

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MELISA MENZ, individually on behalf of)
herself and all others similarly situated,)
)
Plaintiff,)
)
vs.)
)
EOS PRODUCTS, LLC, a New York Limited)
Liability Company,)
)
Defendant.)

Case No.:

Judge:

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL FOR ECONOMIC DAMAGES AND EQUITABLE RELIEF

Plaintiff, Melisa Menz (“Plaintiff”), individually and on behalf of all others similarly situated, by and through her undersigned counsel, hereby files this Class Action Complaint for Economic Damages and Equitable Relief, against Defendant, EOS Products, LLC (“Defendant” or “EOS”), a New York Limited Liability Company, by alleging as follows:

NATURE OF ACTION

1. This is an economic consumer protection class action for injunctive relief and economic damages based on misrepresentations and omissions committed by Defendant regarding certain varieties of its lip balm products.

2. Plaintiff expressly is not making any claims for personal injuries in this Complaint;¹ rather, this case is based on Defendant’s misrepresentations and omissions regarding the lip balm products purchased by Plaintiff, and members of the putative Class during the Class Period

1. All potential claims for individual tort relief by Plaintiff and putative Class members are preserved and outside the scope of the damages sought in this litigation.

(defined below).

3. Specifically, Defendant's EOS Visibly Soft Lip Balm product varieties at issue are: (1) Blackberry Nectar, (2) Blueberry Acai, (3) Vanilla Mint, (4) Strawberry Sorbet, and (5) Summer Fruit (the "Products"). Plaintiff and numerous other putative Class members that purchased the Products suffered economic damages in a similar manner because use of the Products causes potential serious, painful adverse side effects such as rashes, dryness, bleeding, blistering, cracking, and loss of pigmentation around the lips ("Side Effects"), which is the area where the Products are intended and instructed to be applied. Had Plaintiff and the Class known that the Products causes such effects, they would not have purchased the Products.

4. Plaintiff, and all others similarly situated consumers, did not bargain for Products that cause adverse effects in exchange for their payment of the purchase price.

5. Plaintiff contends that the Products do not work as impliedly warranted and as a result, mislead consumers into purchasing the Products under misleading circumstances. The Products are sold pursuant to unfair and unconscionable trade practices because they offend public policy and are immoral, unethical, oppressive, unscrupulous and substantially injurious to consumers.

6. Accordingly, Plaintiff seeks damages equal to the aggregate retail purchase price paid by Plaintiff and members of the putative Class during the Class Period (defined below), because the Products are worthless and useless due to the Side Effects that Defendant has failed to disclose and adequately warn consumers about.

PARTIES

7. At all times mentioned herein, EOS was and is a New York Limited Liability Company with its principal place of business in New York, New York, and was, at all relevant times, engaged in commercial transactions throughout the State of Florida, including this judicial

District. Based on publicly available information, all of the individual members of EOC are residents of states other than Florida.

8. At all times mentioned herein, Plaintiff Melisa Menz, a mother of two young children, was and is an individual over the age of 18 and a citizen of the state of Florida, resident of Pasco County, Florida. Plaintiff has purchased the Products in this judicial District.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter presented by this Complaint, because it is a class action arising under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is a citizen of a state different from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of \$5,000,000.00, exclusive of interest and costs.

10. Pursuant to 28 U.S.C. § 1332(d)(2)(A), Plaintiff alleges that the total claims of the individual members of the Plaintiff Class in this action are in excess of \$5,000,000.00, in the aggregate, exclusive of interest and costs, and as set forth below, diversity of citizenship exists under CAFA because Plaintiff is a citizen of the State of Florida, and Defendant all of its individual members can be considered a citizen of the State of New York.

11. This Court has personal jurisdiction over Defendant because, *inter alia*, during the Class Period (defined below), Defendant distributed, marketed, advertised, and sold the Products throughout the State of Florida and in this judicial district, and Plaintiff purchased Defendant’s Products in this judicial district.

12. Venue is proper because Plaintiff’s claims arise out of Defendant’s conduct within the State of Florida and because a substantial part of the events or omissions giving rise to

the claims alleged herein occurred in this judicial District as Defendant: (a) conducts business in this judicial District and has intentionally availed itself of the benefits of the laws, and markets within this judicial District with the promotion, marketing, distribution and sale of its Products in this judicial District; and (b) at all material times hereto has performed substantial business in this judicial District.

FACTUAL ALLEGATIONS

13. Founded in 2006, Defendant, EOS, develops, promotes markets, advertises, distributes and sells the Products, through various forms, including in-person or in store retailing.

14. EOS has quickly become one of the highest-grossing lip-balm products presently on the market.

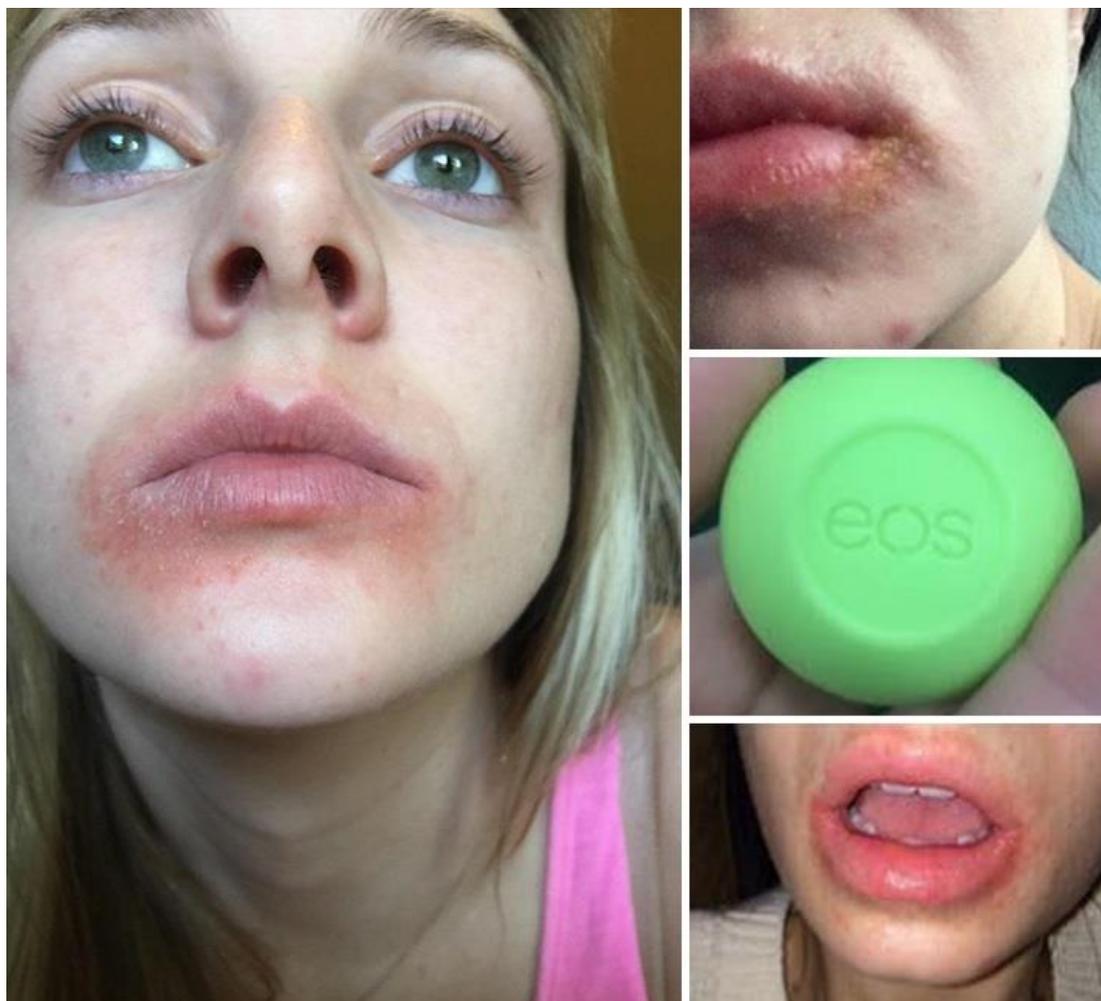
15. The Products come in bright sphere-like pods that stand out from all the other traditionally-shaped lip-balm products currently on the market.

16. “EOS” is an acronym for “evolution of smooth.” Upon information and belief, EOS has dramatically grown through its print and online marketing campaigns linking the continuous and consistent use of the Products with the improvement of a consumer’s health, diet, appearance, celebrity, and success. Defendant even represents that the Products “keeps your lips moist, soft, and sensationally smooth,” are “natural,” cause “beautiful lips,” “free” of ingredients that consumers seek to avoid, such as “petroleum,” “paraben,” and gluten,” and “phthalate.”

17. Despite these statements, which lead the reasonable consumer to believe that the Products are natural and less harmful than other lip balms, the use of the Products cause serious, painful adverse side effects such as rashes, dryness, bleeding, blistering, cracking, and loss of pigmentation around the lips, which is the area where the Products are applied (“Side Effects”). As a result, the Statements are false, misleading, and likely to deceive a reasonable consumer

into purchasing the Products because they fail to warn of the negative side-effects caused by using the Products, thereby rendering the Products worthless, valueless, and useless to the reasonable consumer.

18. For demonstrative purposes,² below are photographs depicting the reported side effects associated with using the Products:



19. The Products misrepresented these deleterious Side Effects caused by using the Products, and failed to adequately disclose or warn of the Side Effects caused by the Products.

20. Accordingly, Plaintiff, individually and on behalf of all other similarly situated purchasers of the Products during the Class Period (defined below), throughout the State of Florida, for injunctive relief and actual economic damages equaling the aggregate purchase price paid for the Products by Plaintiff and members of the Putative Class during the below-defined Class Period.

21. Plaintiff purchased the Products on several occasions for household use, before realizing they were the cause of her adolescent daughter suffering painful rashes, blisters, and dry, red, cracking skin. Specifically, Plaintiff has purchased the following product varieties: (1) Blackberry Nectar, (2) Blueberry Acai, (3) Vanilla Mint, (4) Strawberry Sorbet, and (5) Summer Fruit (the "Products"). Plaintiff has purchased the Products from various retail stores located within this judicial District, from approximately March/April 2015 until on or about October 15, 2015, when the Plaintiff was advised by a Pharmacist to cease using the Products and instead to use Blistex, which helped subdue the problems caused by the Products.

22. Plaintiff allowed her daughter to use the Products as her daughter, now 3-years old, asked to begin wearing lipstick. Plaintiff believed the Products to be a safe, more age appropriate product for her daughter to use. However, the Products caused a severe rash, puffiness, dryness, redness and discomfort upon use, which lasted approximately six (6) months, until Plaintiff discovered that the Products were the cause of the facial problems and ceased purchasing them.

23. Had Plaintiff known of these side-effects she would not have purchased the Products at all. Defendant failed to disclose these side effects that caused Plaintiff and members of the putative Class to purchase a product that they would not have purchased at all if the

2. The referenced photographs are publicly available online. They are not photographs of Plaintiff or members of her household. Reference to these photographs is intended to be a waiver of the work-product privilege.

Products adequately warned or informed consumers on the labeling or packaging of the Products that use of the Products can cause severe rashes, blisters, and dried, red, cracking skin.

24. In addition, there have been numerous other instances reported of the Products causing the same or similar Side Effects that Plaintiff's daughter experienced.

25. As a result, the Products are useless, worthless, and/or valueless to Plaintiff and members of the putative Class.

26. Plaintiff, and all other similarly situated consumers, did not bargain for the Products that cause adverse Side Effects in exchange for their payment of the purchase price.

27. Upon information and belief Defendant has profited by failing to adequately warn purchasers of the Side Effects caused from use of the Products, in order to increase its sales of the Products.

28. Upon information and belief, Defendant has failed to remedy the problem with the Products, thus causing future harm to consumers. Plaintiff, members of the putative Class, and future purchasers in consuming public, are at risk of real, immediate, and continuing harm if the Products continue to be sold as is, and without adequate warning of the Side Effects.

29. Plaintiff would continue to purchase the Products again in the future if they no longer caused the negative Side Effects.

30. Defendant has failed to provide adequate relief to the Plaintiff or members of the putative Class as of the date of filing this Complaint.

31. Plaintiff contends that the Products were sold pursuant to unfair and unconscionable trade practices because the sale of the Products offends public policy and is immoral, unethical, oppressive, unscrupulous, and caused substantial economic injuries to Plaintiff and other Florida purchasers.

32. Reasonable consumers do not expect the Products to cause adverse Side Effects when used as intended. Defendant's representations convey a series of express and implied claims and/or omissions which it knows are material to the reasonable consumer in making a purchasing decision, and which it intended for consumers to rely upon when choosing to purchase the Products.

33. Plaintiff and other reasonable consumers have suffered economic harm as a result of purchasing the Products. Plaintiff and members of the putative Class would not have purchased the Products had they known about the severe adverse Side Effects.

34. Defendant misrepresented the true deleterious effects caused by using the Products, and/or failed to adequately disclose the adverse effects from use of the Products, which was and is false, misleading, and/or likely to deceive reasonable consumers. Reasonable consumers expect such Side Effects to be disclosed so that they can make an informed purchasing decision. Therefore, the Products are valueless, and not worth the purchase price that Plaintiff and members of the putative Class paid for them, and/or are not what Plaintiff and members of the putative Class reasonably intended to receive.

35. Plaintiff and the Class seek damages equal to the aggregate purchase price paid for the Products throughout the State of Florida during the Class Period. Alternatively, Plaintiff and the Class seek the difference between the price premium charged for the Products and their true market value. Notwithstanding, Plaintiff contends that there is no market value for a lip balm that causes such negative Side Effects.

36. Plaintiff also seeks declaratory in the form of an order declaring Defendant's conduct to be a deceptive and unfair business practice in violation of FDUTPA, as well as injunctive and equitable relief putting an end to Defendant's misleading and unfair business

practices, including clear and full disclosure of the Side Effects caused by the Products and/or a reformulation of the Products so that they no longer cause such negative Side Effects.

CLASS ALLEGATIONS

37. Plaintiff brings this action as a class action against EOS pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of the following class:

All persons who have purchased the following product varieties of Defendant's lip balm: (1) Blackberry Nectar, (2) Blueberry Acai, (3) Vanilla Mint, (4) Strawberry Sorbet, and (5) Summer Fruit, in the State of Florida, for personal use and household use, and not for resale, during the time period from four years preceding the date of filing this Complaint through and until the date Notice is provided to the Class (the "Class").

38. Excluded from the class are: (1) Defendant, any entity or division in which Defendant has a controlling interest, and their legal representatives, officers, directors, assigns, and successors; and (2) the judge to whom this case is assigned and the judge's staff.

39. This action has been brought and may properly be maintained as a class action under Federal Rule of Civil Procedure 23 because there is a well-defined community of interest in the litigation and the class is easily ascertainable.

A. Numerosity

40. Based on the annual sales of the Products and the popularity of the Products, it is readily apparent that the number of consumers in the Class is so large as to make joinder impracticable, if not impossible. Members of the Class may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

B. Common Questions Predominate

41. There is a well-defined community if in the questions of law and fact involved in

this case. Questions of law and fact common to the Plaintiff and members of the Class that predominate over questions affecting only individual members, include, *inter alia*:

- a. Whether Defendant's practices and representations related to the marketing, labeling and sales of the Products in Florida were unfair, deceptive, fraudulent, and/or unlawful in any respect, thereby violating Florida Deceptive and Unfair Trade Practices Act (FLA), §§ 501.201, *et seq.*;
- b. Whether Defendant failed to warn Plaintiff and Class members of the Side Effects caused by purchasing and using the Products in violation of FLA §§ 501.201, *et seq.* with its practices and representations related to the marketing, labeling and sales of the Products within Florida;
- c. Whether Defendant's conduct as set forth above economically injured Plaintiff and Class Members; and
- d. Whether Plaintiff and Class Members are entitled to injunctive relief.

C. Typicality

42. The claims asserted by Plaintiff in this action are typical of the claims of the members of the putative Class, as the claims arise from the same course of conduct by Defendant, and the relief sought within the Class is common to the members of the Class. Further, there are no defenses available to Defendant that are unique to Plaintiff.

D. Adequacy

43. Plaintiff will fairly and adequately represent and protect the interests of the Class.

44. Plaintiff has retained counsel competent and experienced in both consumer protection and class action litigation. Plaintiff and Plaintiff's counsel will fairly and adequately

protect the Class' interests. Undersigned counsel has represented consumers in a wide variety of actions where they have sought to protect consumers from fraudulent and deceptive practices.

E. Declaratory and Injunctive Relief—Rule 23(b)(2)

45. Certification also is appropriate because Defendant acted, or refused to act, on grounds generally applicable to the Class, thereby making appropriate the injunctive relief sought on behalf of the Class. Further, given the large number of consumers of the Products, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

F. Superiority of Class Action

46. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of putative class members is not practicable, and questions of law and fact common to putative class members predominate over any questions affecting only individual putative class members. Each putative class member has been damaged and is entitled to recovery as a result of the violations alleged herein. Moreover, because the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

47. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P. 23(b)(3) are met because questions of law and fact common to each class member predominate over any questions affecting only individual members, and a class action is superior to other

available methods for fairly and efficiently adjudicating the controversy.

48. Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

CLAIMS FOR RELIEF
COUNT I:
VIOLATIONS OF FLORIDA’S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT,
FLA. §§ 501.201, ET SEQ.
(By Plaintiff, Melisa Menz and the Proposed Class Against Defendant EOS)

49. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs one (1) through forty-eight (48) of this Complaint, as if fully set forth herein verbatim.

50. This cause of action is brought pursuant to the FLA, Sections 501.201 to 201.213, *Florida Statutes*. The express purpose of the Act is to “protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” FLA Section 501.202(2).

51. The sale of the Products at issue in this case constituted a “consumer transaction” within the scope of the FLA, Sections 501.201 to 201.213, *Florida Statutes*.

52. Section 501.204(1), *Florida Statutes* declares as unlawful “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

53. Section 501.204(2), *Florida Statutes* states that “due consideration be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a)(1) of the Trade Commission Act.” Defendant’s unfair and deceptive practices are likely to mislead – and have misled – the consumer acting reasonably under the circumstances and, therefore, violates Section 500.04, *Florida Statutes* and 21 U.S.C. Section 343.

54. Defendant has violated the Act by engaging in the unfair and deceptive practices described above, which offend public policies and are immoral, unethical, unscrupulous and substantially injurious to consumers. Specifically, Defendant has misrepresented the true nature of the Products and failed to adequately warn of the Side Effects caused by using the Products, which thereby disseminating representations or omissions that are false, deceptive and likely to mislead a reasonable consumer, such as Plaintiff and members of the putative Class.

55. Simply put, Defendant misrepresented and/or omitted facts about the Side Effects that the Product causes, which were and are material to Plaintiff's and Class member's decisions to purchase the Products.

56. Defendant's sale of the Products is an unfair method of competition, unconscionable act and practice, and an unfair and deceptive act and practice in the conduct of its business.

57. As a result of Defendant's deceptive and unfair acts, Plaintiff and Class members have been damaged in the amount of the aggregate retail sales of the Products throughout the Class Period.

58. Defendant's conduct offends established public policy, and is immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers.

59. Defendant should also be ordered to cease and/or continue ceasing its deceptive and unfair advertising, and should be made to engage in a corrective advertising campaign, to inform consumers of the Side Effects that the Products cause.

60. Accordingly, Plaintiff seeks relief in the form of actual and compensatory economic damages, injunctive relief in the form of corrective advertising, equitable relief

including restitution, pre and post judgment interest, reimbursement of costs, reasonable attorney's fees, and for any other relief that this Court deems just and proper.

COUNT II:
NEGLIGENT MISREPRESENTATION
(By Plaintiff, Melisa Menz and the Proposed Class Against Defendant EOS)

61. Plaintiff Melisa Menz re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs one (1) through forty-eight (48) of this Complaint, as if fully set forth herein verbatim.

62. Throughout the Class Period, Defendant made incorrect representations and/or omissions of fact regarding the Products.

63. Defendant advertised, labeled, packaged, marketed, distributed, and sold the Products without adequately warning Plaintiff and members of the putative Class of the Side Effects, such as on the Products' packaging and labeling. Further, Defendant's Products represent that the Products are safe to use despite the Side Effects caused by using the Products.

64. Defendant was negligent in making the misrepresentations and/or omissions at issue because it knew, or should have known, that the Products cause the Side Effects.

65. Plaintiff and members of the Class relied on Defendant's misrepresentations and/or omissions in purchasing the Products they believed did not cause the Side Effects.

66. The factual misrepresentations and/or omissions committed by Defendant were material to Plaintiff and members of the Class in making their purchases of the Products.

67. Plaintiff and other members of the Class relied upon the incorrect representations and/or omissions made about the Products to their detriment, in that Plaintiff and other members of the Class paid the purchase price for the Products based upon the incorrect representations

and/or omissions, and had Plaintiff and other members of the Class known the truth about the Products, they would not have purchased the Products.

68. Accordingly, Plaintiff and members of the Class seek economic damages equaling the aggregate retail purchase price paid by Plaintiff and Class Members during the Class Period throughout the State of Florida, due to Defendant's negligent misrepresentations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class Members, prays for relief as follows:

- A. For an order certifying that this action is properly brought and may be maintained as a class action, that Plaintiff be appointed the class representative, and that Plaintiff's counsel be appointed counsel for the Class;
- B. For an order declaring Defendant's conduct to be in violation of FDUTPA and enjoining Defendant from pursuing the unlawful acts and practices alleged herein by adequately disclosing the Side Effects;
- C. For an order requiring Defendant to pay full restitution to Plaintiff and all members of the Class;
- D. For an order requiring Defendant to disgorge all ill-gotten gains following from the conduct alleged in this Complaint;
- E. For an award of actual damages in an amount to be determined at trial;
- F. For an order awarding reasonable attorneys' fees and the costs;
- G. For an award of pre- and post-judgment interest on any amounts awarded; and

H. For such other and further relief as may be deemed just, necessary or proper.

JURY DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: January 18, 2016

Respectfully submitted,

By: */s/ Joshua H. Eggnatz*
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*Trial Counsel for Plaintiff Melisa Menz and
the Proposed Class*

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

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

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

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Violations of FLA 501.201, et seq. and Negligent Misrepresentation arising from Defendant's dangerous lip balm. Plaintiff seeks class certification, damages, and injunctive relief.

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.