS concerning the adverse effects of EOS Lip Balms were told that EOS had established a "medical health team" and were told to seek medical treatment for the adverse reactions caused by EOS Lip Balms. Nowhere on the EOS website, packaging, or labeling is there any reference to the existence of a "medical health team" created to address health concerns caused by EOS Lip Balms. Clearly the adverse reactions to EOS Lip Balms had reached a crisis level and yet EOS continued to conceal the dangers of its lip balms from consumers.

33. Despite the widespread adverse reactions to EOS Lip Balms, nowhere on the EOS website, packaging, and labeling are there any warnings about potential dangers and health problems caused by EOS Lip Balm. Even after EOS received massive numbers of complaints from consumers related to adverse health effects caused by the use of EOS Lip Balm and the fact that EOS has established a medical team related to adverse health effects caused by its product,

EOS did nothing to alert consumers. Indeed, publicly EOS continued to conceal the risks of its lip balms.

34. Social media is flooded with examples of individuals who shared their adverse reactions and health problems caused by using EOS Lip Balms, all of which are nearly identical to the Plaintiff's adverse reactions and health problems caused by the use of EOS Lip Balm. The scope of individuals who have likely been harmed by EOS Lip Balms is massive in scope, likely in the hundreds of thousands. Below is a small sample of other pictures of individuals suffering the same or similar reactions to the Plaintiff:



Figure 1 - Before use



Figure 2 - After use



Figure 3 - After use



Figure 4 - After use



Figure 5 - After use

35. The claim by EOS that it uses only the best and most natural ingredients and that nothing in its product is “inherently allergenic” is false. A cursory review of the specific ingredients which are combined and contained in the lip balm, is cause for serious medical concern.

36. Specifically, the lip EOS balms contain the following ingredients:

a. Sodium Hyaluronate: Sodium hyaluronate (“SH”) is similar to the fluid that surrounds your joints. SH can be used as a “lip puffer,” and causes swelling and inflammation of the lips. SH gel can also be used as a topical medication.

According to the Dartmouth-Hitchcock Norris Cotton Cancer Center Health

Encyclopedia: (1) You should not use sodium hyaluronate if you are allergic to it, (2) It is a FDA pregnancy category C, meaning it is not known whether sodium hyaluronate topical will harm an unborn baby, (3) If you use sodium hyaluronate gel or cream on an open skin wound, dab a thin layer of the medicine onto the affected area with as little rubbing as possible, and (4) Stop using the medication and call your doctor if your symptoms do not improve or if they get worse, or if you develop new symptoms.

b. Butyrospermum parkii (shea butter): It is derived from the seeds of the African Shea Tree. Notably, EOS lists the ingredient using the outdated name “Butyrospermum Parkii,” when it is actually referred to by the Federal Drug Administration as Vitellaria paradoxa (Sheanut). Under the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA), “peanuts” are considered a “major food allergen.” For purposes of section 201(qq) of FALCPA, Vitellaria paradoxa (Sheanut) is considered a “nut,” and thus a “major allergen.” Under section 403(w)(1), a major food allergen must be declared using the name of the food source from which the major food allergen is derived. FALCPA requires that in the case of tree nuts, the specific type of nut must be declared (e.g., almonds, pecans, walnuts, sheanuts). Here, EOS advertises its product to consumers as though it should be consumed with slogans such as “yummy!” and “tasty” but fails to indicate the product is derived from nuts.

c. Ascorbyl palmitate: Because Ascorbyl palmitate is fat soluble, Vitamin C, and easily penetrates the skin, the Cosmetic Ingredient Review (CIR) Expert Panel recommends that lower concentrations be used in leave-on formulations.

EOS provides no formal guidance or recommendations for the amount of use for the product. Far from it, the advertising by EOS encourages frequent, constant, and frenetic use of the product each day.

d. Tocopherols (TCP): Are a class of organic chemical compounds (more precisely, various methylated phenols), many of which have vitamin E activity. The most common serious side effect is bleeding. Side effects occurring as a result of long-term alpha-tocopherol supplementation have not been adequately studied. The most worrisome possibility is that of impaired blood clotting, which may increase the likelihood of bleeding ('hemorrhage') in some individuals.

e. Stevia Extract: Stevia plant is a small, sweet-leaf herb of South American origin used as a sweetener for food. Stevia plant and its processed products were at one time banned from the European Union countries and by the FDA for suspected mutagenic effects. One study found 16% of infants with nasal allergies to be allergic to stevia, 34% of infants with bronchial asthma to be allergic to stevia and 64% of infants with atopic eczema to be allergic to stevia. See Anaphylaxis by stevioside in infants with atopic eczema, ALLERGY 2007: 62: 565–572, H. Kimata.

37. On the bottom of the EOS website, there are two tabs. The tab that is displayed is labeled "Product Details," and the non-displayed tab for which the visitor to the website is required to click to view is labeled "Ingredients." The product details include broad statements such as "Long-lasting moisture for immediately softer, more beautiful lips," "Smooths on clear,

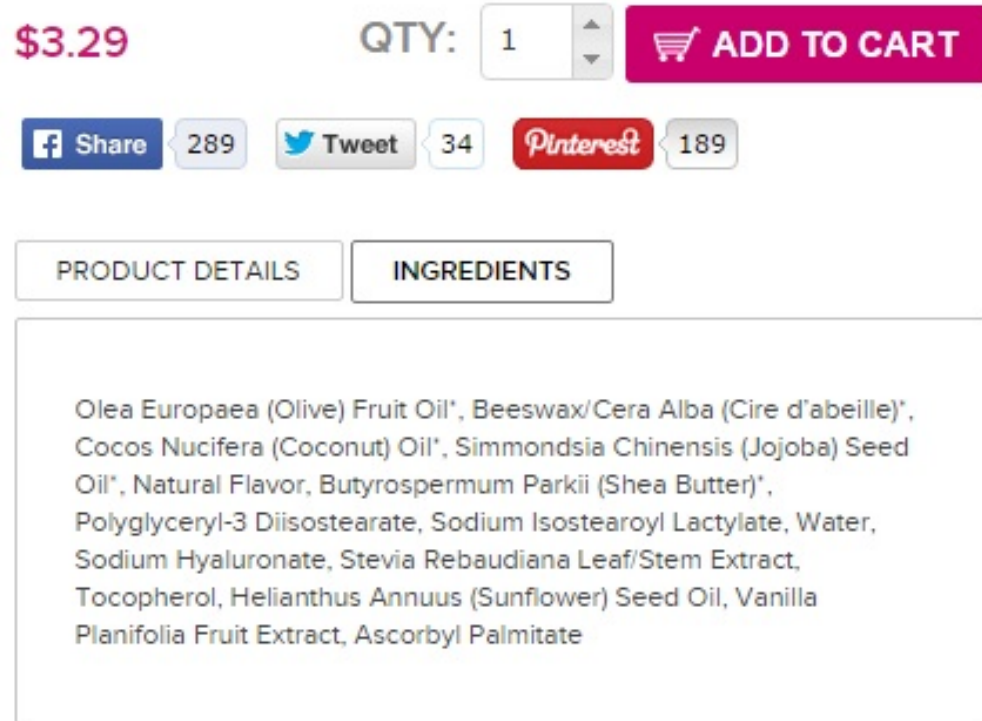
and “Gluten-free.” The ingredients section contains the above ingredients. The “Product Details” and “Ingredients” on the website presents as follows:

PRODUCT DETAILS

INGREDIENTS

eos Visibly Soft(TM) Lip Balm, enriched with natural conditioning oils, moisturizing shea butter and antioxidant vitamins C & E, nourishes for immediately softer, more beautiful lips.

- 99% natural
- Long-lasting moisture for immediately softer, more beautiful lips
- Shea butter & vitamins C & E
- Smoothes on clear
- Precisely glides on lips
- Twist-off top
- Petrolatum-free
- Paraben-free
- Gluten-free
- Phthalate-free
- 0.25 oz



38. Defendant EOS provides no warning regarding the potential dangerous side-effects of the ingredients used in the product, or the cumulative effect of combining these very diverse ingredients into a singular delivery lip balm module.

39. Indeed, not only does EOS fail to provide any warnings regarding the product, EOS provides no disclaimers at all about any aspect of the product, nor does it provide instruction or any information about recommended use. Instead, EOS encourages through its advertisements, the constant and consistent application of the product, causing foreseeable and actual harmful health consequences to consumers.

40. The only “direction” provided by EOS on its packaging is:

DIRECTIONS: TWIST OFF TOP. PUCKER UP. SMOOTH ON. SMILE.

41. EOS has also failed to disclose to consumers the substantial amount of complaints it has received based on adverse health consequences caused by the product, and its formation of a “medical health team” related to its over-the-counter lip balms.

42. EOS’ claims that its products are healthy and safe, and the omission of any warning or instruction, are unfair, deceptive and/or unconscionable. But for the intentional concealment and/or omission of any warnings, and but for EOS’ claims that the product is safe, healthy, and contains no allergens, Plaintiff and the Class would not have purchased EOS Lip Balms and would not and have been injured.

CLASS ACTION FACTS

43. Plaintiff brings this class action on behalf of herself and all others similarly situated as Class Members pursuant to Rule 23 of the Federal Rules of Civil Procedure.

44. Plaintiff seeks to represent a “Class” defined as follows:

All purchasers of EOS Lip Balm, excluding Defendant, Defendant’s officers, directors, and employees, Defendant’s subsidiaries, those who purchased the products for the purpose of resale, the Judge to which this case is assigned and the immediate family of the Judge to which this case is assigned.

45. Plaintiff seeks to represent an “Ohio Subclass” defined as follows:

All Ohio residents who purchased EOS Lip Balm excluding Defendant, Defendant’s officers, directors, and employees, Defendant’s subsidiaries, those who purchased the products for the purpose of resale, the Judge to which this case is assigned and the immediate family of the Judge to which this case is assigned.

46. Plaintiff seeks to represent an “Ohio Injury Subclass” defined as follows:

All Ohio residents who purchased EOS Lip Balm and suffered adverse reactions to EOS Lip Balm that required medical care, excluding Defendant, Defendant’s officers, directors, and employees, Defendant’s subsidiaries, those who purchased the products for the purpose of resale, the Judge to which this case is assigned and the immediate family of the Judge to which this case is assigned.

47. Plaintiff is a member of the Class that she seeks to represent. Plaintiff is a United States resident who purchased EOS Lip Balm.

48. Plaintiff is a member of the Ohio Class that she seeks to represent. Plaintiff is a resident of Ohio who purchased EOS Lip Balm.

49. Plaintiff is a member of the Ohio Injury Class that she seeks to represent. Plaintiff is a resident of Ohio who suffered adverse reaction to EOS Lip Balm and she required medical care for the treatment of the adverse reaction that she suffered as a result of the use of EOS Lip Balm.

50. The definition of the Class is narrowly tailored so as to include only identifiable Class Members who can be identified through Defendant's wholesale sale information, purchase records, and Class Member registrations. The Class has no time limit because, as discussed below, the statute of limitations has been tolled by the Defendant's fraudulent concealment of the true nature of the product purchased by Class Members.

51. The proposed Class is so numerous that the individual joinder of all its Members, in this or any action, is impracticable. The exact number or identification of the Members of the Class is presently unknown to Plaintiff, but it is believed to comprise hundreds of thousands of purchasers of EOS Lip Balms, thereby making joinder impractical.

52. Common questions of fact and law exist as to all Class Members and predominate over questions affecting only individual members. These include, but are not limited to, the following:

- a. Whether, in normal and customary use by consumers, EOS Lip Balms work as advertised, marketed, and conveyed to consumers;

- b. Whether, in the course of business, Defendants represented that EOS Lip Balm has characteristics, uses, benefits or qualities that it does not have when used in a customary manner by consumers;
- c. Whether the Defendants' claims regarding EOS Lip Balms are unfair or deceptive, and specifically, whether EOS Lip Balms are healthy and safe and contain no known allergens;
- d. Whether Defendants breached a duty owed to consumers by failing to warn consumer that EOS Lip Balms can and/or are known to cause significant adverse health consequences based the on ingredients, the combination of ingredients, and based on EOS' advertising pushing users to constantly and consistently apply what is calls it refers to as its "tasty" lip balm product;
- e. Whether Defendants are supplying EOS Lip Balms in accordance with its representations including whether EOS Lip Balms provide healthy and safe moisturizing qualities for the lips;
- f. Whether Defendants knew at the time the consumer transactions took place that the consumer would not receive the benefit of EOS Lip Balms that the Defendants were claiming consumers would receive;
- g. Whether Defendants knowingly made a misleading statement in connection with a consumer transaction that the consumer was likely to rely upon to his/her detriment;
- h. Whether Defendants knew or should have known that the misrepresentations and advertisements regarding EOS Lip Balms were unsubstantiated, false and misleading;

- i. Whether Defendants breached express and implied warranties in the development, making, marketing, sale and/or post-sale actions regarding EOS Lip Balms;
- j. Whether Defendants have been unjustly enriched by the sale of EOS Lip Balms to the Plaintiff and Class;
- k. Whether the Plaintiffs and the Class members that purchased EOS Lip Balms suffered monetary, general, consequential, and special damages and, if so, what is the measure of those damages; and
- l. Whether Plaintiffs and the Class Members are entitled to an injunction, damages, restitution, equitable relief and other relief deemed appropriate and the amount and nature of such relief.

53. Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and all Class Members purchased EOS Lip Balm that were designed, tested, manufactured, marketed, advertised, warranted and/or sold, and placed in the stream of commerce by EOS. Plaintiffs and all other Class Members purchased EOS Lip Balm that could not perform anywhere near advertised. The nature of the misrepresentation is the same for the Plaintiff and all Class Members, even if they purchased different types or flavors of EOS Lip Balm.

54. The factual bases of Defendant's misconduct are common to the Class Members and represent a common thread of deceptive advertising and breach of warranty resulting in injury to all Class Members. Plaintiff is asserting the same rights, making the same claims, and seeking the same relief for herself and all other Class Members. The central question of whether Defendant's representations are accurate and truthful is common to all Class Members and predominates over all other questions, legal and factual in this litigation.

55. Plaintiff is an adequate representative of the proposed Class and has hired experienced class counsel to represent her and the putative Class. Plaintiff is a Class Member and does not have interests that conflict with those of the other Class Members that she seeks to represent. Plaintiff is represented by experienced and able counsel, who has litigated numerous class-action lawsuits, and served as lead counsel on complex, large national class actions. Plaintiff's Counsel intends to prosecute this action vigorously for the benefit of the proposed Class. Plaintiff and her Counsel will fairly and adequately protect the interests of the Class Members.

56. A class action is the superior available method for the efficient adjudication of this litigation because:

- a. The prosecution of separate actions by individual Members of the Class would create a foreseeable risk of inconsistent or varying adjudications which would establish incompatible results and standards for Defendants;
- b. Adjudications with respect to individual Members of the Class would, as a practical matter, be dispositive of the interests of the other Members not parties to the individual adjudications or would substantially impair or impede their ability to protect their own separate interests;
- c. Class action treatment avoids the waste and duplication inherent in potentially thousands of individual actions, and conserves the resources of the courts;
- d. The claims of the individual Class Members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, so it would be impracticable for the Members of the

Class to individually seek redress for Defendants' wrongful conduct. Even if the Members of the Class could afford individual litigation, the court system could not: and

e. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action procedure presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

57. A class action for injunctive and equitable relief pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure is also appropriate in this case. Defendants acted or refused to act on grounds generally applicable to the Class thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole. Defendants' actions and inactions are generally applicable to the Class as a whole, and Plaintiff, on behalf of the Class, seeks damages and injunctive relief described herein. Moreover, Defendant's systemic policy and practices make declaratory relief with respect to the Class as a whole appropriate.

FRAUDULENT CONCEALMENT

58. Defendant EOS was and remains under a duty to Plaintiff and the Class to disclose the facts, as alleged herein. The duty to disclose the true facts arises because, as the manufacturer, EOS is in a superior position to know the true character and quality of its products and the true facts are not something that Plaintiff and Class Members could, in the exercise of reasonable diligence, have discovered independently prior to purchasing EOS Lip Balm.

59. Defendant EOS intentionally concealed and/or failed to disclose the shortcomings and dangers of EOS Lip Balm for the purpose of inducing Plaintiff and Class Members to act thereon.

60. Plaintiff and Class Members justifiably acted upon, or relied upon to their detriment, the concealed and/or non-disclosed material facts as evidenced by their purchase of EOS Lip Balm. Had they known of the true character and quality of EOS Lip Balm, Plaintiff and Class Members would not have purchased (or would have paid less for) the Product.

61. 75. As a direct and proximate cause of Defendant EOS' misconduct, Plaintiff and Class Members have suffered actual damages. Defendant EOS' conduct has been and is malicious, wanton and/or reckless and/or shows a reckless indifference to the interests and rights of others.

FIRST CAUSE OF ACTION
Violation of the Ohio Consumer Sales Practices Act
Ohio Revised Code § 1345.01, *et seq.*
(On behalf of the Ohio Class)

62. Plaintiff incorporates by reference the preceding paragraphs as though fully set forth herein.

63. Defendants violated the Ohio Consumer Sales Practices Act ("OCSPA") by engaging in the deceptive and unconscionable acts alleged herein through the development, manufacture, marketing and sale of the EOS Lip Balms with the dangerous ingredients that were portrayed by the Defendants as safe. Plaintiff and other Ohio residents of the Ohio Class, are the victims of the Defendants false representations and concealment of the dangerous nature of the EOS Lip Balms, and the refusal of the Defendants to facilitate the return of the defective Lip Balms, correctly state the risks of using the EOS Lip Balms and provide relief for Ohio residents impacted by the dangers of EOS Lip Balms. Defendants knew or should have known that the

dangerously defective Lip Balms purchased by Ohio residents contained ingredients that were harmful to many Ohio residents.

64. Plaintiff and the Ohio residents engaged in a “Consumer Transaction” within the meaning of Ohio Revised Code (ORC) § 1345.01(A). Plaintiffs and the Ohio residents are a “Person” and “Consumer” within the meaning of ORC § 1345.01(B) and (D). Defendants are a “Supplier” within the meaning of ORC § 1345.01(C).

65. Defendants violated the OSCPA by among other things:

- a. representing that the dangerously defective EOS Lip Balms have characteristics, use benefits, and qualities which they do not have (ORC § 1345.02(B)(1);
- b. representing that the dangerously defective EOS Lip Balms are of a particular standard, quality, and grade when they are not (ORC § 1345.02(B)(2));
- c. representing that a transaction involving the dangerously defective EOS Lip Balms confers or involves rights, remedies, and obligations which it does not (ORC § 1345.01(B)(10)); and
- d. representing that the subject of a transaction involving the dangerously defective EOS Lip Balms have been supplied in accordance with a previous representation when the EOS Lip Balms have not been supplied in accordance with a previous representation (ORC § 1345.01(B)(5)).

66. At all relevant times, as described above, the dangerously defective EOS Lip Balms that Defendants distributed or sold to Plaintiff and the Ohio residents of the Ohio Class were not of the particular sponsorship, approval, or certification because the dangerously

defective EOS Lip Balms contained misleading representations and/or omissions causing the likelihood of confusion and misunderstanding.

67. Defendants committed deceptive and unconscionable acts in violation of the OSCPA by soliciting Plaintiff and Ohio residents of the Ohio Class to enter into purchases that contained terms that are oppressively one sided or harsh, and unduly limited the rights of residents of the Ohio Class. Defendant's deceptive and unconscionable acts include, among other things, providing a guaranty that Defendants knew would likely not cover the harm that was likely to be caused by its dangerously defective EOS Lip Balms.

68. Defendants failed to honor the warranties that ran with the dangerously defective EOS Lip Balms sold to Plaintiff and the other Ohio residents. The Ohio legislature and the Ohio courts have previously found that actions by a supplier such as those complained of herein are illegal and deceptive. *See, e.g.*, Ohio Revised Code § 3715.66 and § 3715.16 (false labeling of cosmetics prohibited); *Khoury v. Lewis*, Case No. 342098 (Cuyahoga C.P. 2001) (PIF # 10001995); *Urso v. Compact Cars, Inc.*, Case No. 2006-T-0062 (Trumbull, Ct. App., 11th District, 2007) (PIF # 10002585); *State ex rel. Montgomery v. White dba Harvest Auto Body Shop*, Case No. 95 CVH 107591 (Franklin C.P. 1997) (PIF #: 10001666); *Schmidt v. Total Systems Technology*, Case No. 98 10527 (Lucas M.C. 2000) (PIF #: 10001892); *Henry v. Dunning Motor Sales, Inc.*, Case No. 32822 (Guernsey C.P. 1985) (PIF # 10000257). All of the foregoing code sections and decisions are available to the public and therefore Defendants had notice that their actions were in unfair and deceptive, and in violation of the OSCPA.

69. In *Khoury v. Lewis*, Case No. 342098 (Cuyahoga C.P. 2001) (PIF # 10001995), the court held that it is a violation of the OSCPA when a supplier fails to honor implied warranties of merchantability. The consumer relied upon the supplier's expressed and implied

warranties with respect to purchasing a product in response to the supplier's representations that the product would be reliable and dependable. The court found the supplier breached the express warranty and violated the OCSA and awarded four times the consumer's actual damages.

70. In *Urso v. Compact Cars, Inc.*, Case No. 2006-T-0062 (Trumbull, Ct. App., 11th District, 2007) (PIF # 10002585), the supplier refused to fix a problem with the product sold to a consumer. The court held that the failure to remedy a defective product could be a violation of the OCSA and so could the fact that a product is unfit for the ordinary purpose for which it was intended to be used.

71. In *State ex rel. Montgomery v. White dba Harvest Auto Body Shop*, Case No. 95 CVH 107591 (Franklin C.P. 1997) (PIF #: 10001666), the court held that the failure to honor a warranty is a failure to deliver an essential part of the consumer transaction and, as such, is an unfair and deceptive act.

72. In *Schmidt v. Total Systems Technology*, Case No. 98 10527 (Lucas M.C. 2000) (PIF #: 10001892) the court held that the failure to honor a warranty is a failure to deliver an essential part of the consumer transaction and, as such, is an unfair and deceptive act.

73. In *Henry v. Dunning Motor Sales, Inc.*, Case No. 32822 (Guernsey C.P. 1985) (PIF # 10000257) the court held that the supplier committed an unfair and deceptive act by breaching the implied warranty of fitness because a product was not fit for the purpose for which it was intended and the supplier failed to remedy the problem.

74. By failing to disclose the dangerous defects inherent to the EOS Lip Balms and failing to properly remedy the effects of the EOS Lip Balms, Defendants engaged in unfair or deceptive acts or practices prohibited by the OSCPA. Defendants sold the dangerously defective EOS Lip Balms to Plaintiff and Ohio residents of the Ohio Class with full knowledge that the

dangerously defective EOS Lip Balms contained harmful ingredients that would cause the adverse effects complained of herein.

75. Defendants intended that Plaintiff and the other Ohio residents of the Ohio Class rely on its misrepresentations and omissions, so that Plaintiff and other Ohio residents would purchase the dangerously defective EOS Lip Balms.

76. EOS owed Plaintiff Stuckey and Ohio residents of the Ohio Class a duty to disclose the dangerous defects in the EOS Lip Balms, because it possessed exclusive and superior knowledge of the defects and did not disclose these defects.

77. Information regarding the dangerously defective condition of EOS Lip Balms resulted in substantial harm to Ohio residents. A reasonable consumer, such as Plaintiff and other Ohio residents would have considered the risk of such harm in deciding to purchase a lip balm had they known of the risks associated with EOS Lip Balms.

78. A reasonable consumer who had known of the dangerously defective nature of the EOS Lip Balms would not have purchased the EOS Lip Balms or would have paid less for them.

79. Defendants' unfair or deceptive acts or practices were therefore likely to or had a tendency or capacity to deceive reasonable consumers about the true nature of the dangerously defective EOS Lip Balms.

80. Defendants' actions impact the public interest because Plaintiff and Ohio residents of the Ohio Class were injured in exactly the same way as thousands of others who purchased and/or leased the dangerously defective EOS Lip Balms as a result of and pursuant to Defendants' generalized course of deception.

81. Defendants' conduct was knowing, intentional, and with malice, and demonstrated complete carelessness and recklessness and was in conscious disregard for the rights of Plaintiff and Ohio residents of the Ohio Class.

82. The foregoing acts, omissions, and practices proximately caused Plaintiff and Ohio residents of the Ohio Class to suffer actual damages as described herein, and these Class Members are entitled to recover such damages, together with punitive damages, equitable relief, injunctive relief, diminution of value, reasonable attorneys' fees, costs of suit, and such other relief set forth below.

**SECOND CAUSE OF ACTION
Breach of Express Warranty
(On behalf of any and all Classes)**

83. Plaintiff incorporates by reference the preceding paragraphs as though fully set forth herein.

84. Plaintiff and each member of the Classes formed a contract with Defendants at the time they purchased EOS Lip Balm. The terms of the contract included the promises and affirmations of fact made by Defendants on the label of each of EOS Lip Balm, specifically that the product would nourish lips in a health and safe manner. Defendants' branding, labels, and advertising constitute express warranties, and are part of the basis of the bargain and a standard contract between Plaintiff, Class Members, and Defendants.

85. Alternatively, privity was established between Plaintiff, Class Members and Defendants and/or their agents because Defendants were substantially if not completely responsible for directly promoting and marketing Defendants' EOS Lip Balm to Plaintiff and the Class Members which led to Plaintiff and Class Member's purchase of the product. By virtue of this direct promotion and marketing to Plaintiff, Defendants expressly warranted EOS Lip Balm's

attributes and benefits to Class Members.

86. Defendants breached the terms of the express warranty by failing to provide a product that provided the benefits promised and which caused harm and/or had the potential to cause harm.

87. As a result of Defendant's breaches of its express warranties, Plaintiff and the Class have been damaged in an amount to be proven at trial.

88. By reason of the foregoing, Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendants for damages, including compensatory, incidental and consequential damages for itself and each member of the Classes.

**THIRD CAUSE OF ACTION
Breach of Implied Warranties
(On behalf of any and all Classes)**

89. Plaintiff incorporates by reference the preceding paragraphs as though fully set forth herein.

90. Defendants manufactured, designed, formulated, tested, packaged, labeled, produced, created, made, constructed, assembled, marketed, advertised, distributed and sold EOS Lip Balm as safe for use by the public at large, including Plaintiff, who purchased EOS Lip Balm. Defendants knew the use for which their product was intended and impliedly warranted the product to be of merchantable quality, safe and fit for use.

91. Plaintiff reasonably relied on the skill and judgment of the Defendants, and as such their implied warranty, in using EOS Lip Balm.

92. EOS Lip Balm was not of merchantable quality or safe or fit for its intended use, because it is unreasonably dangerous and unfit for the ordinary purpose for which it was used.

93. As a direct and proximate result of one or more of these wrongful acts or omissions of the Defendants, Plaintiff suffered profound injuries, required medical treatment, and incurred and continues to incur medical expenses.

94. Plaintiff demands judgment against Defendants for compensatory, statutory and punitive damages, together with interest, costs of suit attorneys' fees and all such other relief as the Court deems appropriate pursuant to the common law and statutory law.

FOURTH CAUSE OF ACTION
Unjust Enrichment
(On behalf of any and all Classes)

95. Plaintiff incorporates by reference the preceding paragraphs as though fully set forth herein.

96. Plaintiff conferred a tangible economic benefit upon Defendants by purchasing EOS Lip Balm. Plaintiff and Class Members expected remuneration from Defendants at the time this benefit was conferred. Plaintiff and Class Members would not have purchased EOS Lip Balm had they known that the Lip Balm did not perform as promised and had the Defendants warned of its potential adverse effects.

97. As a result of Defendants' deceptive, fraudulent, and misleading packaging, advertising, marketing and sales of its EOS Lip Balm, Defendants were enriched, at the expense of the Plaintiff and Class Members, through the payment of the purchase price for EOS Lip Balm products.

98. Under the circumstances, it would be against equity and good conscious to permit Defendants to retain the ill-gotten benefits that it received from Plaintiff and Class Members in light of the fact that the EOS Lip Balm purchased by Plaintiff and Class Members were not as Defendants purport them to be, as set forth more fully above.

99. It would thus be unjust and inequitable for Defendants to retain the benefit without restitution or disgorgement of monies paid to Defendants for EOS Lip Balm products, or such other appropriate equitable remedy as appropriate, to the Plaintiff and other Class Members.

FIFTH CAUSE OF ACTION
Intentional Written Misrepresentation
(On behalf of any and all Classes)

100. Plaintiff incorporates by reference the preceding paragraphs as though fully set forth herein.

101. Defendants intentionally, willfully, falsely, and knowingly uniformly misrepresented material facts in writing that relate to the character and quality of EOS Lip Balm. Specifically, Defendants intentionally and willfully misrepresented that EOS was safer and healthy, and failed to disclose that it poses health risks on websites, in various media advertising, and at point of sale materials disseminated or caused to be disseminated by Defendants.

102. Defendants' uniform written misrepresentations were made with the intent that the general public, including Plaintiff and the Class, would rely upon them. Defendants' false representations were made with knowledge of the falsity of such statements, or in reckless disregard of the truth thereof, and gave Defendants an unjust advantage and caused a loss to Plaintiff and Class Members. The Defendants' claims of superior health qualities, purity, safety, and flavor, are so central to the consumer's selection of EOS Lip Balm that the Defendants knew and intended that consumers would rely on those misrepresentations in determining whether to purchase EOS Lip Balm instead of the less expensive alternatives.

103. In actual and reasonable reliance upon Defendants' misrepresentations, Plaintiff and Class Members purchased EOS Lip Balm for its intended and reasonably foreseeable purposes. Plaintiff and Class Members were unaware of the true facts concerning the

effectiveness and health risks of EOS Lip Balm, which were concealed from the Plaintiff and the Class Members. If Plaintiff and Class Members had been aware of the concealed facts, Plaintiff and the Class Members would not have purchased EOS Lip Balm at or would not have purchased EOS Lip Balm for the high price paid for it. Plaintiff's and Class Members' reliance on the representations of the Defendants was reasonable.

104. Defendants misrepresented material facts with the intent to defraud Plaintiff and the Class Members. Plaintiff and the Class Members were unaware of the intent of Defendants and relied upon these representations in purchasing EOS Lip Balm.

105. In actual and reasonable reliance upon Defendants misrepresentations, Plaintiff and Class Members purchased EOS Lip Balm and did not benefit from the Product as represented, the direct and proximate result of which was injury and harm to Plaintiff and Class Members because:

- a. they would not have purchased EOS Lip Balm if the true facts concerning its effectiveness had been known;
- b. they paid a price premium due to the mislabeling of EOS Lip Balm
- c. EOS Lip Balm did not (and cannot) perform as promised.

106. As a result of the Defendants' uniform written misrepresentations, the Plaintiff and Class Members were harmed and are entitled to relief.

PRAYER FOR RELIEF

WHEREFORE, the representative Plaintiff, on behalf of herself and the Members of the Classes defined herein, prays for judgment against the Defendants as follow:

- a. For an order certifying this action and/or common issues raised herein as a "Class Action under Rule 23 of the Federal Rules of Civil Procedure; designating Class Representatives; and appointing the undersigned to serve as class counsel.
- b. For notice of class certification and of any relief to be disseminated to all Class Members and for such other further notices as this Court deems appropriated under Fed. R. Civ. P. 23(d)(2);
- c. For an order requiring complete and immediate disclosure of all studies, reports, analyses, data, compilations, and other similar information within the possession, custody, or control of Defendant concerning, relating to, or involving the health and safety of EOS Lip Balm products;
- d. For an order barring Defendant from destroying or removing any computer or similar records which record evidence related to the purported health and safety of EOS products;
- e. For an order barring Defendant from attempting, on its own or through its agents, to induce any putative Class Members to sign any documents which in any way releases any of the claims of any Putative Class Members;
- f. For an award of compensatory damages in the amount to be determined for all injuries and damages described herein;
- g. For an award of punitive damages to the extent allowable by law, in an amount to be proven at trial;

- h. Awarding restitution and disgorgement of Defendants' revenues to the Plaintiff and Class Members;
- i. Awarding declaratory and injunctive relief as permitted by law or equity, including: enjoining Defendants from continuing the unlawful practices as set forth herein, and directing Defendants to identify, with Court supervision, victims of its conduct and pay them, restitution and disgorgement of all monies acquired by Defendants by means of any act or practice declared by the Court to be wrongful;
- j. Ordering Defendant to engage in a corrective advertising campaign;
- k. Awarding attorney fees and costs; and
- l. Providing such other relief as may be just and proper.

INJUNCTIVE RELIEF

- m. Plaintiff prays for final injunctive relief because Defendants have refused to act on grounds generally applicable to the Plaintiff and Class Members making final injunctive relief proper;
- n. Plaintiff further prays for final injunctive relief as Defendants' conduct as set forth above demonstrates a willful disregard for the health and safety of consumers and a willingness to deceive the Plaintiff and Class Members as to the dangers of EOS Lip Balms making final injunctive relief appropriate;
- o. Plaintiff further prays for final injunctive relief to prohibit Defendants from continuing to engage in deceptive and unfair marketing practices to the detriment of Plaintiff, Class Members and future purchasers of EOS Lip Balms;
- p. Plaintiff further prays for final injunctive relief as if the Defendants are permitted to continue with the deceptive practices complained of herein, the Plaintiff, Class

Members and future purchasers of the Defendants' EOS Lip Balms will be irreparably harmed in that they will not have a plain, adequate, speedy, and/or complete remedy at law to address the wrongs complained of herein;

q. Specifically, Plaintiff, on behalf of herself and the Classes defined herein, seeks a Court Order requiring Defendants to do the following:

- i. discontinue advertising, marketing, packaging and otherwise representing its products are safe and healthy without providing appropriate warnings, disclosures and instructions of use regarding the product.
- ii. undertake an immediate public information campaign to inform Plaintiff and putative class and subclass, of the truth about Defendant's products and Defendant's prior practices relating thereto; and
- iii. correct any erroneous impression derived concerning the nature, characteristics, or qualities of EOS Lip Balm, including without limitation, the placement of corrective advertising and providing written notice to the general public.

Dated: January 22, 2016

Respectfully submitted:
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and Members of the Classes defined herein, demands a trial by jury of all causes so triable.

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