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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARYLOU GILSLEIDER and YOKIE
RENEE IVY, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

EOS PRODUCTS, LLC,

Defendant.

Case No. _____

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND EQUITABLE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiffs Marylou Gilsleider and Yokie Renee Ivy ("Plaintiffs"), by and
2 through their attorneys, make the following allegations pursuant to the investigation
3 of their counsel and based upon information and belief, except as to allegations
4 specifically pertaining to themselves and their counsel, which are based on personal
5 knowledge, against defendant eos Products, LLC ("EOS" or "Defendant"):

6 **JURISDICTION AND VENUE**

7 1. The Court has subject matter jurisdiction over this action pursuant to 28
8 U.S.C. § 1332(d) because there are more than 100 Class members and the aggregate
9 amount in controversy exceeds \$5,000,000, exclusive of interest, fees, and costs,
10 and at least one Class member, including Plaintiffs, is a citizen of a state different
11 from Defendant.

12 2. This Court has personal jurisdiction over Defendant because Defendant
13 conducts substantial business within California, including the distribution and sale
14 of its products in California, and Plaintiff Gilsleider's claims arise from her
15 purchase of Defendant's product in California.

16 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
17 Defendant does substantial business in this District, and a substantial part of the
18 events giving rise to Plaintiff Gilsleider's claims took place within this judicial
19 district, including Plaintiff's purchase and use of Defendant's product.

20 **NATURE OF THE ACTION**

21 4. This is a class action for damages relating to the Defendant's
22 formulation, manufacture, testing, marketing, promotion, distribution, and sale of
23 its defective lip balm product – eos Visibly Soft Lip Balm ("EOS Lip Balm" or the
24 "Product").

25 5. Defendant advertises EOS Lip Balm as nourishing, moisturizing, and
26 all natural, and it promises consumers they will get "smooth" and "visibly softer,"
27 "more beautiful lips."

1 6. EOS Lip Balm has quickly grown to be one of the most widely sold
2 lip balm products in the country, primarily due to its marketing, including the
3 notable packaging—a small, colorful plastic sphere that unscrews in the middle to
4 uncover the balm—and advertising in various channels, including through social
5 media and celebrity endorsements.

6 7. The Product is sold throughout the United States in hundreds of
7 thousands of retail locations, including by drug stores and mass retailers, as well as
8 through online retailers and Defendant's own website, *evolutionofsmooth.com*.

9 8. As consumers across the country unsuspectingly continue to purchase
10 the Product, a host of consumer reports indicate that EOS Lip Balm does not give
11 consumers smother, softer, more beautiful, or moisturized lips; rather, it results in
12 painful and unsightly rashes, blisters, redness, cracking, and other signs of damage
13 and irritation.

14 9. When applied as intended, the Product increases risks of and
15 frequently causes these adverse reactions and injuries. Defendant has knowledge
16 of these increased risks and effects, but has failed to adequately warn consumers or
17 take adequate action to protect the public as it continues to manufacture, market,
18 and sell the Product.

19 10. This action seeks redress on a class-wide basis for Defendant's
20 deceptive business practices in selling the Product. Plaintiffs bring claims
21 individually and on a class-wide basis against Defendant for negligence, strict
22 products liability, breach of express and implied warranties, violations of the
23 California Consumer Legal Remedies Act ("CLRA"), Civil Code §§ 1750, *et seq.*,
24 California's Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200, *et seq.*,
25 California's False Advertising Law ("FAL"), Bus. & Prof. Code §§ 17500, *et seq.*,
26 the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815
27 Ill. Comp. Stat. 505/1, *et seq.*, unjust enrichment, and injunctive relief.

1 **PARTIES**

2 11. Plaintiff Marylou Gilsleider is a citizen of the State of California,
3 residing in Corona Del Mar, California. She has purchased EOS Lip Balms in
4 honeydew flavor. Her most recent purchase was a honeydew flavored Product from
5 an Ulta retail store located in Newport Beach, California, for which she paid
6 approximately \$3.99. She expected the Product to act as a lip balm, which would
7 hydrate her skin and she saw no warnings concerning any potential adverse
8 reactions from use of the Product. She relied on the Product's claim that it was lip
9 balm that would moisturize and soften her lips. After using the Product she
10 purchased from Ulta, Plaintiff developed extremely chapped lips, which were so dry
11 they cracked, as well as a rash and bumps on her lips. These rash and bumps lasted
12 from approximately mid-December to end of January. Had Plaintiff known that
13 EOS Lip Balm does not work as represented by Defendant or had Plaintiff been
14 warned of the potential adverse effects caused by the Product, Plaintiff would not
15 have purchased the Product or would not have paid as much as she did for the
16 Product.

17 12. Plaintiff Yokie Renee Ivy is a citizen of the State of Illinois, residing in
18 University Park, Illinois. Plaintiff Ivy began purchasing EOS Lip Balm in or around
19 November or December 2014. She would purchase the Product approximately once
20 every three to four weeks. She has purchased EOS Lip Balm in a variety of flavors,
21 including varieties in blue, pink, orange, and yellow packaging. She would
22 purchase the Product from a Target retail store located in Matteson, Illinois, for
23 approximately \$2.99 per lip balm. She expected the Product to act as a lip balm,
24 which would hydrate her skin and she saw no warnings concerning any potential
25 adverse reactions from use of the Product. She relied on the Product's claim that it
26 was lip balm that would moisturize and soften her lips. In early 2015, after
27 regularly using the Product, Plaintiff developed extremely chapped lips, which were

1 so dry they peeled, as well as dark, black spots on her lips. These dark spots have
2 lasted for approximately a year, during which time Plaintiff sought treatment from a
3 dermatologist. As of the filing of this Complaint, Plaintiff still has two spots of
4 discoloration on her lips. Had Plaintiff known that EOS Lip Balm does not work as
5 represented by Defendant or had Plaintiff been warned of the potential adverse
6 effects caused by the Product, Plaintiff would not have purchased the Product or
7 would not have paid as much as she did for the Product.

8 13. Defendant eos Products, LLC, is a New York limited liability company
9 with its principal place of business at 19 West 44th Street, Suite 811, New York,
10 New York, 10036. EOS manufactures, markets, distributes, and sells the Products,
11 as well as other personal care products, including hand lotion, body lotion, and
12 shave cream. EOS sells the Products directly through its consumer website,
13 evolutionofsmooth.com, and through a variety of retailers nationwide.

14 FACTUAL ALLEGATIONS

15 14. Defendant manufactures, markets, and sells EOS Lip Balm. Packaged
16 in widely recognized, egg-shaped, brightly colored pods, Defendant's Product is
17 sold for approximately \$3.29 to almost \$5 per .25 ounce balm, a premium over
18 many lip balm products including brands such as ChapStick, Blistex, and Carmex.
19 It is sold in a variety of flavors, including, but not limited to, blackberry nectar,
20 vanilla mint, coconut milk, strawberry sorbet, wildberry, blueberry acai,
21 pomegranate raspberry, summer fruit, sweet mint, honeysuckle honeydew,
22 medicated tangerine, strawberry kiwi, and orange blossom.

23 15. While purchased by all manner of consumers, the eye-catching
24 packaging and fun flavors that EOS offers in its Product have had special appeal for
25 younger generations of purchasers, including children. For example, in a 2014 poll
26 conducted by Goldman Sachs' equity research team and Teen Vogue of top 50
27 brands that girls love, the "eos" brand was number four.

1 16. Defendant's marketing vice president has acknowledged that much of
2 the Product's success can be attributed to its appealing packaging. *See* Lieber,
3 Chavie, Why EOS Lip Balm Is Suddenly Everywhere (Oct. 31, 2014),
4 <http://www.racked.com/2014/10/31/7571165/eos-lip-balm>.

5 17. Additionally, celebrity endorsements have boosted EOS' robust sales,
6 with figures such as Kim Kardashian, Miley Cyrus, and Kylie Jenner promoting the
7 product. *See, e.g.*, <http://evolutionofsmooth.com/celebrity-fans> (last visited Jan. 25,
8 2016); <http://evolutionofsmooth.com/press-us> (last visited Jan. 25, 2016).

9 18. First introduced in 2009, the Product is sold today by major retailers
10 throughout the nation, including chain drug stores and mass merchandisers, as well
11 as by many online retailers.

12 19. The packaging accompanying the Product uniformly claims it will give
13 users smoother, softer, more beautiful lips. It also states that it will moisturize,
14 hydrate, and nourish lips and claims that the Product is all natural, organic, and
15 petrolatum-, paraben-, and gluten-free. Defendant makes the same material claims
16 and representations for all Product flavors.

17 20. More specifically, Defendant represents, *inter alia*, directly on EOS Lip
18 Balm packaging, that the Product:

- 19 a. gives users "visibly soft" and "immediately softer, more beautiful lips";
20 b. is made "with shea butter and jojoba oil for happy, moist, super-
21 smooth lips";
22 c. is "enriched with natural conditioning oils, moisturizing shea butter
23 and antioxidant vitamins C & E" and "absorbs to nourish lips for a
24 softness you can feel";
25 d. "softens," "hydrates," and "nourishes"; and
26
27
28

1 e. is “[p]acked with antioxidant-rich vitamin E, soothing shea butter and
2 jojoba oil” and “keeps your lips moist, soft and sensationally
3 smooth.”

4 21. Defendant’s Product page at evolutionofsmooth.com directs users to
5 “[s]mooth on an all-natural lip balm that delivers the perfect balance of flavor and
6 moisture.” It further states, “eos lip balm is 95% organic, 100% natural, and
7 paraben and petrolatum free...eos keeps your lips moist, soft and sensationally
8 smooth” and delivers “long-lasting moisture.” Other pages within Defendant’s
9 Product website reiterate claims identical to those on Product packaging.

10 22. The message that the Product will smooth, soften, nourish, and hydrate
11 is similarly reinforced through a nationwide multimedia marketing campaign,
12 including magazines, social media accounts, such as Facebook, Instagram, and
13 Twitter, and music videos featuring the Product. It is also, of course, expressed and
14 implied by the name of the Product (eos Visibly Soft Lip Balm) and nature of the
15 Product itself, as lip balm is intended to soothe and heal the lips.

16 23. Defendant’s marketing materials do not contain adequate warnings
17 concerning potential adverse reactions from use of the Product. Nor does Defendant
18 provide information regarding limits on frequency of use on the Product or
19 elsewhere.

20 24. While Defendant’s manufacturing process and Product formulations
21 can only be obtained through discovery, even the ingredients list published on
22 packaging and in marketing materials shows certain ingredients that are known
23 dangerous chemicals, allergens, and/or irritants. For example, the ingredient
24 “Beeswax/Cera Alba” is the bleached form of cera flava, the yellow wax produced
25 from honeycomb. It contains propolis (glue produced by honeybees to build hives),
26 which as an allergen can result in dermatitis or hives, and produce symptoms
27

1 including itching, burning, swelling, a localized rash, redness, scaling and crusting
2 of the lips.

3 25. Other ingredients also raise serious medical concerns. At least two
4 ingredients, “Cocos Nucifera (Coconut) Oil” and “Butyrospermum Parkii (Shea
5 Butter),” are classified as tree nuts and can also trigger allergic reactions. Some
6 reactions from coconut oil may include tingling, hives, eczema, or general
7 inflammation and itching, as well as dermatitis (involving localized swelling,
8 redness, and inflammation). Similarly, the ingredient “Jojoba” can cause rashes and
9 allergic reactions when applied to the skin, including redness, breakouts, blisters or
10 itchiness. The Product also contains Sodium Hyaluronate, a lip plumper that can
11 cause swelling and inflammation of the lips, and tocopherols, a side effect of which
12 can include bleeding.

13 26. Despite these known triggers and the disturbing number of consumer
14 complaints (as detailed below) that attribute painful and embarrassing effects to use
15 of EOS Lip Balm, Defendant has taken no steps to protect its customers or to warn
16 them of the possible side-effects resulting from the Product.

17 27. Defendant’s marketing claims are false and misleading and omit
18 material information. When used as intended, EOS Lip Balm causes adverse
19 reactions in a substantial number of consumers. Reported effects include, but are
20 not limited to, blisters, bumps, rashes, cracking, redness, soreness, swelling,
21 bleeding, and skin discoloration, which may last for a few days, endure for months,
22 or even be ongoing. The internet is replete with such complaints.

23 28. For example, in a 2012 blog post, one consumer described how during
24 her use of EOS Lip Balm she “started to get VERY chapped lips.” She continued,
25 “Of course, I kept applying EOS because I thought it would make it better. Not only
26 were my lips chapped, but I had a lot of dryness around my mouth as well. I
27 stopped using my EOS balms and used vaseline instead. It took a good month or two

1 to completely heal up.” Once her lips had healed and after a month or two of not
 2 using EOS Lip Balm, one night she tried using the Product again. She writes, in
 3 part, “Last night, I applied EOS before I went to bed...when I woke up...the rash was
 4 back!... these babies are going in the trash ASAP!” She posted a photo of her lips
 5 and the surrounding skin covered in a red rash:



11 [http://chinaglazelover.blogspot.com/2012/10/my-eos-lip-balms-are-going-in-](http://chinaglazelover.blogspot.com/2012/10/my-eos-lip-balms-are-going-in-trash.html)
 12 [trash.html](http://chinaglazelover.blogspot.com/2012/10/my-eos-lip-balms-are-going-in-trash.html) (last visited Jan. 26, 2016).

13
14 29. In another string of forum posts from 2013 to 2015, numerous women
 15 respond to a February 6, 2013, post asking whether anyone else has developed tiny
 16 red, painful dots on their lip line after using the Product. Others respond,
 17 complaining of developing irritated red bumps and flaking skin after their use of
 18 EOS Lip Balm. The complaints all share a similar theme:

- 19 a. “I too did not have success with the EOS lip balms. I would put them
 20 on numerous times through the day and **by the end of the day the**
 21 **skin on my lips was flaking to the point I could pull it off in**
 22 **strips!**” (May 3, 2013);
- 23 b. “I too have used the eos lip balms and keep **getting tiny somewhat**
 24 **raw bumps on my upper lip.** I stopped using them for a while, the
 25 bumps go away. I start over just to see if it could be them causing it
 26 and I believe it is the lip balm.” (Sept. 12, 2013);
- 27 c. “I as well had a problem with the EOS lip balms. I actually used them
 28 for a good couple of months before **I started noticing they were**
drying out my lips bad. I developed small skin colored bumps,

1 **like pimples too. They took about a week to go away. But my lips**
 2 **were soooooo flaky and dry during that time!"** (Sept. 15, 2013);

3 d. "I am so glad I found this question and responsive threads. I recently
 4 have been having the same issues as everyone else. I stated using
 5 EOS lip balm two months ago. **I noticed I had these tiny red bumps**
 6 **that itched but also burned. They appeared along the bottom of**
 7 **my lower lip line. I decided to stop using the balm to see if it made**
 8 **a difference. My symptoms cleared up and went away. I then**
 9 **started using the balm again this week to see if I would have the**
 10 **same reaction and I do. I don't know what the little bumps are but**
 11 they arent zits because they arent filled with anything. I am so sad
 12 because I bought a huge pack from Costco and have 6 of them." (Oct.
 13 1, 2013);

14 e. "waahh..i came across this thread because **i'm getting these small**
 15 **red bumps on the edges of my lips and i'm thinking it could be the**
 16 **eos lip balm. my lips are now very dry and itchy.. :(**" (March 2,
 17 2014);

18 f. "I am so thankful you all posted this it helped me narrow down my
 19 problem. My newest one after using just that for a few weeks went in
 20 the trash last night **the more I used it the more it broke down the**
 21 **corners of the skin near my lips..** Thank you all for educating me
 22 that this could be an issue!" (Sept. 16, 2014);

23 g. "i bought eos lip balm a month ago and **after a couple day my lips**
 24 **started to peel , itch and burn** i look up on what cause burning,
 25 itchy, red lumps and red round spots it came down to cold sores **i stop**
 26 **using this eos lip balm and bought abreva to stop what i thought**
 27 **was a sore but did not work so i let it resolve on its own and in a**
 28 **week it cured but then i went back to use eos and now the**
 29 **symtoms started right after i put it on my lips** this is when i realize
 30 that am allergic to eos lip balm. itchy, bumpy, burning lips is the
 31 worse feeling. hope this can help others" (Feb. 23, 2015).

32 <http://www.makeuptalk.com/f/topic/122113-eos-lip-balm-allergy/> (last visited Jan.
 33 26, 2016) (emphasis added).

1 30. Similarly, in a string of comments from 2014 to 2015 on
2 thedermreview.com, users of the Product complain of painful and unsightly
3 reactions:

- 4 a. "I have used eos lip balm in the past with no problems. I recently
5 purchased a new eos for myself and **after using it for one day I had**
6 **a severe reaction.** After doing some research I have found that I am
7 not the only one this has happened to. **The company claims they**
8 **have never had anyone call with this problem before and did not**
9 **offer any solution.** I just wanted to let others know that this can
10 happen." (Oct. 16, 2014);
- 11 b. "I purchased the sweet mint flavored & started using about a year
12 ago. I loved it & thought it worked great & smelt great. **This past**
13 **summer my lips became ridiculously chapped & broken to the**
14 **point o[f] bleeding.** I thought it was due to over exposure to the sun.
15 **I had to end up going to the doctor & was told to stop using lip**
16 **balm or chapstick while i was taking medicine (which was only**
17 **for a week) & use vasaline. So, i stopped using EOS & after a few**
18 **weeks my lips cleared back up.** This took place in July. **Yesterday,**
19 **December 16, i was in my local Wal-Mart & picked one back up**
20 **while at the register to check out thinking i would start backin**
21 **using. I placed it on one time yesterday, then this morning, & just**
22 **about an hour ago & with in minutes my lips burned, & turned**
23 **red & puffy. Even read around my lips.** I looked up allergic
24 reactions to EOS on line & saw pics of many with the same as I
25 currently have. I threw mine away today & have decided this is NOT
26 the lip balm for me & my lips at all!!" (Dec. 17, 2014);
- 27 c. "I had been using EOS with no issues for over a year. **Within the**
28 **past few months, I noticed incidents of extremely chapped lips on**
my 5 year old who has his own EOS lip balm that I keep in his
backpack for school. I thought it was a result of him constantly
licking his little lips and had been trying to stop him from doing such.
Well he lost his EOS about a month ago and I replaced it with a
tiny Vaseline with cocoa butter. At the time, I never thought that
his issue was related to his EOS. Within the last four weeks, I've
been dealing with extreme chapping on my upper lip which I initially

1 blamed on the extremely cold weather but within the last few days,
 2 **I've noticed that the more EOS I use, the drier and more chapped**
 3 **my lips become. They now are burning and my lip is slightly**
 4 **swollen** and of course, I've completely stopped using it...." (Jan. 8,
 5 2015);

6 d. "After I started to use the balm on a daily basis I have noticed that my
 7 lips could not be without it anymore. I just had to apply it because my
 8 lips started to dry. **I have rarely suffered with chopped lips prior to**
 9 **EOS, but after about two weeks of using these product not only**
 10 **my lips became ch[a]pped to the point of peeling, but corners of**
 11 **my mouth also turned red and dry. It looks like i have cold sores.**
 12 I'm definitely returning this balm and it is highly unlikely that I will
 13 ever purchase it again. Nice design though, but the product is
 14 worthless...." (Jan. 8, 2015);

15 e. "I am usually not allergic nor sensitive to any products but I **after**
 16 **using this lip balm for a couple weeks I started to get a type of**
 17 **allergic reaction.** I have never experienced this type of feeling before
 18 and I **didn't realize it was the lip balm until I stopped using it**
 19 **entirely, which ended up healing my lips and making them feel**
 20 **normal again. It wasn't until I lost my other chapstick and had to**
 21 **use EOS again that I figured out what caused the discomfort. Not**
 22 **even a day later of using EOS that the reaction happened and**
 23 **now my lips feel like they have a bunch of invisible little pimples**
 24 **on it. It feels disgusting. I am very unhappy, definitely not buying**
 25 **the product ever again."** (Jan. 28, 2015);

26 f. "For two months my face was chapped about an inch around my
 27 lips – cracking, bleeding, painful to talk or drink. I thought it
 28 might be from stress or something I was eating. **Finally saw my**
 29 **doctor and she recommended I stop with all my different lip**
 30 **chaps and just use a hypoallergenic lotion. A year later I decided to**
 31 **buy an eos vanilla mint because I remembered how much I liked**
 32 **it and sure enough my face is chapped, swollen and sore after 3**
 33 **days."** (Feb. 9, 2015);

34 g. "I had the same problem in 2013 and the EOS company did not
 35 care at all so I posted on their fb page. I never used their lip balm or

1 any other product they manufacture. I've met a lot of people who
2 have the same problems with their lip balm." (March 22, 2015);

3 h. "I have read a lot of the comments about eos. Thank you all for
4 posting. **I have started using ... eos about 2 months ago....my lips**
5 **are awful, shaped, peeling, cracks in the corners of my mouth and**
6 **now blisters on my bottom lip. I am not subject to having allergic**
7 **reactions, thanks to eos I can longer say that. Needless to say I**
8 **have thrown out all 4 eos lip balm."** (May 3, 2015);

9 i. "I've been using eos lip balm for about two weeks. My lips were
10 dry from the beginning and I thought it was because I switched
11 from my usual (Carmex) to something new. Well this week my
12 lips have been so dry it hurts. They are dry, sore, red and I have
13 black spots. I'm hoping my lips clear up and I hope the black
14 spots go away." (June 7, 2015);

15 j. "So I really wanted to try this lip balm just because it looked different
16 and so I went for it. **I had been using it for about two months, and**
17 **all of a sudden, sometime last week I wake up with the upper part**
18 **of my lip peeled;** I was like I was sleeping how did this happen?!
19 **The next day I realize I had a random cold sore on my bottom lip,**
20 **the day after I had four of them and tiny red spots, not to mention**
21 **how horribly chapped my lips became....This thing ruined my**
22 **lips and made me miserable in the span of just three days, and**
23 **after reading all of these comments I got up and threw that thing**
24 **away. I don't know when it's going to heal but I should have**
25 **definitely read the reviews before buying it. And I haven't read a**
26 **review on a product with this many negative feedback with almost all**
27 **of them stating the same thing, they should really either stop**
28 **producing it or come up with a solution."** (June 12, 2015);

k. "Finally put the pieces of the puzzle together that EOS caused me a
horrible allergic reaction. **A few months ago my lips were suddenly**
red, dry, chapped, itching & peeling. I assumed it was from a new
lipstick I purchased, because surely a lip balm intended to heal
wouldn't do this. I continued to ignorantly use my EOS in an
attempt to heal my very badly chapped lips. It felt like a chemical
burn. I tried every kind of chapstick to heal my lips. Threw out
lip glosses. This went on for months!! There was a part of my lips

1 that just wouldn't heal. They would chap & peel over and over
 2 again!! Finally, I just started using vasaline and my lips healed.
 3 WELL, two days ago, without realizing it was EOS that caused
 4 the first reaction, I found my EOS in my makeup drawer, and
 5 used some. I even thought to myself, wow, I haven't used this in
 6 forever. Sure enough my lips are bright red, dry, itching,
 7 chapped, and swollen!! I finally put the pieces together that this
 8 POS lip balm EOS caused it!! I turned to the internet and this is
 9 what I found. How is this product even on the market
 10 anymore????!!" (July 18, 2015).

- 11 1. "My experience with EOS is the same as the others above! After
 12 months of using this product and loving it honestly I began to
 13 have some issues with my lips. They were severely dry and they
 14 peeled horribly. This has been going on since April. I assumed
 15 that it was due to the change in the weather. So I did what I felt
 16 was the logical thing to do which was to increase the usage of the
 17 lip balm. Some days my lips would be fine and other days my lips
 18 would be immensely dry. Even worse my lips turned black and
 19 scabbed it was horrible. I just tossed my last EOS egg into the trash
 20 can at work. I will not be purchasing this product ever again. I am so
 21 glad that I found this thread." (Oct. 11, 2015).

22 <http://www.thedermreview.com/eos-lip-balm/> (last visited Jan. 26, 2016)
 23 (emphasis added).

24 31. These consumers, as well as Plaintiffs and other Class members,
 25 sustained damages as a direct and proximate result of Defendant's negligence and
 26 wrongful conduct and omissions in connection with the research, formulation,
 27 manufacture, testing, marketing, and sale of the Product. Despite having long had
 28 notice of these consumer complaints, Defendant has failed to provide adequate
 warning on the Product packaging or in other marketing materials. Moreover,
 Defendant has failed to take proper action to mitigate the adverse effects caused by
 its Product.

1 32. Plaintiffs and other Class members relied on Defendant's
2 misrepresentations and omissions regarding the benefits of the Product. Plaintiffs,
3 the Class, and the Subclasses (as defined below) have been damaged by Defendant's
4 deceptive and unfair conduct and wrongful inaction in that they purchased the
5 Product which they would not have otherwise purchased or would not have paid as
6 much for had Defendant not misrepresented the benefits of the Product or warned
7 them of the potential harms caused by the Product.

8 **CLASS DEFINITION AND ALLEGATIONS**

9 33. Plaintiffs seek to represent a class defined as all persons in the United
10 States who purchased the Product (the "Class"). Excluded from the Class are
11 persons who purchased the Product for purposes of resale.

12 34. Plaintiff Gilsleider also seeks to represent a subclass defined as all
13 members of the Class who purchased the Product in California (the "California
14 Subclass").

15 35. Plaintiff Ivy also seeks to represent a subclass defined as all members
16 of the Class who purchased the Product in Illinois (the "Illinois Subclass").

17 36. Members of the Class and the Subclasses are so numerous that their
18 individual joinder herein is impracticable. On information and belief, members of
19 the Class and the Subclasses number in the hundreds of thousands. The precise
20 number of Class members and their identities are unknown to Plaintiffs at this time
21 but may be determined through discovery. Class members may be notified of the
22 pendency of this action by mail and/or publication through the distribution records
23 of Defendant and third party retailers and vendors.

24 37. Common questions of law and fact exist as to all members of the Class
25 and the Subclasses and predominate over questions affecting only individual Class
26 and Subclass members. Common legal and factual questions include, but are not
27

1 limited to, whether Defendant's labeling and marketing of the Product was
2 misleading and omitted material information.

3 38. The claims of the named Plaintiffs are typical of the claims of the Class
4 and the Subclasses they seek to represent in that the named Plaintiffs were exposed
5 to Defendant's misleading labeling and advertising, purchased the Product, and
6 suffered a loss as a result of that purchase.

7 39. Plaintiffs are adequate representatives of the Class and the Subclasses
8 because their interests do not conflict with the interests of the Class or Subclass
9 members they seek to represent, they have retained competent counsel experienced
10 in prosecuting class actions, and they intend to prosecute this action vigorously.
11 The interests of Class and Subclass members will be fairly and adequately protected
12 by Plaintiffs and their counsel.

13 40. The class mechanism is superior to other available means for the fair
14 and efficient adjudication of the claims of Class and Subclass members. Each
15 individual member of the Class and Subclasses may lack the resources to undergo
16 the burden and expense of individual prosecution of the complex and extensive
17 litigation necessary to establish Defendant's liability. Individualized litigation
18 increases the delay and expense to all parties and multiplies the burden on the
19 judicial system presented by the complex legal and factual issues of this case.
20 Individualized litigation also presents a potential for inconsistent or contradictory
21 judgments. In contrast, the class action device presents far fewer management
22 difficulties and provides the benefits of single adjudication, economy of scale, and
23 comprehensive supervision by a single court on the issue of Defendant's liability.
24 Class treatment of the liability issues will ensure that all claims and claimants are
25 before this Court for consistent adjudication of the liability issues.

COUNT I
(California's Consumer Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.*)

41. Plaintiffs repeat the allegations contained in the paragraphs above as if fully set forth herein.

42. Plaintiff Gilsleider brings this Count individually and on behalf of the California Subclass.

43. Plaintiff and California Subclass members are consumers who purchased EOS Lip Balm for personal, family, or household purposes. Accordingly, Plaintiff and California Subclass members are “consumers” as that term is defined by the CLRA in Cal. Civ. Code § 1761(d). Plaintiff and California Subclass members are not sophisticated experts with independent knowledge of the formulation and effects of the Product.

44. At all relevant times, the Product constituted a “good” as that term is defined in Cal. Civ. Code § 1761(a).

45. At all relevant times, Defendant was a “person” as that term is defined in Civ. Code § 1761(c).

46. At all relevant times, Plaintiff's purchase of the Product, and the purchases of the Product by other California Subclass members, constituted “transactions” as that term is defined in Cal. Civ. Code § 1761(e). Defendant's actions, inactions, representations, omissions, and conduct has violated, and continues to violate the CLRA, because they extend to transactions that intended to result, or which have resulted in, the sale of the Product to consumers.

47. The policies, acts, omissions, and practices described in this Complaint were intended to and did result in the sale of the Product to Plaintiff and the Class. Defendant's practices, acts, omissions, policies, and course of conduct violated the CLRA §1750 *et seq.* as described above.

1 48. Defendant represented that the Product had sponsorship, approval,
2 characteristics, uses, and benefits which it did not have in violation of Cal. Civ.
3 Code § 1770(a)(5).

4 49. Defendant represented that the Product was of a particular standard or
5 quality when Defendant was aware it was of another, in violation of California Civil
6 Code § 1770(a)(7).

7 50. Defendant violated California Civil Code §§ 1770(a)(5) and (a)(7) by
8 representing that the Product was lip balm that would nourish and hydrate lips, and
9 leave them soft, smooth, and more beautiful when, in fact, the Product does not have
10 these effects; rather, it increases the risk of and results in painful and unsightly
11 rashes, blisters, redness, cracking, and other signs of damage and irritation.

12 51. Defendant advertised the Product with the intent not to sell it as
13 advertised in violation of § 1770(a)(9) of the CLRA. Defendant did not intend to
14 sell the Product as advertised because Defendant knew that the Product would not
15 nourish and hydrate lips, and leave them soft, smooth, and more beautiful.
16 Defendant knew use of the Product increases the risk of and frequently results in
17 painful and unsightly rashes, blisters, redness, cracking, and other signs of damage
18 and irritation.

19 52. Plaintiff and California Subclass members suffered injuries caused by
20 Defendant's misrepresentations and omissions because: (a) Plaintiff and California
21 Subclass members would not have purchased the Product or would not have paid as
22 much for the Product if they had known the true facts; (b) Plaintiff and California
23 Subclass members purchased the Product due to Defendant's misrepresentations and
24 omissions; and (c) the Product did not have the level of quality, effectiveness, or
25 value as promised.

26 53. Plaintiff and the California Subclass seek an order enjoining
27 Defendant's unfair or deceptive acts or practices, equitable relief, an award of
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1 attorneys' fees and costs under Cal. Civ. Code § 1780(e), and any other just and
2 proper relief available under the CLRA.

3 54. Prior to the filing of this Complaint, a CLRA notice letter was served
4 on Defendant which complies in all respects with California Civil Code § 1782(a).
5 A true and correct copy of Plaintiff's letter is attached as Exhibit A. On February
6 17, 2016, Plaintiff sent Defendant a letter via certified mail, return receipt requested,
7 advising Defendant that it is in violation of the CLRA and must correct, repair,
8 replace, or otherwise rectify the goods alleged to be in violation of § 1770. In the
9 event that the relief requested has not been provided within thirty (30) days, Plaintiff
10 will amend this Complaint to include a request for damages pursuant to the CLRA.

11 55. Pursuant to section 1780(d) of the CLRA, attached hereto as Exhibit B
12 is an affidavit showing that this action has been commenced in the proper forum.

13 **COUNT II**

14 **(California's False Advertising Law, Cal. Bus. & Prof. Code §§17500, *et seq.*)**

15 56. Plaintiffs repeat the allegations contained in the paragraphs above as if
16 fully set forth herein.

17 57. Plaintiff Gilsleider brings this Count individually and on behalf of the
18 California Subclass.

19 58. California's FAL (Bus. & Prof. Code §§17500, *et seq.*) makes it
20 "unlawful for any person to make or disseminate or cause to be made or
21 disseminated before the public in this state, . . . in any advertising device . . . or in
22 any other manner or means whatever, including over the Internet, any statement,
23 concerning . . . personal property or services, professional or otherwise, or
24 performance or disposition thereof, which is untrue or misleading and which is
25 known, or which by the exercise of reasonable care should be known, to be untrue
26 or misleading."
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1 59. Defendant committed acts of false advertising, as defined by the FAL,
2 by using false and misleading statements, and material omissions, to promote the
3 sale of the Product, as described above, and including, but not limited to,
4 representing that the Product would nourish and hydrate lips, and leave them soft,
5 smooth, and more beautiful, when Defendant knew or should have known that use
6 of the Product increases the risk of and frequently results in painful and unsightly
7 rashes, blisters, redness, cracking, and other signs of damage and irritation.

8 60. Defendant knew or should have known, through the exercise of
9 reasonable care, that its statements were untrue and misleading.

10 61. Defendant's actions and omissions in violation of the FAL were false
11 and misleading such that the general public is and was likely to be deceived.

12 62. As a direct and proximate result of these acts and omissions, consumers
13 have been and are being harmed. Plaintiff and members of the California Subclass
14 have suffered injury and actual out-of-pocket losses as a result of Defendant's FAL
15 violation because: (a) Plaintiff and California Subclass members would not have
16 purchased the Product or would not have paid as much for it if they had known the
17 true facts; (b) Plaintiff and California Subclass members purchased the Product due
18 to Defendant's misrepresentations and omissions; and (c) the Product did not have
19 the level of quality, effectiveness, or value as promised.

20 63. Plaintiff brings this action pursuant to Bus. & Prof. Code § 17535 for
21 injunctive relief to enjoin the practices described herein and to require Defendant to
22 issue corrective disclosures to consumers. Plaintiff and the California Subclass are
23 therefore entitled to: (a) an order requiring Defendant to cease the acts of unfair
24 competition alleged herein; (b) full restitution of all monies paid to Defendant as a
25 result of its deceptive practices; (c) interest at the highest rate allowable by law; and
26 (d) the payment of Plaintiff's attorneys' fees and costs pursuant to, *inter alia*,
27 California Code of Civil Procedure §1021.5.

COUNT III

(California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

64. Plaintiffs repeat the allegations contained in the paragraphs above as if fully set forth herein.

65. Plaintiff Gilsleider brings this Count individually and on behalf of the California Subclass.

66. The Unfair Competition Law, Cal. Business & Professions Code § 17200, *et seq.* ("UCL"), prohibits any "unlawful," "unfair," or "fraudulent," business act or practice and any false or misleading advertising.

67. The UCL, Bus. & Prof. Code § 17200 *et seq.*, provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising" The UCL also provides for injunctive relief and restitution for UCL violations. By virtue of its above-described wrongful actions, Defendant engaged in unlawful, unfair, and fraudulent practices within the meaning, and in violation of, the UCL.

68. "By proscribing any unlawful business practice, section 17200 borrows violations of other laws and treats them as unlawful practices that the UCL makes independently actionable." *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal. 4th 163, 180 (1999) (citations and internal quotation marks omitted).

69. Virtually any law or regulation – federal or state, statutory, or common law – can serve as a predicate for an UCL "unlawful" violation. *Klein v. Chevron U.S.A., Inc.*, 202 Cal. App. 4th 1342, 1383 (2012).

70. Defendant violated the "unlawful prong" by violating the CLRA and the FAL, as well as by breaching express and implied warranties as described herein.

1 71. Defendant's acts and practices constitute "unfair" business acts and
2 practices in that the harm caused by Defendant's wrongful conduct outweighs any
3 utility of such conduct, and that Defendant's conduct: (i) offends public policy;
4 (ii) is immoral, unscrupulous, unethical, oppressive, deceitful and offensive, and/or
5 (iii) has caused (and will continue to cause) substantial injury to consumers, such as
6 Plaintiffs and the Class.

7 72. There were reasonably available alternatives to further Defendant's
8 legitimate business interests, including changing the Product formula, warning
9 consumers and the public about the risks of and adverse effects caused by the
10 Product, and recalling the Product, other than Defendant's wrongful conduct and
11 omissions described herein.

12 73. The UCL also prohibits any "fraudulent business act or practice."
13 Defendant's above-described claims, nondisclosures, and misleading statements
14 were false, misleading, and likely to deceive the consuming public in violation of
15 the UCL.

16 74. As a direct and proximate result of Defendant's above-described
17 wrongful actions, inactions, and violation of the UCL; Plaintiff and members of the
18 California Subclass have suffered injury and actual out-of-pocket losses because:
19 (a) Plaintiff and California Subclass members would not have purchased the Product
20 or would not have paid as much for it if they had known the true facts; (b) Plaintiff
21 and California Subclass members purchased the Product due to Defendant's
22 misrepresentations and omissions; and (c) the Product did not have the level of
23 quality, effectiveness, or value as promised.

24 75. Pursuant to Bus. & Prof. Code §17203, Plaintiff and the California
25 Subclass are therefore entitled to: (a) an order requiring Defendant to cease the acts
26 of unfair competition alleged herein; (b) full restitution of all monies paid to
27 Defendant as a result of its deceptive practices; (c) interest at the highest rate

allowable by law; and (d) the payment of Plaintiff's attorneys' fees and costs pursuant to, *inter alia*, California Code of Civil Procedure §1021.5

COUNT IV

**(Illinois Consumer Fraud and Deceptive Business Practices Act,
815 Ill. Comp. Stat. 505/1, *et seq.*)**

76. Plaintiffs repeat the allegations in the foregoing paragraphs as if fully set forth herein.

77. Plaintiff Ivy brings this Count individually and on behalf of the Illinois Subclass.

78. The Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 Ill. Comp. Stat. 505/1, *et seq.* (the "ICFA") protects consumers and competitors by promoting fair competition in commercial markets for goods and services.

79. The ICFA prohibits any unlawful, unfair, or fraudulent business acts or practices including the employment of any deception, fraud, false pretense, false advertising, misrepresentation, or the concealment, suppression, or omission of any material fact.

80. Section 2 of the ICFA provides in relevant part as follows:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

815 ILCS 505/2 (footnote omitted).

1 81. The ICFA applies to Defendant's actions and conduct as described
2 herein because it protects consumers in transactions that are intended to result, or
3 which have resulted, in the sale of goods or services.

4 82. Defendant is a person within the meaning of the ICFA.

5 83. Plaintiff and other members of the Illinois Subclass are consumers
6 within the meaning of the ICFA.

7 84. Defendant's Product is merchandise within the meaning of the ICFA
8 and the sale of its Product is considered trade or commerce under the ICFA.

9 85. Defendant violated the ICFA by misrepresenting and omitting material
10 facts about the Product. Specifically, Defendant represented that the Product would
11 nourish and hydrate lips, and leave them soft, smooth, and more beautiful, when
12 Defendant knew or should have known use of the Product increases the risk of and
13 frequently results in painful and unsightly rashes, blisters, redness, cracking, and
14 other signs of damage and irritation.

15 86. Defendant created its advertisements and marketing materials with the
16 intent that Plaintiffs and other consumers would rely on the information provided.

17 87. Defendant's misrepresentations and omissions to Plaintiff and members
18 of the Illinois Subclass constitute unfair and deceptive acts and practices in violation
19 of the ICFA.

20 88. Had Defendant not engaged in the deceptive misrepresentation and
21 omission of material facts as described above, Plaintiffs and Illinois Subclass
22 members would not have purchased the Product or would have paid less for the
23 Product.

24 89. Plaintiff and Illinois Subclass members were damaged by Defendant's
25 conduct directed towards consumers. As a direct and proximate result of
26 Defendant's violation of the ICFA, Plaintiff and Illinois Subclass members have
27 suffered harm in the form of monies paid for Defendant's Product. Plaintiff, on
28

1 behalf of herself and the Illinois Subclass, seeks an order (1) requiring Defendant to
2 cease the unfair practices described herein; (2) awarding damages, interest, and
3 reasonable attorneys' fees, expenses, and costs to the extent allowable; and/or
4 (3) requiring Defendant to restore to Plaintiff and each Illinois Subclass member any
5 money acquired by means of unfair competition.

6
7 **COUNT V**
(Breach of Express Warranty)

8 90. Plaintiffs repeat the allegations in the foregoing paragraphs as if fully
9 set forth herein.

10 91. Plaintiffs bring this claim individually and on behalf of the members of
11 the Class and Subclasses against Defendant.

12 92. In connection with the sale of the Product, Defendant, as the designer,
13 manufacturer, marketer, distributor and/or seller issued written warranties by
14 representing that the Product: gives users "visibly soft" and "immediately softer,
15 more beautiful lips" and "moist, super-smooth lips"; "absorbs to nourish lips for a
16 softness you can feel"; "softens," "hydrates," and "nourishes"; and "keeps your lips
17 moist, soft and sensationally smooth."

18 93. Defendant's express warranties, and its affirmations of fact and
19 promises made to Plaintiffs and the Class regarding the Product, became part of the
20 basis of the bargain between Defendant and Plaintiffs and the Class, thereby
21 creating an express warranty that Defendant would conform to those affirmations of
22 fact, representations, promises and descriptions.

23 94. In fact, the Product does not nourish and hydrate lips, and leave them
24 soft, smooth, and more beautiful; rather, it increases the risk of and results in painful
25 and unsightly rashes, blisters, redness, cracking, and other signs of damage and
26 irritation.

1 change in the condition in which it was produced, manufactured, sold, distributed,
2 and marketed by Defendant.

3 111. At those times, EOS Lip Balm was in an unsafe, defective, and
4 inherently dangerous condition which was unreasonably dangerous to its users and,
5 in particular, Plaintiffs and Class members.

6 112. EOS Lip Balm was so defective in design or formulation or
7 manufacture that when it left the hands of the manufacturer and/or suppliers, the
8 foreseeable risks exceeded the benefits associated with the design, formulation or
9 manufacture of the Product.

10 113. At all times herein mentioned, EOS Lip Balm was in a defective
11 condition and unsafe, and Defendant knew, had reason to know, or should have
12 known that the Product was defective and unsafe, especially when used in the form
13 and manner as provided by Defendant.

14 114. Defendant knew, or should have known, that at all times herein
15 mentioned EOS Lip Balm was and is inherently dangerous and unsafe.

16 115. At the time of their use of EOS Lip Balm, Plaintiffs and Class members
17 utilized the Product for the purposes and manner normally intended.

18 116. Defendant had a duty to create a product that was not unreasonably
19 dangerous for its normal, intended use.

20 117. EOS Lip Balm was designed, researched, manufactured, tested,
21 advertised, promoted, marketed, sold and distributed in a defective condition by
22 Defendant and was unreasonably dangerous to its intended users, including
23 Plaintiffs and Class members.

24 118. Defendant designed, researched, manufactured, tested, advertised,
25 promoted, marketed, sold, and distributed a defective product which created an
26 unreasonable risk to the health of consumers thereof and to Plaintiffs and Class
27

1 members. Defendant is, therefore, strictly liable for the injuries sustained by the
2 Plaintiffs and Class members.

3 119. Neither Plaintiffs nor Class members, acting as a reasonably prudent
4 person, could discover that EOS Lip Balm was defective, as herein described, or
5 perceive its danger.

6 120. The EOS Lip Balm designed, researched, manufactured, tested,
7 advertised, promoted, marketed, sold, and distributed by Defendant was defective
8 due to inadequate warnings or instructions as Defendant knew, or should have
9 known, that the defective Product created a risk of serious and dangerous side
10 effects including, but not limited to adverse reactions to the Product, including, but
11 not limited to rashes, blisters, bumps, cracking, redness, soreness, swelling,
12 bleeding, and skin discoloration, which may last for a few days, months, or even be
13 ongoing, and other health concerns.

14 121. EOS Lip Balm as designed, researched, manufactured, tested,
15 advertised, promoted, marketed, sold, and distributed by Defendant is defective due
16 to inadequate warnings and/or inadequate testing. Defendant has continued to
17 manufacture, distribute, and sell the Product after it knew, or should have known, of
18 the defects and risk of serious adverse reactions.

19 122. By reason of the foregoing, Defendant is strictly liable in tort to
20 Plaintiffs and Class Members for the manufacturing, promoting, distribution, and
21 selling of a defective product, EOS Lip Balm.

22 123. Defendant's defective design, manufacturing defects, and inadequate
23 warnings of the dangers associated with EOS Lip Balm were acts that amount to
24 willful, wanton, and/or reckless conduct by Defendant.

25 124. Said defects in EOS Lip Balm were a substantial factor in causing
26 Plaintiffs' and Class members' injuries and/or placed Plaintiffs and Class members
27 at increased risk of serious injury and/or harm.

1 125. As a direct and proximate result of the defective condition of EOS Lip
2 Balm as manufactured and sold by Defendant, Plaintiffs and Class members
3 suffered, and will continue to suffer, damages.

4 126. By reason of the foregoing, Plaintiffs and Class members experienced,
5 and/or are at risk of experiencing, serious and dangerous adverse reactions, as well
6 as have incurred financial damage and injury.

7 127. As a result of the foregoing acts and omissions, Plaintiffs and Class
8 members require, and/or will require, more health care and services and did incur
9 medical, health and incidental and related expenses. Plaintiffs and Class members
10 are informed and believe, and further allege, that Plaintiffs and the Class members
11 will in the future be required to obtain further medical and/or hospital care,
12 attention, and services.

13 128. Plaintiffs, on behalf of themselves and all others similarly situated,
14 demand judgment against Defendant for compensatory damages for each Class
15 member and for the establishment of a common fund, plus attorney's fees, interest
16 and costs.

17 **COUNT IX**

18 **(Negligence)**

19 129. Plaintiffs repeat the allegations in the foregoing paragraphs as if fully
20 set forth herein.

21 130. Plaintiffs bring this claim individually and on behalf of the members of
22 the Class and Subclasses against Defendant.

23 131. Defendant negligently manufactured, designed, tested, researched,
24 developed, labeled, packaged, distributed, promoted, marketed, advertised, and sold
25 the Product in this district and throughout the United States.

26 132. At all times relevant and material hereto, Defendant had a duty to
27 exercise reasonable care in the design, manufacture, research and development,

1 testing, processing, advertising, marketing, labeling, packaging, distribution,
2 promotion and sale of the Product.

3 133. Defendant breached its duty and was negligent in its actions,
4 misrepresentations, and omissions in numerous ways including, but not limited to,
5 the following:

- 6 a. Failing to use due care in the formulation, design, and development of
7 the Product to prevent and/or minimize the risk of injury and adverse
8 effect to individuals when the Product was used;
 - 9 b. Failing to test the Product properly and thoroughly before releasing it
10 on the market;
 - 11 c. Failing to conduct adequate post-market monitoring and surveillance
12 of the Product and analysis for adverse reports and effects;
 - 13 d. Designing, manufacturing, marketing, advertising, distributing, and
14 selling the Product to consumers, including Plaintiffs and Class
15 members, without adequate warnings of the risks associated with
16 using the Product and without proper and/or adequate instructions to
17 avoid the harm which could foreseeably occur as a result of using the
18 Products;
 - 19 e. Failing to exercise due care when advertising and promoting the
20 Products;
 - 21 f. Negligently continuing to manufacture, market, distribute, and sell the
22 Product, after Defendant knew or should have known of the risks of
23 serious injury associated with using the Product;
 - 24 g. Failing to conduct adequate post-market surveillance and studies to
25 determine the safety of the Product;
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1 h. Failing to label the Product to adequately warn Plaintiff, Class
2 members, and the public of the risk of injury and adverse effects
3 associated with the Product.

4 134. Defendant advertised, marketed, sold and distributed the Product
5 despite the fact that the Defendant knew or should have known of the risks
6 associated with using the Product.

7 135. Defendant had a duty to warn their customers and the public about the
8 risks of injury and adverse effects and refused to do so placing profit ahead of
9 consumer safety.

10 136. Defendant knew or should have known that the Product had
11 unreasonably dangerous risks of which consumers would not be aware. Defendant
12 nevertheless advertised, marketed, sold and distributed the Product.

13 137. Despite the fact that Defendant knew or should have known that the
14 Product increased the risk of injury, Defendant continued to manufacture, market,
15 advertise, promote, sell and distribute the Product to consumers, including Plaintiffs
16 and Class members.

17 138. Defendant recklessly and/or negligently failed to disclose to Plaintiffs
18 and Class members the risks and adverse effects associated with the Product,
19 thereby suppressing material facts about the Product, while having a duty to disclose
20 such information, which duty arose from its actions of making, marketing,
21 promoting, distributing and selling the Product as alleged.

22 139. Defendant led Plaintiffs and Class members to rely upon the safety of
23 the Product in their use of the Product.

24 140. Defendant's false representations were recklessly and/or negligently
25 made in that the Product in fact caused injury, was unsafe, and the benefits of its use
26 were far outweighed by the risk associated with use thereof.

1 141. Defendant knew or should have known that its representations and/or
2 omissions were false. Defendant made such false, negligent and/or reckless
3 representations with the intent or purpose that Plaintiffs and Class members would
4 rely upon such representations, leading to the use of the Product as described.

5 142. Defendant recklessly and/or negligently misrepresented and/or omitted
6 information with respect to the Product as set forth above.

7 143. Defendant omitted, suppressed, and/or concealed material facts
8 concerning the dangers and risk of injuries associated with the use of the Product.
9 Furthermore, Defendant was willfully blind to, ignored, downplayed, avoided,
10 and/or otherwise understated the nature of the risks associated with the Product in
11 order to continue to sell the Product.

12 144. At the time Defendant made these misrepresentations and/or omissions,
13 they knew or should have known that the Product was unreasonably dangerous and
14 not what Defendant had represented to Plaintiffs and Class members.

15 145. Defendant's misrepresentations and/or omissions were undertaken with
16 an intent that Plaintiffs and Class members rely upon them.

17 146. Plaintiffs relied on and were induced by Defendant's
18 misrepresentations, omissions, and/or active concealment of the dangers of the
19 Product to Purchase and use the Product.

20 147. Plaintiffs did not know that these representations were false and
21 therefore were justified in their reliance.

22 148. As a direct and proximate consequence of Defendant's negligent,
23 willful, wanton, and/or intentional acts, omissions, misrepresentations and/or
24 otherwise culpable acts described herein, Plaintiffs sustained injuries and damages
25 as alleged herein.

26 149. Had Plaintiffs been aware of the increased risk of injury associated with
27 the Product and the relative efficacy of the Product compared with other readily
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1 available products, they would not have purchased the Product or would not have
2 paid as much for it.

3 150. As a direct and proximate consequence of Defendant's negligence,
4 willful, wanton, and/or intentional acts, omissions, misrepresentations and/or
5 otherwise culpable acts described herein, Plaintiffs sustained the injuries, damages,
6 and harm as alleged herein.

7 151. Defendant's negligence was a substantial factor in causing Plaintiffs'
8 harm.

9 152. Plaintiffs and Class members are entitled to compensatory damages,
10 and exemplary and punitive damages together with interest, and such other and
11 further relief as this Court deems just and proper.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly
14 situated, seek a judgment against Defendant, as follows:

- 15 a. For an order certifying the Class under Rule 23 of the Federal Rules
16 of Civil Procedure and naming Plaintiffs as representatives of the
17 Class and Subclasses and Plaintiffs' attorneys as Class Counsel to
18 represent the Class and Subclasses;
- 19 b. For an order declaring that Defendant's conduct violates the statutes
20 referenced herein;
- 21 c. For an order finding in favor of Plaintiffs and the Class and
22 Subclasses on all counts asserted herein;
- 23 d. For compensatory, statutory, and punitive damages in amounts to be
24 determined by the Court and/or jury;
- 25 e. For prejudgment interest on all amounts awarded;
- 26 f. For an order of restitution and all other forms of equitable monetary
27 relief;

- 1 g. For an order enjoining Defendant from continuing the unlawful
2 practices detailed herein; and
3 h. For an order awarding Plaintiffs and the Class and Subclass their
4 reasonable attorneys' fees and expenses and costs of suit.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiffs hereby demand a trial by jury on all issues so triable.

7 DATED: February 17, 2016 BISNAR|CHASE LLP

8
9 By: /s/ Jerusalem F. Beligan

10
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26 *Counsel for Plaintiffs*
27
28

EXHIBIT A

February 17, 2016

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ULTA
427 NEWPORT CENTER DRIVE
NEWPORT BEACH, CA 92660

EOS PRODUCTS, LLC
ATTN. JONATHAN TELLER
19 WEST 44TH STREET, SUITE 811
NEW YORK, NY 10036

THE KIND GROUP, LLC
C/O CORPORATION SERVICE
COMPANY
80 STATE STREET
ALBANY, NY 12207-2543

THE KIND GROUP, LLC
C/O DANIELLE LESSER
MORRISON COHEN LLP
909 THIRD AVE
NEW YORK, NY 10022

Re: ***Gilsleider, et al. v. EOS Products, LLC***
Notice of Violation of the California Consumers Legal Remedies Act and
Breach of Express Warranty

Dear Sir or Madam:

We send this letter on behalf of our client, Marylou Gilsleider, currently a resident of California, as well as on behalf of a proposed class of all persons who purchased in or from California one or more EOS Visibly Soft Lip Balm (the "EOS lip balms") purchased, sold and/or distributed by EOS Products, LLC and The Kind Group, LLC (collectively "EOS" or "Defendants") to advise you that Defendants have violated and continue to violate the Consumers Legal Remedies Act ("CLRA"), California Civil Code section 1750, *et seq.* We hereby ask that Defendants remedy such violations within thirty (30) days.

Defendants are engaging in unfair competition and unfair or deceptive acts or practices with regard to the manner in which Defendants advertise and market to California consumers the EOS lip balms that they distribute and sell to retailers and consumers in California. EOS advertises its EOS lip balms as nourishing, moisturizing, all natural, and it promises consumers that they will get "smooth," "visibly softer" and "more beautiful lips." EOS' advertising and marketing of the EOS lip balms, however, are false and misleading as EOS failed to disclose and warn consumers that its EOS lip balms have ingredients that result in painful and unsightly rashes, blisters, redness, cracking, and other signs of damage and irritation.

Defendants' conduct violates California Civil Code section 1770(a), in particular by:

- Representing that [the] goods have ... approval, characteristics, ... uses [or] benefits which they do not have;

Page 2 of 3

February 17, 2016

Gilsleider, et al. v. EOS Products, LLC

- Representing that [the] goods ... are of a particular standard, quality or grade ... if they are of another; and
- Advertising goods ... with intent not to sell them as advertised.

Our client will shortly file a complaint for, *inter alia*, injunctive relief under the CLRA, and will amend such complaint to seek monetary relief under the CLRA unless, within thirty (30) days, Defendants correct, repair, or otherwise rectify the violations specified above. If Defendants fail to comply with this request within thirty (30) days, Defendants may be liable for the following monetary amounts under the CLRA:

- Actual damages suffered;
- Punitive damages;
- Costs and attorney's fees related to suit; and
- Penalties of up to \$5,000.00 for each incident where citizens have suffered substantial physical, emotional or economic damage resulting from Defendants' conduct.

As will be set forth in the Class Action Complaint, Defendants' practices also violate (1) California's False Advertising Law ("FAL"), Cal. Business & Professions Code §§ 17500 *et seq.* (the "FAL"), (2) Unfair Competition Law (the "UCL"), Cal. Business & Professions Code §§ 17200 *et seq.* (the "UCL"), (3) Illinois Consumer Fraud and Deceptive Business Practices Act, Ill Comp. Stat. 505/1, *et seq.*, (4) Breach of Express Warranty, (5) Breach of Implied Warranty of Merchantability, (6) Unjust Enrichment, (7) Strict Products Liability, and (8) Negligence. With respect to the claim for breach of express warranty, this letter constitutes statutory notice pursuant to California Uniform Commercial Code § 2-607(3)(A) of Defendants' breach of express warranty. Defendants breached their warranties with our client and class members by providing them with EOS lip balms that are not of the quality that Defendants represented.

We hereby demand on behalf of Ms. Gilsleider and all others similarly situated that Defendants immediately correct and rectify its violations by ceasing the deceptive and misleading marketing and advertising described above of Defendants' EOS lip balms. We further demand that Defendants initiate a corrective marketing and advertising campaign. In addition, Defendants must offer to refund consumers for their purchases of EOS lip balms and provide reimbursement with interest.

It is our hope that Defendants will choose to correct these unlawful practices promptly. A failure to act within thirty (30) days will be considered a denial of this claim and our client will act accordingly.

Page 3 of 3

February 17, 2016

Gilsleider, et al. v. EOS Products, LLC

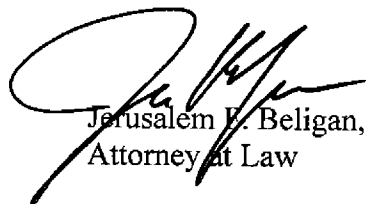
If you would like to discuss the matter, please do not hesitate to call us at:

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BRIAN D. CHASE
bchase@bisnarchase.com
JERUSALEM F. BELIGAN
jbeligan@bisnarchase.com
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Newport Beach, CA 92626
Telephone: 949/752-2999
Facsimile: 949/752-2777

Otherwise, we look forward to Defendants immediately changing their practices and compensating Ms. Gilsleider and the other members of the proposed class identified above.

Thank you for your attention to this matter. We look forward to your response.

Sincerely,



Jerusalem F. Beligan, Esq.
Attorney at Law

EXHIBIT B

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARYLOU GILSLEIDER; YOKIE
RENEE IVY, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

EOS PRODUCTS, LLC,

Defendant.

Case No.

Class Action

**AFFIDAVIT OF PLAINTIFF
MARYLOU GILSLEIDER
PURSUANT TO CAL. CIV. CODE
§ 1780(d)**

**AFFIDAVIT OF PLAINTIFF MARYLOU GILSLEIDER PURSUANT TO
CAL. CIV. CODE § 1780(d)**

1 I, Marylou Gilsleider, hereby declare as follows:

2 1. I am an adult, over 18 years old. I am a named plaintiff and a
3 prospective class member in the above-entitled case. I have personal knowledge
4 of the matters stated herein, and if called to testify about these facts, I could and
5 would do so in a competent and truthful manner.

6 2. I am currently a resident of Orange County, California. My
7 Complaint filed in this matter contains causes of action for violations of (1)
8 California's Consumers Legal Remedies Act, Cal. Civil Code §§ 1750 *et seq.* (the
9 "CLRA"), (2) False Advertising Law, Cal. Business & Professions Code §§ 17500
10 *et seq.* (the "FAL"), (3) Unfair Competition Law, Cal. Business & Professions Code
11 §§ 17200 *et seq.* (the "UCL"), (4) Illinois Consumer Fraud and Deceptive Business
12 Practices Act, Ill Comp. Stat. 505/1, *et seq.*, (5) Breach of Express Warranty, (6)
13 Breach of Implied Warranty of Merchantability, (7) Unjust Enrichment, (8) Strict
14 Products Liability, and (9) Negligence against eos Products, LLC, a company
15 doing business throughout California ("EOS" or "Defendant"). These causes of
16 action arise out of Defendant's deceptive and misleading marketing, promotion,
17 distribution, and sale of EOS Visibly Soft Lip Balm (the "Product"), and its
18 failure to disclose and warn consumers about ingredients contained in the
19 Product that result in painful and unsightly rashes, blisters, redness, cracking,
20 and other signs of damage and irritation.

21 3. Pursuant to Civil Code § 1780(d), this action is being filed in the
22 correct judicial district because I purchased the Product within the Central
23 District of California.

24 I declare under penalty of perjury under the laws of the United States of
25 America that the foregoing declaration is true and correct, and was executed by
26 me in the City of Newport Beach, California on February 17, 2016.

Javier Ruiz

From: paygovadmin@mail.doc.twai.gov
Sent: Thursday, February 18, 2016 9:00 AM
To: Javier Ruiz; Chris Schlindwein
Subject: Pay.gov Payment Confirmation: CACD CM ECF

Your payment has been submitted to Pay.gov and the details are below. If you have any questions or you wish to cancel this payment, please contact CACD CM/ECF Helpdesk at (213) 894-0242.

Application Name: CACD CM ECF
Pay.gov Tracking ID: 25Q0V9NH
Agency Tracking ID: 0973-17303226
Transaction Type: Sale
Transaction Date: Feb 18, 2016 11:59:31 AM

Account Holder Name: Shannon Barker
Transaction Amount: \$400.00
Card Type: AmericanExpress
Card Number: *****3018

THIS IS AN AUTOMATED MESSAGE. PLEASE DO NOT REPLY.