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Counsel for Plaintiff and the [Proposed] Class

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

LAUREL BIRMINGHAM,	)	Case No.:
individually and on behalf of all)	
others similarly situated,	)	<u>CLASS ACTION</u>
)	
Plaintiff,	)	COMPLAINT FOR:
	)	(1) BREACH OF EXPRESS
v.	)	WARRANTY;
	)	(2) BREACH OF IMPLIED
EDGEWELL PERSONAL CARE	)	WARRANTY;
COMPANY, EDGEWELL	)	(3) UNJUST ENRICHMENT;
PERSONAL CARE BRANDS,	)	(4) VIOLATION OF CAL. UNFAIR
LLC, and EDGEWELL	)	COMPETITION LAW; AND
PERSONAL CARE, LLC,	)	(5) VIOLATION OF CAL. CONSUMERS
	)	LEGAL REMEDIES ACT
Defendants.)	
	)	<u>DEMAND FOR JURY TRIAL</u>

1 Plaintiff Laurel Birmingham (“Plaintiff”) brings this action on behalf of herself
2 and all others similarly situated against Edgewell Personal Care Company; Edgewell
3 Personal Care Brands, LLC; and Edgewell Personal Care, LLC (collectively,
4 “Edgewell” or “Defendant”). Plaintiff makes the following allegations pursuant to
5 the investigation of her counsel and based upon information and belief, except as to
6 the allegations specifically pertaining to Plaintiff, which are based on personal
7 knowledge.

8 **NATURE OF THE ACTION**

9
10 1. This is a class action against Defendant for falsely and misleadingly
11 advertising that its Banana Boat Kids Tear-Free Sting-Free Lotion (the “Product”) is
12 Sun Protection Factor (“SPF”) 50 when, in fact, it is SPF 8. On the Product’s
13 packaging, it clearly and boldly states on the front of the packaging “50” and “Broad
14 Spectrum SPF 50.” This representation is false.

15 2. Independent laboratory testing reveals that the Product is not SPF 50. In
16 fact, the SPF has been found to be 8, a much lower rating that makes it much less
17 effective than advertised.¹

18 3. SPF is a rating system that measures the fraction of the Sun’s ultraviolet
19 (“UV”) rays that reach the surface of the skin. As a result, for SPF 50, 1/50th of the
20 UV rays of the Sun reach the skin past the sunscreen. At SPF 8, a much higher
21 fraction, 1/8th, do.

22 4. As a direct and proximate result of Defendant’s false and misleading
23 advertising claims and marketing practices, Plaintiff and the members of the Class, as
24 defined herein, purchased the Product and paid more for the Product because they

25 ¹ See *Suncreens: What’s really working and what’s not*, CBS NEWS,
26 [http://www.cbsnews.com/news/consumer-reports-which-sunscreens-live-up-to-](http://www.cbsnews.com/news/consumer-reports-which-sunscreens-live-up-to-product-claims-keep-skin-safe/)
27 [product-claims-keep-skin-safe/](http://www.cbsnews.com/news/consumer-reports-which-sunscreens-live-up-to-product-claims-keep-skin-safe/) (last visited June 10, 2016).

1 were deceived into believing that the Product was SPF 50. Because the Product is, in
2 fact, SPF 8, Plaintiff and Class members have suffered an ascertainable and out-of-
3 pocket loss.

4 5. Plaintiff seeks relief in this action individually and on a class-wide basis
5 for breach of express and implied warranties, negligent misrepresentation, fraud,
6 unjust enrichment, and for violations of the California Unfair Competition Law, Cal.
7 Bus. & Prof. Code §§ 17200 *et seq.*, and the California Consumers Legal Remedies
8 Act, Cal. Civil Code §§ 1750 *et seq.*

9 **THE PARTIES**

10 6. Plaintiff Laurel Birmingham is domiciled in Los Angeles County,
11 California. Plaintiff Birmingham purchased the Product on May 9, 2016, in Studio
12 City, California. She paid approximately \$13 for the Product. In purchasing the
13 Product, Plaintiff read and relied on the prominent representation on the front of the
14 Product label – that the Product is “SPF 50.” Plaintiff reasonably understood this
15 representation to mean that the Product is of a high SPF that is highly effective in
16 blocking UV rays. Plaintiff would not have purchased the Product, or would not
17 have paid as much for the Product, had she known that the “SPF 50” representation is
18 false and misstates the amount, percentage, and quality of UV ray blockage provided
19 by the Product. Plaintiff suffered an injury in fact and lost money as a result of
20 Defendant’s deceptive, misleading, false, unfair, and fraudulent practices, as
21 described herein.

22 7. Defendant Edgewell Personal Care Company is a Delaware corporation
23 with headquarters in St. Louis, Missouri. Defendant develops, manufactures,
24 distributes, sells, and advertises its Banana Boat Kids Tear-Free Sting-Free Lotion
25 nationwide, including in California and in this District. Defendant has been and still
26 is engaged in the business of distributing, marketing, and selling Banana Boat Kids
27 Tear-Free Sting-Free Lotion throughout the United States. On July 1, 2015
28 Energizer Holdings spun off its household products division as Energizer Holdings

1 while retaining its personal care products (including the Banana Boat brand) under
2 the new name of Edgewell Personal Care Company.²

3 8. Defendant Edgewell Personal Care Brands, LLC is a Delaware Limited
4 Liability Corporation with its headquarters in St. Louis, Missouri. Defendant
5 Edgewell Personal Care Brands, LLC is a wholly-owned subsidiary of and/or 100%
6 controlled by Edgewell Personal Care Company.

7 9. Defendant Edgewell Personal Care, LLC is a Delaware Limited
8 Liability Corporation with its headquarters in St. Louis, Missouri. Defendant
9 Edgewell Personal Care, LLC is a wholly-owned subsidiary of and/or 100%
10 controlled by Edgewell Personal Care Company.

11 **JURISDICTION AND VENUE**

12 10. This Court has jurisdiction over this action pursuant to 28 U.S.C.
13 § 1332(d) because there are more than 100 Class members, the aggregate amount in
14 controversy exceeds \$5,000,000, exclusive of interest, fees, and costs, and at least
15 one Class member is a citizen of a state different from the Defendant.

16 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a
17 substantial part of the events or omissions giving rise to Plaintiff's claims occurred in
18 this District as Defendant does business throughout this District, including selling
19 and distributing the products at issue in this District.

20 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

21 12. Consumers purchasing Defendant's Product are presented with a
22 prominent marketing claim on Defendant's Product packaging. Defendant proclaims

23 ///

24 ///

25 ///

26 _____
27 ² See Edgewell Personal Care Company, Quarterly Report (Form 10-Q) (Aug.
28 10, 2015).

the Product is “Broad Spectrum SPF 50.” The packaging also shows a prominent red shield that says “50”, indicating an SPF of 50. Further, the Product’s packaging states that it provides “UVA/UVB Protection.”



13. Plaintiff and other consumers rely on Defendant’s claims that the Product provides a Sun Protection Factor of at least 50. They reasonably interpret and understand the claims to mean that the Product is of a high SPF that is ‘highly effective’ in blocking the sun’s ultraviolet rays.

14. However, Defendant’s claims are untrue. Defendant’s Product does not provide a Sun Protection Factor of 50. In fact, independent laboratory testing reveals that the Product provides a Sun Protection Factor of 8,³ meaning that the Product allows 1/8th of the sun’s radiation through its protection, rather than 1/50th.

³ See *Ratings: Sunscreen Lotions, Sprays, and Sticks*, CONSUMER REPORTS, July 2016, at 28.

1 15. Consumer Reports states that its “Tested SPF” ratings are “based on the
2 average results for each sunscreen, not how close a sunscreen comes to meeting its
3 SPF claim, and is used to calculate [its] UVB scores.” Further, “[t]o test for UVA,
4 we smear sunscreen on plastic plates and pass UV light through and measure the
5 amount of UVA and UVB rays that are absorbed. That information is then used to
6 calculate our UVA score.” *Id.*

7 16. This tested SPF rating of 8 is far below that recommended by the
8 American Academy of Dermatology, which recommends all people use a sunscreen
9 with an SPF of at least 30.⁴

10 17. Further, Defendant specifically markets this sunscreen for children,
11 saying on its website, “This lotion spray is so gentle, it won’t irritate your child’s
12 eyes or skin. Plus, the white lotion lets Mom see where she’s applied it – no more
13 missed spots!”⁵

14 18. Defendant’s false advertising is not limited to its Product’s labels. For
15 example, Defendant has represented on its website and in store displays that the
16 Product is SPF 50. *Id.*

17 19. Defendant continues to make this false and misleading labeling claim
18 regarding the quality of its Product. In doing so, Defendant has misled and continues
19 to mislead consumers throughout the United States and is able to charge more for its
20 Product than it otherwise could.

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22
23
24
25 ⁴ See *Sunscreen FAQs*, AMERICAN ACADEMY OF DERMATOLOGY,
26 <https://www.aad.org/media/stats/prevention-and-care/sunscreen-faqs> (last visited
June 13, 2016).

27 ⁵ See *Kids & Baby*, BANANA BOAT, [http://www.bananaboat.com/products/kids-](http://www.bananaboat.com/products/kids-tear-free-sunscreen)
28 [tear-free-sunscreen](http://www.bananaboat.com/products/kids-tear-free-sunscreen) (last visited June 13, 2016).

CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action as a class action under Federal Rule of Civil Procedure 23 on behalf of all persons in the United States who, within the relevant statute of limitations period, purchased the Product (the “Class”).

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

22. Excluded from the Class and California Subclass are the Defendant, the officers and directors of the Defendant at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendant has or had a controlling interest.

23. Also excluded from the Class and California Subclass are persons or entities that purchased the Product for purposes of resale.

24. Plaintiff is a member of the Class and California Subclass she seeks to represent.

25. The Class and California Subclass are so numerous that joinder of all members is impractical. Although Plaintiff does not yet know the exact size of the Class, the Product is sold in retail locations throughout the United States, and on information and belief, members of the Class number in the hundreds of thousands.

26. The Class and California Subclass are ascertainable because their members can be identified by objective criteria – the purchase of Defendant’s Product in the United States during the statute of limitations period. Individual notice can be provided to Class members “who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B).

27. There are numerous questions of law and fact common to the Class which predominate over any individual questions or issues, including but not limited to whether the labeling and marketing of the Product was false and misleading.

28. Plaintiff’s claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant’s wrongful conduct.

1 Plaintiff has no interests antagonistic to the interests of the other members of the
2 Class. Plaintiff and all members of the Class have sustained economic injury arising
3 out of Defendant's violations of common and statutory law as alleged herein.

4 29. Plaintiff is an adequate representative of the Class because her interests
5 do not conflict with the interests of the Class members she seeks to represent, she has
6 retained counsel that is competent and experienced in prosecuting class actions, and
7 she intends to prosecute this action vigorously. The interests of the Class members
8 will be fairly and adequately protected by Plaintiff and her counsel.

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

21 **FIRST CLAIM FOR RELIEF**

22 **(Breach of Express Warranty)**

23 31. Plaintiff repeats the allegations contained in the paragraphs above as if
24 fully set forth herein.

25 32. Plaintiff brings this Count individually and on behalf of the members of
26 the Class and California Subclass.

27 33. In connection with the sale of the Product, Defendant issued express
28 warranties that the Product was of SPF 50.

1 Product was SPF 50. Defendant did so with the intent to induce Plaintiff and
2 proposed Class and California Subclass members to purchase the Product.

3 41. Defendant breached its implied warranties because the Product does not
4 have the characteristics or benefits as promised, as described herein.

5 42. As the manufacturer of the Product, Defendant had actual knowledge of
6 the breach. Additionally, the results of independent laboratory tests revealed that the
7 Product was SPF 8, which was made public prior to the filing of this Complaint.
8 Plaintiff served notice upon Defendant Edgewell Personal Care LLC and Defendant
9 Edgewell Personal Care Brands LLC of their breach on June 20, 2016. A copy of the
10 letter is attached hereto as Exhibit A.

11 43. Plaintiff and proposed Class and California Subclass members were
12 injured as a direct and proximate result of Defendant's breach because: (a) they
13 would not have purchased the Product or would not have paid as much for the
14 Product if they had known the true facts; (b) they purchased and paid more for the
15 Product due to the implied warranties; and (c) the Product did not have the quality or
16 value as impliedly warranted.

17 **THIRD CLAIM FOR RELIEF**

18 **(Unjust Enrichment)**

19 44. Plaintiff repeats the allegations contained in the paragraphs above as if
20 fully set forth herein.

21 45. Plaintiff brings this Count individually and on behalf of the members of
22 the Class and California Subclass.

23 46. Plaintiff and members of the Class and California Subclass conferred
24 benefits on Defendant by purchasing the Product.

25 47. Defendant has been unjustly enriched in retaining revenues derived from
26 Plaintiff's and Class and California Subclass members' purchases of the Product.
27 Retention of that revenue under these circumstances is unjust and inequitable
28 because Defendant misrepresented facts concerning the characteristics, qualities, and

1 value of the Product and caused Plaintiff and Class and California Subclass members
2 to purchase the Product and to pay more for the Product, which they would not have
3 done had the true facts been known.

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

8 **FOURTH CLAIM FOR RELIEF**

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

10 **(On Behalf of Plaintiff and the California Subclass)**

11 49. Plaintiff repeats the allegations contained in the paragraphs above as if
12 fully set forth herein.

13 50. The Unfair Competition Law, California Business & Professions Code
14 §§ 17200, *et seq.* (the "UCL"), prohibits any "unlawful," "unfair," or "fraudulent"
15 business act or practice and any false or misleading advertising.

16 51. In the course of conducting its business, Defendant committed unlawful
17 business practices by, *inter alia*, making the representations (which also constitute
18 advertising within the meaning of § 17200) and omissions of material facts, as set
19 forth more fully herein, and violating Cal. Civil Code §§ 1750, *et seq.*, and the
20 common law.

21 52. Plaintiff, individually and on behalf of other California Subclass
22 members, reserves the right to allege other violations of law which constitute other
23 unlawful business acts or practices. Such conduct is ongoing and continues to this
24 date.

25 53. Defendant's actions constitute "unfair" business acts or practices
26 because, as alleged above, *inter alia*, Defendant engages in deceptive and false
27 advertising, and misrepresents and omits material facts regarding its products, and
28 thereby offends an established public policy, and engages in immoral, unethical,

1 oppressive, and/or unscrupulous activities that are substantially injurious to
2 consumers. This conduct constitutes violations of the unfair prong of Business &
3 Professions Code §§ 17200, *et seq.*

4 54. Business & Professions Code §§ 17200, *et seq.*, also prohibits any
5 “fraudulent business act or practice.”

6 55. Defendant’s actions, claims, nondisclosures, and misleading statements,
7 as alleged in this Complaint, also constitute “fraudulent” business practices in
8 violation of the UCL because, among other things, they are false, misleading, and/or
9 likely to deceive reasonable consumers within the meaning of Business &
10 Professions Code §§ 17200, *et seq.*

11 56. There were reasonably available alternatives to further Defendant’s
12 legitimate business interests other than the conduct described herein.

13 57. As a result of Defendant’s pervasive false marketing, including
14 deceptive and misleading acts and omissions as detailed in this Complaint, Plaintiff
15 and other members of the California Subclass have in fact been harmed as described
16 above. If Defendant had not misrepresented the Product as being of a higher SPF
17 level than it was, Plaintiff would not have purchased Defendant’s Product or would
18 not have paid as much for it as she did.

19 58. As a result of Defendant’s unlawful, unfair, and fraudulent practices,
20 Plaintiff and the other California Subclass members have suffered injury in fact and
21 lost money.

22 59. As a result of its deception, Defendant has been able to reap unjust
23 revenue and profit in violation of the UCL.

24 60. Unless restrained and enjoined, Defendant will continue to engage in the
25 above-described conduct. Accordingly, injunctive relief is appropriate for Plaintiff
26 and the California Subclass.

27 61. As a result of Defendant’s conduct in violation of the UCL, Plaintiff and
28 members of the California Subclass have been injured as alleged herein in amounts

1 to be proven at trial because they purchased the Product without full disclosure of the
2 material facts discussed above.

3 62. As a result, Plaintiff individually, and on behalf of the California
4 Subclass, and the general public, seeks restitution and disgorgement of all money
5 obtained from Plaintiff and the members of the California Subclass collected by
6 Defendant as a result of unlawful, unfair, and/or fraudulent conduct, and seeks
7 injunctive relief, and all other relief this Court deems appropriate, consistent with
8 Business & Professions Code section 17203.

9 **FIFTH CLAIM FOR RELIEF**

10 **(California Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.*)**

11 **(On Behalf of Plaintiff and the California Subclass)**

12 63. Plaintiff repeats the allegations contained in the paragraphs above as if
13 fully set forth herein.

14 64. This cause of action is brought pursuant to the California Consumer
15 Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.* (the “CLRA”). Plaintiff is a
16 consumer as defined by California Civil Code section 1761(d). The affected products
17 are goods within the meaning of the CLRA.

18 65. Defendant violated and continues to violate the CLRA by engaging in
19 the following practices proscribed by California Civil Code section 1770(a) in
20 transactions with Plaintiff and the California Subclass which were intended to result
21 in, and did result in, the sale of the affected products:

22 (5) Representing that [the products] have . . . characteristics, . . . uses [or]
23 benefits . . . which they do not have;

24 (7) Representing that [the products] are of a particular standard, quality, or
25 grade . . . if they are of another; and

26 (9) Advertising goods . . . with intent not to sell them as advertised.
27
28

1 66. Defendant violated the CLRA by marketing and advertising the affected
2 products in the manner described herein, when it knew, or should have known, that
3 the labeling and advertisements were deceptive, false and misleading.

4 67. Defendant was in a position to know, both from its own product
5 knowledge and independent testing that the Sun Protection Factor of the Product fell
6 far short of its advertised levels.

7 68. Defendant intended that Plaintiff and members of the California
8 Subclass would rely on the false and misleading representations, and any reasonable
9 consumer would deem the false and misleading representations material to the
10 purchase of the Product.

11 69. California Civil Code section 1780(a)(2) permits any court of competent
12 jurisdiction to enjoin practices that violate California Civil Code section 1770.

13 70. On June 20, 2016, Plaintiff sent to Defendant a letter demanding that
14 Defendant rectify the problems listed herein. If Defendant has failed to rectify or
15 agree to rectify the problems associated with the actions detailed above and give
16 notice to all affected consumers with thirty (30) days of the written notice pursuant
17 to section 1782 of the CLRA, then Plaintiff will further seek to recover actual or
18 statutory compensatory/monetary damages as authorized by California Civil Code
19 section 1780(a)(1), restitution as applicable and authorized under California Civil
20 Code section 1780(a)(3), and punitive damages as authorized by California Civil
21 Code section 1780(a)(4), which are appropriate in this case in light of Defendant's
22 knowing, intentional, fraudulent and unconscionable conduct, Defendant's reckless
23 disregard of its legal obligations to Plaintiff and the members of California Class,
24 and/or as otherwise recoverable under California Civil Code section 1780(a)(4). A
25 copy of the letter is attached hereto as Exhibit A.

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

28 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action;

B. For an order declaring that the Defendant's conduct violates the statutes referenced herein;

C. Awarding compensatory and punitive damages in favor of Plaintiff, members of the Class and the California Subclass against Defendant for all damages sustained as a result of Defendant's wrongdoing, in an amount to be proven at trial, including interest thereon;

D. Awarding injunctive relief against Defendant to prevent Defendant from continuing its ongoing unfair, unconscionable, and/or deceptive acts and practices;

E. For an order of restitution and/or disgorgement and all other forms of equitable monetary relief;

F. Awarding Plaintiff and members of the Class and California Subclass their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

G. Awarding such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims so triable in this action.

Dated: June 28, 2016

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

By: /s/ Rachele R. Rickert
RACHELE R. RICKERT

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Counsel for Plaintiff and the [Proposed] Class

BANANABOAT:23006

EXHIBIT A

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312-984-0000

RACHELE R. RICKERT
rickert@whafh.com

June 20, 2016

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edgewell Personal Care LLC
Edgewell Personal Care Brands LLC
1350 Timberlake Manor, Suite 300
St. Louis, MO 63017

Dear Sir/Madam:

We represent Ms. Laurel Birmingham, a purchaser of a product that we understand was manufactured, marketed and/or sold by Edgewell Personal Care LLC and/or Edgewell Personal Care Brands LLC (“Edgewell” or the “Company”). Our client is a citizen of California and she believes that the Company is engaging in, *inter alia*, unfair methods of competition and deceptive and misleading consumer practices in connection with the marketing and sale of Edgewell products, specifically, its Banana Boat Kids Tear-Free Sting-Free Lotion (“Banana Boat Sunscreen” or “Product”).

The Company has affirmatively represented that the Product provides a Sun Protection Factor (or “SPF”) of 50. However, recent testing indicates that the Product actually only has an SPF of 8.

We believe that the Company has been aware of this discrepancy during all or part of the time it has sold the product and has nonetheless persisted with its false representations. Accordingly, we submit that the Company has violated and continues to violate: (1) Cal. Civil Code §§ 1750, *et seq.* (the “CLRA”), which provides that “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful” (CLRA § 1770); (2) Cal. Business and Professions Code §§ 17200, *et seq.* (the “UCL”), which prohibits any “unlawful,” “unfair” or “fraudulent” business act or practice and any false or misleading advertising; and (3) Cal. Business and Professions Code §§ 17500, *et seq.* Misrepresenting that

Edgewell Personal Care, LLC

Page 2

June 20, 2016

its products have an SPF factor of 50 when they do not violates California Civil Code section 1770(a) in particular by:

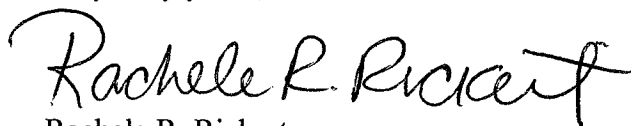
- Representing that [the] goods have ... approval, characteristics, . . . uses [or] benefits which they do not have;
- Representing that [the] goods ... are of a particular standard, quality or grade ... if they are of another; and
- Advertising goods ... with intent not to sell them as advertised.

In addition, we believe that the misrepresentations made by the Company constitute a breach of an express warranty from Edgewell to our client and other consumers that the Product has an SPF factor of 50 as well as the implied warranty of merchantability. We believe that Edgewell, at all relevant times, had actual knowledge of the misrepresentations it made regarding the product. While we do not believe notice is required in these circumstances, this letter nonetheless constitutes statutory notice pursuant to California Uniform Commercial Code § 2-607(3)(A) (as well as under applicable laws of all other states that have codified and adopted substantially similar language) of the Company's breach of express warranty. The Company breached its warranties with Ms. Birmingham and all others similarly situated by providing them with sunscreen that was not of the quality or grade that the Company represented it to be.

This letter is being served on behalf of our client and all similarly situated consumers, pursuant to CLRA § 1782(a), who hereby demand that the Company: (1) engage in corrective advertising concerning the unfair and/or deceptive acts or practices alleged herein; (2) cease and desist from the unlawful conduct described herein; and (3) reimburse our client and all other similarly situated consumers for the amount that they paid for these products that were sold using unfair and/or deceptive acts or practices. Please comply with this demand within 30 days. We stand ready to discuss a reasonable resolution of this matter on terms acceptable to our client and similarly situated consumers.

If you have any questions, require any additional information or would like to discuss these matters, please do not hesitate to contact me.

Very truly yours,



Rachele R. Rickert

EXHIBIT B

1 BETSY C. MANIFOLD (182450)
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2 RACHELE R. RICKERT (190634)
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8 *Counsel for Plaintiff and the [Proposed] Class*
9

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 LAUREL BIRMINGHAM,) Case No.:
14 individually and on behalf of all)
15 others similarly situated,) **AFFIDAVIT PURSUANT TO**
16) **CALIFORNIA CIVIL CODE § 1780(d)**
17 Plaintiff,)
18)
19 v.)
20)
21 EDGEWELL PERSONAL CARE)
22 COMPANY, EDGEWELL)
23 PERSONAL CARE BRANDS,)
24 LLC, and EDGEWELL)
PERSONAL CARE, LLC,)
25)
26 Defendants.)
27)
28)

1 I, LAUREL BIRMINGHAM, hereby declare that:

2 1. I am a plaintiff in the above-captioned action. I have personal
3 knowledge of the facts set forth below, and if called as a witness I could and would
4 testify competently thereto. I make this affidavit as required by California Civil
5 Code § 1780(d).

6 2. My Complaint filed in this matter contains a cause of action for
7 violations of the Consumers Legal Remedies Act against Edgewell Personal Care
8 Company, Edgewell Personal Care Brands, LLC, and Edgewell Personal Care, LLC
9 (collectively, "Edgewell"), Delaware corporations doing business nationwide with
10 their headquarters located in St. Louis, Missouri.

11 3. The Complaint in this action is filed in a proper place for the trial of this
12 action because I am domiciled in Los Angeles County, California and because
13 defendant Edgewell is doing business in Los Angeles County.

14 4. The Complaint in this action is further filed in a proper place for the trial
15 of this action because a substantial portion of the transactions that are the subject of
16 the action occurred in Los Angeles County.

17 I declare under penalty of perjury under the laws of the United States of
18 America that the foregoing is true and correct.

19 Executed by me in Los Angeles, California, on June 25, 2016.

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28

LAUREL BIRMINGHAM

BANANABOAT:23015