

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

SAMANTHA SANTIAGO, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

EOS PRODUCTS, LLC,

Defendant.

Civil Action No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

February 5, 2016

Plaintiff Samantha Santiago (“Plaintiff”), by and through her attorneys, makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to allegations specifically pertaining to herself and her counsel, which are based on personal knowledge, against defendant eos Products, LLC (“EOS” or “Defendant”).

NATURE OF THE ACTION

1. This is a class action for damages relating to the Defendant’s formulation, manufacture, testing, marketing, promotion, distribution, and sale of its defective lip balm product – eos Visibly Soft Lip Balm (“EOS Lip Balm” or the “Product”).

2. Defendant advertises EOS Lip Balm as nourishing, moisturizing, and all natural, and it promises consumers they will get “smooth” and “visibly softer,” “more beautiful lips.”

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

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

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

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

7. This action seeks redress on a class-wide basis for Defendant's deceptive business practices in selling the Product. Plaintiff brings claims individually and on a class-wide basis against Defendant for negligence, violations of the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. §§ 42-110a, *et seq.*, unjust enrichment, and injunctive relief.

PARTIES

8. Plaintiff Samantha Santiago is a citizen of the state of Connecticut, residing in Ansonia, Connecticut. In or around June 2015, Plaintiff purchased approximately six EOS Lip Balms, two of which were coconut flavored, from a Walgreens located in Bridgeport, Connecticut, for approximately \$20.00. Prior to purchasing the Product, Plaintiff viewed celebrity endorsements for the Product on social media, including, but not limited to, endorsements by Kim Kardashian. She expected the Product to act as a lip balm, which would hydrate her skin and she relied on Defendant's claims that the Product would moisturize and

hydrate her lips. She saw no warnings concerning any potential adverse reactions from use of the Product. She kept and intermittently used the coconut flavored Products throughout the summer and began using the Product on a daily basis beginning in November. Shortly after Plaintiff began using the EOS Lip Balm regularly, her lips began to crack and bleed and became painfully dry. After experiencing these adverse effects, Plaintiff noticed other individuals complaining online of similar adverse reactions. Plaintiff contacted EOS to complain about the adverse reaction she experienced, but received only a form email response which did not offer a solution, explanation, or relief. Had Plaintiff known that EOS Lip Balm does not work as represented by Defendant or had Plaintiff been warned of the potential adverse effects caused by the Product, Plaintiff would not have purchased the Product or would not have paid as much as she did for the Product.

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

JURISDICTION AND VENUE

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

11. This Court has personal jurisdiction over Defendant because Defendant conducts substantial business within Connecticut, including the distribution and sale of its products in Connecticut, and Plaintiff's claims arise from her purchase of Defendant's Product in Connecticut.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant does substantial business in this District, and a substantial part of the events giving rise to Plaintiff's claims took place within this judicial district, including Plaintiff's purchase of the Product and the adverse effects she experienced as a result of using the Product.

FACTUAL BACKGROUND

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

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

15. Defendant's marketing vice president has acknowledged that much of the Product's success can be attributed to its appealing packaging. *See* Lieber, Chavie, Why EOS

Lip Balm Is Suddenly Everywhere (Oct. 31, 2014), <http://www.racked.com/2014/10/31/7571165/eos-lip-balm>.

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

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

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

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

- a. gives users “visibly soft” and “immediately softer, more beautiful lips”;
- b. is made “with shea butter and jojoba oil for happy, moist, super-smooth lips”;
- c. is “enriched with natural conditioning oils, moisturizing shea butter and antioxidant vitamins C & E” and “absorbs to nourish lips for a softness you can feel”;
- d. “softens,” “hydrates,” and “nourishes”; and
- e. is “[p]acked with antioxidant-rich vitamin E, soothing shea butter and jojoba oil” and “keeps your lips moist, soft and sensationally smooth.”

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

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

22. Defendant's marketing materials do not contain adequate warnings concerning potential adverse reactions from use of the Product. Nor does Defendant provide information regarding limits on frequency of use on the Product or elsewhere.

23. While Defendant's manufacturing process and Product formulations can only be obtained through discovery, even the ingredients list published on packaging and in marketing materials shows certain ingredients that are known allergens and/or irritants. For example, the ingredient "Beeswax/Cera Alba" is the bleached form of *cera flava*, the yellow wax produced from honeycomb. It contains propolis (glue produced by honeybees to build hives), which as an allergen can result in dermatitis or hives, and produce symptoms including itching, burning, swelling, a localized rash, redness, scaling and crusting of the lips.

24. At least two ingredients, “Cocos Nucifera (Coconut) Oil” and “Butyrospermum Parkii (Shea Butter),” are classified as tree nuts and can also trigger allergic reactions. Some reactions from coconut oil may include tingling, hives, eczema, or general inflammation and itching, as well as dermatitis (involving localized swelling, redness, and inflammation). Similarly, the ingredient “Jojoba” can cause rashes and allergic reactions when applied to the skin, including redness, breakouts, blisters or itchiness.

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

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

27. For example, in a 2012 blog post, one consumer described how during her use of EOS Lip Balm she “started to get VERY chapped lips.” She continued, “Of course, I kept applying EOS because I thought it would make it better. Not only were my lips chapped, but I had a lot of dryness around my mouth as well. I stopped using my EOS balms and used vaseline instead. It took a good month or two to completely heal up.” Once her lips had healed and after a month or two of not using EOS Lip Balm, one night she tried using the Product again. She writes, in part, “Last night, I applied EOS before I went to bed...when I woke up...the rash was

back!... these babies are going in the trash ASAP!” She posted a photo of her lips and the surrounding skin covered in a red rash:



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

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

- a. “I too did not have success with the EOS lip balms. I would put them on numerous times through the day and **by the end of the day the skin on my lips was flaking to the point I could pull it off in strips!**” (May 3, 2013);
- b. “I too have used the eos lip balms and keep **getting tiny somewhat raw bumps on my upper lip**. I stopped using them for a while, the bumps go away. I start over just to see if it could be them causing it and I believe it is the lip balm.” (Sept. 12, 2013);
- c. “I as well had a problem with the EOS lip balms. I actually used them for a good couple of months before **I started noticing they were drying out my lips bad. I developed small skin colored bumps, like pimples too. They took about a week to go away. But my lips were soooooo flaky and dry during that time!**” (Sept. 15, 2013);
- d. “I am so glad I found this question and responsive threads. I recently have been having the same issues as everyone else. I stated using EOS lip balm two months ago. **I noticed I had these tiny red bumps that itched but also burned. They appeared along the bottom of my lower lip line. I decided to stop using the balm to see if it made a difference. My symptoms cleared up and went away. I then started using the balm again this week**

to see if I would have the same reaction and I do. I don't know what the little bumps are but they aren't zits because they aren't filled with anything. I am so sad because I bought a huge pack from Costco and have 6 of them.” (Oct. 1, 2013);

- e. “waahh..i came across this thread because **i'm getting these small red bumps on the edges of my lips and i'm thinking it could be the eos lip balm. my lips are now very dry and itchy..** :!(” (March 2, 2014);
- f. “I am so thankful you all posted this it helped me narrow down my problem. My newest one after using just that for a few weeks went in the trash last night **the more I used it the more it broke down the corners of the skin near my lips..** Thank you all for educating me that this could be an issue!” (Sept. 16, 2014);
- g. “i bought eos lip balm a month ago and **after a couple day my lips started to peel , itch and burn** i look up on what cause burning, itchy, red lumps and red round spots it came down to cold sores **i stop using this eos lip balm and bought abreva to stop what i thought was a sore but did not work so i let it resolve on its own and in a week it cured but then i went back to use eos and now the symptoms started right after i put it on my lips** this is when i realize that am allergic to eos lip balm. itchy, bumpy, burning lips is the worse feeling. hope this can help others” (Feb. 23, 2015).

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

(emphasis added).

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

- a. “I have used eos lip balm in the past with no problems. I recently purchased a new eos for myself and **after using it for one day I had a severe reaction.** After doing some research I have found that I am not the only one this has happened to. **The company claims they have never had anyone call with this problem before and did not offer any solution.** I just wanted to let others know that this can happen.” (Oct. 16, 2014);
- b. “I purchased the sweet mint flavored & started using about a year ago. I loved it & thought it worked great & smelt great. **This past summer my lips became ridiculously chapped & broken to the point o[f] bleeding.** I thought it was due to over exposure to the sun. **I had to end up going to the doctor & was told to stop using lip balm or chapstick while i was taking medicine (which was only for a week) & use vasaline. So, i stopped using EOS & after a few weeks my lips cleared back up.** This took place in July.

Yesterday, December 16, i was in my local Wal-Mart & picked one back up while at the register to check out thinking i would start backin using. I placed it on one time yesterday, then this morning, & just about an hour ago & with in minutes my lips burned, & turned red & puffy. Even read around my lips. I looked up alergic reactions to EOS on line & saw pics of many with the same as I currently have. I threw mine away today & have decided this is NOT the lip balm for me & my lips at all!!” (Dec. 17, 2014);

- c. **“I had been using EOS with no issues for over a year. Within the 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 blamed on the extremely cold weather but within the last few days, I’ve noticed that the more EOS I use, the drier and more chapped my lips become. They now are burning and my lip is slightly swollen and of course, I’ve completely stopped using it....”** (Jan. 8, 2015);
- d. **“After I started to use the balm on a daily basis I have noticed that my lips could not be without it anymore. I just had to apply it because my lips started to dry. I have rarely suffered with chopped lips prior to EOS, but after about two weeks of using these product not only my lips became ch[a]pped to the point of peeling, but corners of my mouth also turned red and dry. It looks like i have cold sores. I’m definitely returning this balm and it is highly unlikely that I will ever purchase it again. Nice design though, but the product is worthless....”** (Jan. 8, 2015);
- e. **“I am usually not allergic nor sensitive to any products but I after using this lip balm for a couple weeks I started to get a type of allergic reaction. I have never experienced this type of feeling before and I didn’t realize it was the lip balm until I stopped using it entirely, which ended up healing my lips and making them feel normal again. It wasn’t until I lost my other chapstick and had to use EOS again that I figured out what caused the discomfort. Not even a day later of using EOS that the reaction happened and now my lips feel like they have a bunch of invisible little pimples on it. It feels disgusting. I am very unhappy, definitely not buying the product ever again.”** (Jan. 28, 2015);
- f. **“For two months my face was chapped about an inch around my lips – cracking, bleeding, painful to talk or drink. I thought it might be from stress or something I was eating. Finally saw my doctor and she recommended I stop with all my different lip chaps and just use a hypoallergenic lotion. A year later I decided to buy an eos vanilla mint**

because I remembered how much I liked it and sure enough my face is chapped, swollen and sore after 3 days.” (Feb. 9, 2015);

- g. **“I had the same problem in 2013 and the EOS company did not care at all so I posted on their fb page. I never used their lip balm or any other product they manufacture. I’ve met a lot of people who have the same problems with their lip balm.”** (March 22, 2015);
- h. **“I have read a lot of the comments about eos. Thank you all for posting. I have started using ... eos about 2 months ago....my lips are awful, shaped, peeling, cracks in the corners of my mouth and now blisters on my bottom lip. I am not subject to having allergic reactions, thanks to eos I can longer say that. Needless to say I have thrown out all 4 eos lip balm.”** (May 3, 2015);
- i. **“I’ve been using eos lip balm for about two weeks. My lips were dry from the beginning and I thought it was because I switched from my usual (Carmex) to something new. Well this week my lips have been so dry it hurts. They are dry, sore, red and I have black spots. I’m hoping my lips clear up and I hope the black spots go away.”** (June 7, 2015);
- j. **“So I really wanted to try this lip balm just because it looked different and so I went for it. I had been using it for about two months, and all of a sudden, sometime last week I wake up with the upper part of my lip peeled; I was like I was sleeping how did this happen?! The next day I realize I had a random cold sore on my bottom lip, the day after I had four of them and tiny red spots, not to mention how horribly chapped my lips became....This thing ruined my lips and made me miserable in the span of just three days, and after reading all of these comments I got up and threw that thing away. I don’t know when it’s going to heal but I should have definitely read the reviews before buying it. And I haven’t read a review on a product with this many negative feedback with almost all of them stating the same thing, they should really either stop 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 that just wouldn’t heal. They would chap & peel over and over again!! Finally, I just started using vasaline and my lips healed. WELL, two days ago, without realizing it was EOS that caused the first reaction, I found my EOS in my makeup drawer, and used some.**

I even thought to myself, wow, I haven't used this in forever. Sure enough my lips are bright red, dry, itching, chapped, and swollen!! I finally put the pieces together that this POS lip balm EOS caused it!! I turned to the internet and this is what I found. How is this product even on the market anymore????!!" (July 18, 2015).

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

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

30. These consumers, as well as Plaintiff and other Class members, sustained damages as a direct and proximate result of Defendant's negligence and wrongful conduct and omissions in connection with the research, formulation, manufacture, testing, marketing, and sale of the Product. Despite having long had 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.

31. Plaintiff and other Class members relied on Defendant's misrepresentations and omissions regarding the benefits of the Product. Plaintiff, the Class, and the Subclass (as defined below) have been damaged by Defendant's deceptive and unfair conduct and wrongful inaction in that they purchased the Product, which they would not have otherwise purchased, or would not have paid as much for, had Defendant not misrepresented the benefits of the Product or warned them of the potential harms caused by the Product.

CLASS ACTION ALLEGATIONS

32. Plaintiff seeks to represent a class defined as all persons in the United States who purchased the Product (the “Class”). Excluded from the Class are persons who purchased the Product for purposes of resale.

33. Plaintiff also seeks to represent a subclass defined as all members of the Class who purchased the Product in Connecticut (the “Connecticut Subclass”).

34. Members of the Class and the Connecticut Subclass are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class and the Connecticut Subclass number in the hundreds of thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant and third party retailers and vendors.

35. Common questions of law and fact exist as to all members of the Class and the Connecticut Subclass and predominate over questions affecting only individual Class and Connecticut Subclass members. Common legal and factual questions include, but are not limited to, whether Defendant’s labeling and marketing of the Product was misleading and omitted material information.

36. The claims of the named Plaintiff are typical of the claims of the Class and the Connecticut Subclass she seeks to represent in that the named Plaintiff was exposed to Defendant’s misleading labeling and advertising, purchased the Product, and suffered a loss as a result of that purchase.

37. Plaintiff is an adequate representative of the Class and the Connecticut Subclass because her interests do not conflict with the interests of the Class or Connecticut Subclass

members she seeks to represent, she has retained competent counsel experienced in prosecuting class actions, and she intends to prosecute this action vigorously. The interests of Class and Connecticut Subclass members will be fairly and adequately protected by Plaintiff and her counsel.

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

COUNT I

(Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110A, et seq.)

39. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

40. Plaintiff brings this claim individually and on behalf of the members of the Connecticut Subclass against Defendant.

41. Plaintiff and members of the Connecticut Subclass are "persons" within the meaning of Conn. Gen. Stat. § 42-110a.

42. At all times relevant hereto, Defendant was engaged in “trade or commerce” as defined by Conn. Gen. Stat. § 42-110a because it markets and sells its Products within Connecticut.

43. Defendant’s actions and omissions alleged herein constitute unfair acts and deceptive practices in the conduct of trade or commerce in violation of CUTPA and Conn. Agencies Regs. § 42-110b-18(e), promulgated by Connecticut’s Department of Consumer Protection. Defendant misrepresented the characteristics, benefits, and qualities of the Product by representing that the Product will nourish and hydrate lips, and leave them soft, smooth, and more beautiful, when in fact the Product increases the risk of and results in painful and unsightly rashes, blisters, redness, cracking, and other signs of damage and irritation. Further, by failing to provide adequate warnings concerning potential adverse reactions from use of the Product or information regarding limits on frequency of use, Defendant engaged in concealment, suppression, or omission of material facts in violation of CUTPA. This information is of the kind that buyers would be expected to rely on in deciding whether to purchase the Product.

44. Defendant’s false statements that the Product will nourish and hydrate lips, and leave them soft, smooth, and more beautiful, when in fact it increases the risk of and results in painful and unsightly rashes, blisters, redness, cracking, and other signs of damage and irritation, and Defendant’s failure to provide adequate warnings concerning potential adverse reactions from use of the Product or information regarding limits on frequency of use, could reasonably be found to have caused consumers to have acted differently than they would otherwise have acted in the absence of such statements.

45. As a direct and proximate result of Defendant’s violations, Plaintiff and Connecticut Subclass members have suffered injury and actual out-of-pocket losses because they

would not have purchased the Product or would have paid less for the Product had they known the true facts. Plaintiff and Connecticut Subclass members are entitled to: compensatory damages, punitive damages, injunctive relief against further violations, reasonable attorney's fees and costs and pre- and post-judgment interest, and such other relief as is proper.

46. Upon filing the instant Complaint, Plaintiff shall mail a copy of the Complaint to the Attorney General and the Commissioner of Consumer Protection.

COUNT II
(Unjust Enrichment)

47. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

48. Plaintiff brings this claim individually and on behalf of the members of the Class against Defendant.

49. Plaintiff and members of the Class conferred benefits on Defendant by purchasing the Product.

50. Defendant has been unjustly enriched in retaining revenues derived from Plaintiff's and Class members' purchases of the Product. Retention of that revenue under these circumstances is unjust and inequitable because Defendant misrepresented and omitted facts concerning the characteristics, uses, and benefits of the Product and caused Plaintiff and Class members to purchase the Product and to pay more for the Product, which they would not have done had the true facts been known.

51. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiff and members of the Class is unjust and inequitable, Defendant must pay restitution to Plaintiff and members of the Class for its unjust enrichment, as ordered by the Court.

COUNT III
(Negligence)

52. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

53. Plaintiff brings this claim individually and on behalf of the members of the Class against Defendant.

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

55. At all times relevant and material hereto, Defendant had a duty to exercise reasonable care in the design, manufacture, research and development, testing, processing, advertising, marketing, labeling, packaging, distribution, promotion and sale of the Product.

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

- a. Failing to use due care in the formulation, design, and development of the Product to prevent and/or minimize the risk of injury and adverse effect to individuals when the Product was used;
- b. Failing to test the Product properly and thoroughly before releasing it on the market;
- c. Failing to conduct adequate post-market monitoring and surveillance of the Product and analysis for adverse reports and effects;
- d. Designing, manufacturing, marketing, advertising, distributing, and selling the Product to consumers, including Plaintiff and Class members, without adequate warnings of the risks associated with using the Product and without

proper and/or adequate instructions to avoid the harm which could foreseeably occur as a result of using the Products;

- e. Failing to exercise due care when advertising and promoting the Products;
- f. Negligently continuing to manufacture, market, distribute, and sell the Product, after Defendant knew or should have known of the risks of serious injury associated with using the Product;
- g. Failing to conduct adequate post-market surveillance and studies to determine the safety of the Product;
- h. Failing to label the Product to adequately warn Plaintiff, Class members, and the public of the risk of injury and adverse effects associated with the Product.

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

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

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

60. Despite the fact that Defendant knew or should have known that the Product increased the risk of injury, Defendant continued to manufacture, market, advertise, promote, sell and distribute the Product to consumers, including Plaintiff and Class members.

61. Defendant recklessly and/or negligently failed to disclose to Plaintiff and Class members the risks and adverse effects associated with the Product, thereby suppressing material

facts about the Product, while having a duty to disclose such information, which duty arose from its actions of making, marketing, promoting, distributing and selling the Product as alleged.

62. Defendant led Plaintiff and Class members to rely upon the safety of the Product in their use of the Product.

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

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

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

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

67. At the time Defendant made these misrepresentations and/or omissions, it knew or should have known that the Product was unreasonably dangerous and not what Defendant had represented to Plaintiff and Class members.

68. Defendant's misrepresentations and/or omissions were undertaken with an intent that Plaintiff and Class members rely upon them.

69. Plaintiff relied on and was induced by Defendant's misrepresentations, omissions, and/or active concealment of the dangers of the Product to purchase and use the Product.

70. Plaintiff did not know that these representations were false and therefore was justified in her reliance.

71. As a direct and proximate consequence of Defendant's negligent, willful, wanton, and/or intentional acts, omissions, misrepresentations and/or otherwise culpable acts described herein, Plaintiff sustained injuries and damages as alleged herein.

72. Had Plaintiff been aware of the increased risk of injury associated with the Product and the relative efficacy of the Product compared with other readily available products, she would not have purchased the Product or would not have paid as much for the Product.

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

74. Defendant's negligence was a substantial factor in causing Plaintiff's harm.

75. Plaintiff and Class members are entitled to compensatory damages, and exemplary and punitive damages together with interest, and such other and further relief as this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks a judgment against Defendant, as follows:

- A. For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representatives of the Class and Connecticut Subclass and Plaintiff's attorneys as Class Counsel to represent the Class and Connecticut Subclass;
- B. For an order declaring that Defendant's conduct violates the statutes referenced herein;
- C. For an order finding in favor of Plaintiff and the Class and Connecticut Subclass on all counts asserted herein;
- D. For compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury;
- E. For prejudgment interest on all amounts awarded;
- F. For an order of restitution and all other forms of equitable monetary relief;
- G. For an order enjoining Defendant from continuing the unlawful practices detailed herein; and
- H. For an order awarding Plaintiff and the Class and Connecticut Subclass their reasonable attorneys' fees and expenses and costs of suit.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all causes of action and issues so triable.

Dated: February 5, 2016

Respectfully submitted,

LEVI & KORSINSKY LLP

By: s/ Shannon L. Hopkins
Shannon L. Hopkins (29744)

Nancy A. Kulesa (25384)
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Stamford, Connecticut 06901
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LEVI & KORSINSKY LLP

Lori G. Feldman (*pro hac vice* to be filed)

Andrea Clisura (*pro hac vice* to be filed)

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Attorneys for Plaintiff

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Connecticut



SAMANTHA SANTIAGO, individually and on behalf of all others similarly situated,

Plaintiff

v.

EOS PRODUCTS, LLC,

Defendant

)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

eos Products, LLC
19 West 44th Street, Suite 811
New York, New York 10036

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Shannon L. Hopkins
Levi & Korsinsky LLP
733 Summer Street, Suite 304
Stamford, Connecticut 06901

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

Santiago, Samantha individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Shannon L. Hopkins, Nancy A. Kulesa, Lori G. Feldman, Andrea Clisura, Courtney E. Maccarone, 733 Summer Street, Suite 304, Stamford, Connecticut 06901, Tel. 203-992-4523

DEFENDANTS

eos Products, LLC

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
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes options for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each category contains a list of specific legal claims.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332(d)(2) Class Action Fairness Act
Brief description of cause: Unfair and deceptive trade practices, unjust enrichment, negligence

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 02/05/2016 SIGNATURE OF ATTORNEY OF RECORD s/ Shannon L. Hopkins

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.