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14  
 15 **UNITED STATES DISTRICT COURT**  
 16 **CENTRAL DISTRICT OF CALIFORNIA**

17 VERONICA BRENNER, on behalf of  
 18 herself and all others similarly situated,

19 Plaintiff,

20 v.

21 PROCTER & GAMBLE CO.,

22 Defendant.  
 23  
 24

Case No. 8:16-1093-JLS-JCG

**FIRST AMENDED  
 CONSOLIDATED COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiffs Veronica Brenner and Angela Banegas (“Plaintiffs”), individually and  
2 on behalf of other similarly situated individuals, allege the following First Amended  
3 Consolidated Class Action Complaint against defendant Procter & Gamble Co.  
4 (“Defendant”) for making, marketing, and distributing Pampers “natural clean” Wipes,  
5 upon personal knowledge as to themselves and their own acts and upon information  
6 and belief – based upon, *inter alia*, the investigation made by their attorneys – as to all  
7 other matters, as follows:

8 **INTRODUCTION**

9 1. In recent years, consumers have become significantly more aware and  
10 sensitive to the toxicity and impact of household wipes on their health, the health of  
11 their children, and the general environment. As a result, demand has increased for  
12 wipes that are naturally derived and non-toxic.

13 2. Defendant manufactures Pampers “natural clean” Wipes (the “Wipes”)  
14 and distributes them to retailers nationwide for sale to consumers.

15 3. Defendant markets the Wipes to be a natural and safer alternative to  
16 traditional wipes, including traditional Pampers-brand wipes. Unlike other varieties of  
17 Pampers-brand wipes, the Wipes are sold in a green package bearing images of  
18 flowers and leaves that prominently states “natural clean:”



1           4.       Unfortunately for consumers, this is false and misleading. The Wipes are  
2 not natural because they contain an unnatural and potentially harmful ingredient called  
3 phenoxyethanol, which “can depress the central nervous system and may cause  
4 vomiting and diarrhea, which can lead to dehydration in infants” according to the Food  
5 and Drug Administration (“FDA”).<sup>1</sup>

6           5.       That is not all. In May 2012, the Agence Nationale de Sécurité du  
7 Médicament et des Produits de Santé (French National Agency for Medicines and  
8 Health Wipes Safety) (“ANSM”) published a report recommending that  
9 phenoxyethanol should be “avoid[ed] ... in cosmetic Wipes intended for the nappy  
10 area” for “infants under the age of three years” due to concerns of reproductive and  
11 developmental toxicity.

12           6.       At the very least, it is clear than phenoxyethanol is *not* a natural chemical.  
13 In April 2016, the Federal Trade Commission filed complaints against two cosmetics  
14 manufacturers for representing that their products were “natural” when they contained  
15 phenoxyethanol. Both companies agreed to cease marketing the products in question  
16 as being “natural.”<sup>2</sup>

17           7.       Defendant knows about these findings from American and French  
18 governmental agencies. And it knows that consumers use the Wipes on their infants’  
19 nappy areas, hands, and mouths. But Defendant puts phenoxyethanol in the Wipes  
20 anyway.<sup>3</sup>

21           8.       Defendant charges a premium for its “natural clean” Wipes, which are  
22 sold on store shelves alongside non-natural standard wipe offerings. The only reason  
23

24  
25 <sup>1</sup> <http://www.fda.gov/newsevents/newsroom/pressannouncements/ucm116900.htm>

26 <sup>2</sup> <https://www.ftc.gov/news-events/press-releases/2016/04/four-companies-agree-stop-falsely-promoting-their-personal-care>

27 <sup>3</sup> The Wipes also contain other non-natural and potentially harmful ingredients,  
28 including dimethicone, and ethylhexyl glycerin.

1 consumers purchase the Wipes over the non-natural alternatives is on account of  
2 Defendant’s representation that the Wipes are “natural.”

3 9. This is a proposed class action brought by Plaintiffs, on behalf of a class  
4 of similarly situated individuals, against Defendant for breach of express warranty,  
5 unjust enrichment, and violations of California and Florida consumer protection laws.

6 **JURISDICTION AND VENUE**

7 10. This Court has personal jurisdiction over Defendant. Defendant  
8 purposefully avails itself of the California consumer market and distributes the  
9 Wipes to at least hundreds of locations within this County and thousands of retail  
10 locations throughout California, where the Wipes are purchased by thousands of  
11 consumers every day.

12 11. This Court has original subject-matter jurisdiction over this proposed  
13 class action pursuant to 28 U.S.C. § 1332(d), which, under the provisions of the  
14 Class Action Fairness Act (“CAFA”), explicitly provides for the original jurisdiction  
15 of the federal courts in any class action in which at least 100 members are in the  
16 proposed plaintiff class, any member of the plaintiff class is a citizen of a State  
17 different from any defendant, and the matter in controversy exceeds the sum of  
18 \$5,000,000.00, exclusive of interest and costs. Plaintiffs allege that the total claims  
19 of individual members of the proposed Class (as defined herein) are well in excess of  
20 \$5,000,000.00 in the aggregate, exclusive of interest and costs.

21 12. Venue is proper in this District under 28 U.S.C. § 1391(a). Substantial  
22 acts in furtherance of the alleged improper conduct, including the dissemination of  
23 false and misleading information regarding the nature, quality, and/or ingredients of  
24 the Wipes, occurred within this District.

25 **PARTIES**

26 13. Plaintiff Veronica Brenner is an individual consumer who, at all times  
27 material hereto, was a citizen of California. Ms. Brenner has purchased Pampers  
28

1 “natural clean” Wipes from a Target store located in Rancho Santa Margarita,  
2 California on many occasions since May 2015 for approximately \$5.99. In  
3 purchasing the Wipes, Ms. Brenner relied on Defendant’s false, misleading, and  
4 deceptive representation that the Wipes provided only a “natural clean,” which was  
5 depicted on a green package alongside images and flowers and leaves. Ms. Brenner  
6 understood this representation to mean that the Wipes did not contain synthetic  
7 chemicals and, at the very least, would not contain chemicals which were potentially  
8 harmful to her child. Had Ms. Brenner known the truth that the statements she  
9 relied on were false, misleading, deceptive, and unfair; she would have not  
10 purchased the Wipes.

11 14. Plaintiff Angela Banegas is an individual consumer who, at all times  
12 material hereto, was a citizen of Florida. Ms. Banegas purchased the Wipes an  
13 estimated 100 times over the last twelve years at Babies “R” Us, Target, and BJ’s  
14 Wholesale Club in Broward County, Florida. In purchasing the Wipes, Ms. Banegas  
15 relied on Defendant’s false, misleading, and deceptive representation that the Wipes  
16 provided only a “natural clean,” which was depicted on a green package alongside  
17 images and flowers and leaves. Ms. Banegas understood this representation to mean  
18 that the Wipes did not contain synthetic chemicals and, at the very least, would not  
19 contain chemicals which were potentially harmful to her child. Had Ms. Banegas  
20 known the truth that the statements she relied on were false, misleading, deceptive,  
21 and unfair; she would have not purchased the Wipes.

22 15. Defendant Procter & Gamble Co. is incorporated in the State of Ohio,  
23 with a principal place of business at One Procter & Gamble Plaza Cincinnati, Ohio  
24 45202.

25 16. Defendant manufactures, markets, and distributes the Wipes throughout  
26 California and the United States.

1 **CLASS ALLEGATIONS**

2 17. Plaintiffs seek to represent a class defined as all persons in the United  
3 States who purchased Pampers “natural clean” Wipes (the “Class”). Excluded from  
4 the Class are persons who made such purchases for purpose of resale.

5 18. Ms. Brenner also seeks to represent a Subclass of all Class Members  
6 who purchased the Wipes in California (the “California Subclass”).

7 19. Ms. Banegas also seeks to represent a Subclass of all Class Members  
8 who purchased the Wipes in Florida (the “Florida Subclass”).

9 20. At this time, Plaintiffs do not know the exact number of members of the  
10 Class and Subclasses; however, given the nature of the claims and the number of  
11 retail stores in the United States selling Defendant’s Wipes, Plaintiffs believe that  
12 Class and Subclass members are so numerous that joinder of all members is  
13 impracticable.

14 21. There is a well-defined community of interest in the questions of law  
15 and fact involved in this case. Questions of law and fact common to the members of  
16 the Class that predominate over questions that may affect individual Class members  
17 include:

- 18 a. whether Defendant misrepresented and/or failed to disclose  
19 material facts concerning the Wipes;
- 20 b. whether Defendant’s conduct was unfair and/or deceptive;
- 21 c. whether Defendant has been unjustly enriched as a result of the  
22 unlawful, fraudulent, and unfair conduct alleged in this Complaint such that it would  
23 be inequitable for Defendant to retain the benefits conferred upon Defendant by  
24 Plaintiffs and the Class;
- 25 d. whether Defendant breached express warranties to Plaintiffs and  
26 the Class;
- 27
- 28

1 e. whether Plaintiffs and the Class have sustained damages with  
2 respect to the common law claims asserted, and if so, the proper measure of their  
3 damages.

4 22. With respect to the California Subclass, additional questions of law and  
5 fact common to the members that predominate over questions that may affect  
6 individual members include:

7 a. whether, in violation of California Civil Code § 1770(a)(5),  
8 Defendant represented that the Wipes had characteristics, uses, or benefits which  
9 they did not have;

10 b. whether, in violation of California Civil Code § 1770(a)(9),  
11 Defendant represented on packaging for the Wipes that they had characteristics,  
12 ingredients, uses, or benefits that they do not have;

13 c. whether Defendant is subject to liability for violating California's  
14 Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750-1784;

15 d. whether Defendant has violated California's Unfair Competition  
16 Law, Cal. Bus. & Prof. Code §§ 17200-17210;

17 e. whether Defendant has violated California's False Advertising  
18 Law, Cal. Bus. & Prof. Code §§ 17500-17536; and

19 f. whether the California Subclass is entitled to an award of  
20 restitution pursuant to California Business and Professions Code § 17203.

21 23. With respect to the Florida Subclass, additional questions of law and  
22 fact common to the members that predominate over questions that may affect  
23 individual members include whether Defendant violated the Florida Deceptive and  
24 Unfair Trade Practices Act.

25 24. Plaintiffs' claims are typical of those of the Class because Plaintiffs, like  
26 all members of the Class, purchased, in a typical consumer setting, Defendant's  
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1 Wipes bearing the natural representations and Plaintiffs sustained damages from  
2 Defendant's wrongful conduct.

3 25. Plaintiffs will fairly and adequately protect the interests of the Class and  
4 have retained counsel that is experienced in litigating complex class actions.  
5 Plaintiffs have no interests which conflict with those of the Class or Subclasses.

6 26. A class action is superior to other available methods for the fair and  
7 efficient adjudication of this controversy.

8 27. The prerequisites to maintaining a class action for equitable relief are  
9 met as Defendant has acted or refused to act on grounds generally applicable to the  
10 Class and the Subclasses, thereby making appropriate equitable relief with respect to  
11 the Class and the Subclasses as a whole.

12 28. The prosecution of separate actions by members of the Class and the  
13 Subclasses would create a risk of establishing inconsistent rulings and/or  
14 incompatible standards of conduct for Defendant. Additionally, individual actions  
15 could be dispositive of the interests of the Class and the Subclasses even where  
16 certain Class members are not parties to such actions.

17 **CAUSES OF ACTION**

18 **COUNT I**

19 **(Unfair and Deceptive Acts and Practices In Violation of the California**  
20 **Consumers Legal Remedies Act)**

21 29. Plaintiffs incorporate by reference and re-allege herein all paragraphs  
22 alleged above.

23 30. Plaintiff Brenner brings this cause of action on behalf of herself and  
24 members of the California Subclass.

25 31. This cause of action is brought pursuant to California's Consumers  
26 Legal Remedies Act, Cal. Civ. Code §§ I750-I785 (the "CLRA").  
27  
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1           32. Ms. Brenner and the other members of the California Subclass are  
2 “consumers,” as the term is defined by California Civil Code § 1761(d), because they  
3 bought the Wipes for personal, family, or household purposes.

4           33. Ms. Brenner, the other members of the California Subclass, and  
5 Defendant have engaged in “transactions,” as that term is defined by California Civil  
6 Code § 1761(e).

7           34. The conduct alleged in this Complaint constitutes unfair methods of  
8 competition and unfair and deceptive acts and practices for the purpose of the  
9 CLRA, and the conduct was undertaken by Defendant in transactions intended to  
10 result in, and which did result in, the sale of goods to consumers.

11           35. As alleged more fully above, Defendant has violated the CLRA by  
12 falsely representing to Ms. Brenner and the other members of the California Subclass  
13 that the Wipes were natural when they contained unnatural and potentially harmful  
14 chemicals.

15           36. As a result of engaging in such conduct, Defendant has violated  
16 California Civil Code § 1770(a)(5), (a)(7) and (a)(9).

17           37. CLRA § 1782 NOTICE. On April 15, 2016, a CLRA demand letter was  
18 sent to Defendant via certified mail that provided notice of Defendant’s violation of  
19 the CLRA and demanded that within thirty (30) days from that date, Defendant  
20 correct, repair, replace or other rectify the unlawful, unfair, false and/or deceptive  
21 practices complained of herein. The letter also stated that if Defendant refused to do  
22 so, a complaint seeking damages in accordance with the CLRA would be filed.  
23 Defendant has failed to comply with the letter. Accordingly, pursuant to California  
24 Civil Code § 1780(a)(3), Ms. Brenner, on behalf of herself and all other members of  
25 the California Subclass, seeks compensatory damages, punitive damages, and  
26 restitution of any ill-gotten gains due to Defendant’s acts and practices.  
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**COUNT II**

**(Violations of California’s False Advertising Law)**

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2  
3 38. Plaintiffs incorporate by reference and re-allege herein all paragraphs  
4 alleged above.

5 39. Ms. Brenner brings this cause of action on behalf of herself and  
6 members of the California Subclass.

7 40. As alleged more fully above, Defendant has falsely advertised the  
8 Wipes by falsely claiming that they are natural when they are not.

9 41. Ms. Brenner and the other members of the California Subclass have  
10 suffered injury in fact and have lost money or property as a result of Defendant’s  
11 violations of California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §  
12 17500 *et seq.*

**COUNT III**

**(Violation California’s Unfair Competition Law)**

13  
14 42. Plaintiffs incorporate by reference and re-allege herein all paragraphs  
15 alleged above.

16 43. Ms. Brenner brings this cause of action on behalf of herself and  
17 members of the California Subclass.

18 44. By committing the acts and practices alleged herein, Defendant has  
19 violated California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§  
20 17200-17210, as to the California Subclass, by engaging in unlawful, fraudulent, and  
21 unfair conduct.

22 45. Defendant has violated the UCL’s proscription against engaging in  
23 *unlawful* conduct as a result of:

24 (a) its violations of the CLRA, Cal. Civ. Code § 1770(a)(5), (a)(7),  
25 and (a)(9), as alleged above; and

26 (b) its violations of the FAL, Cal. Bus. & Prof. Code § 17500 *et seq.*  
27 as alleged above.  
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1           46. Defendant's acts and practices described above also violate the UCL's  
2           proscription against engaging in fraudulent conduct.

3           47. As more fully described above, Defendant's misleading marketing,  
4           advertising, packaging, and labeling of the Wipes is likely to deceive reasonable  
5           consumers. Indeed, Ms. Brenner and the other members of the California Subclass  
6           were unquestionably deceived regarding the natural benefits of the Wipes, as  
7           Defendant's marketing, advertising, packaging, and labeling of the Wipes  
8           misrepresent and/or omit the true facts concerning the benefits of the Wipes. Said  
9           acts are fraudulent business practices.

10          48. Defendant's acts and practices described above also violate the UCL's  
11          proscription against engaging in *unfair* conduct.

12          49. Ms. Brenner and the other California Subclass members suffered a  
13          substantial injury by virtue of buying the Wipes that they would not have purchased  
14          absent Defendant's unlawful, fraudulent, and unfair marketing, advertising,  
15          packaging, and labeling or by virtue of paying an excessive premium price for the  
16          unlawfully, fraudulently, and unfairly marketed, advertised, packaged, and labeled  
17          Wipes.

18          50. There is no benefit to consumers or competition from deceptively  
19          marketing and labeling the Wipes, which purport to be natural, when this unqualified  
20          claim is false.

21          51. Ms. Brenner and the other California Subclass members had no way of  
22          reasonably knowing that the Wipes they purchased were not as marketed, advertised,  
23          packaged, or labeled. Thus, they could not have reasonably avoided the injury each  
24          of them suffered.

25          52. The gravity of the consequences of Defendant's conduct as described  
26          above outweighs any justification, motive, or reason therefore, particularly  
27          considering the available legal alternatives which exist in the marketplace, and such  
28

1 conduct is immoral, unethical, unscrupulous, offends established public policy, or is  
2 substantially injurious to Ms. Brenner and the other members of the California  
3 Subclass.

4 53. Defendant's violations of the UCL continue to this day.

5 54. Pursuant to California Business and Professional Code § 17203, Ms.  
6 Brenner and the California Subclass seek an order of this Court that includes, but is  
7 not limited to, an order requiring Defendant to:

8 (a) provide restitution to Ms. Brenner and the other California  
9 Subclass members;

10 (b) disgorge all revenues obtained as a result of violations of the  
11 UCL; and

12 (c) pay Ms. Brenner's and the California Subclass' attorney's fees  
13 and costs.

14 **COUNT IV**

15 **(Unjust Enrichment)**

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

18 56. Plaintiffs bring this claim individually and on behalf of the members of  
19 the Class and California and Florida Subclasses against Defendant.

20 57. Plaintiffs and members of the Class and Subclasses conferred benefits  
21 on Defendant by purchasing the Wipes.

22 58. Defendant has knowledge of these benefits.

23 59. Defendant has been unjustly enriched in retaining the revenues derived  
24 from Plaintiffs' and Class and Subclass members' purchases of the Wipes. Retention  
25 of those monies under these circumstances is unjust and inequitable because of  
26 Defendant's misrepresentations about the Wipes, which caused injuries to Plaintiffs  
27 and members of the Class and Subclasses because they would not have purchased the  
28

1 Wipes if the true facts had been known.

2 60. Because Defendant's retention of the non-gratuitous benefits conferred  
3 on them by Plaintiffs and members of the Class and Subclasses is unjust and  
4 inequitable, Defendant must pay restitution to Plaintiffs and members of the Class  
5 and Subclasses for their unjust enrichment, as ordered by the Court.

6 **COUNT V**

7 **(Breach of Express Warranty, U.C.C. § 2-313)**

8 57. Plaintiffs incorporate by reference and re-allege herein all paragraphs  
9 alleged above.

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

12 59. In connection with the sale of the Wipes, Defendant issued written  
13 warranties. Defendant, as the designer, manufacturer, marketer, distributor, and/or  
14 seller expressly warranted that the Wipes were natural.

15 60. Defendant's express warranties, and its affirmations of fact and  
16 promises made to Plaintiffs and the Class regarding the Wipes, became part of the  
17 basis of the bargain between Defendant and Plaintiffs and the Class, thereby creating  
18 an express warranty that the Wipes would conform to those affirmations of fact,  
19 representations, promises, and descriptions.

20 61. The Wipes do not conform to the express warranties because they  
21 contain ingredients that are unnatural and potentially harmful.

22 62. Plaintiffs and members of the Class were injured as a direct and  
23 proximate result of Defendant's breach because (a) they would not have purchased  
24 the Wipes if they had known the truth about their unnatural and potentially harmful  
25 ingredients; (b) they paid a price premium for the Wipes based on Defendant's  
26 express warranties; and (c) the Wipes did not have the characteristics, uses, or  
27 benefits as promised.



1 deceptive practices described above, which offend public policies and are immoral,  
2 unethical, unscrupulous and substantially injurious to consumers.

3 73. Specifically, Defendant has represented that the Wipes are “natural”  
4 when, in fact, the Wipes are made with unnatural and potential harmful ingredients.

5 74. Ms. Banegas and Florida Subclass members have been aggrieved by  
6 Defendant’s unfair and deceptive practices in violation of FDUTPA, in that they paid  
7 a premium for Defendant’s mislabeled Wipes.

8 75. Reasonable consumers rely on Defendant to honestly represent the true  
9 nature of the Wipes’ ingredients.

10 76. Defendant has deceived reasonable consumers, like Ms. Banegas and  
11 members of the Florida Subclass, into believing that the Wipes were natural when  
12 they were not.

13 77. Ms. Banegas and Florida Subclass members make claims hereunder for  
14 damages, punitive damages, restitution, disgorgement, attorney’s fees and costs.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs demand judgment on behalf of themselves and  
17 members of the Class and California and Florida Subclasses as follows:

- 18
- 19 A. For an order certifying the nationwide Class and the Subclasses  
20 under Rule 23 of the Federal Rules of Civil Procedure and  
21 naming Plaintiffs as representative of the Class, Ms. Brenner as  
22 representative of the California Subclass, and Ms. Banegas as  
23 representative of the Florida Subclass and Plaintiffs’ attorneys as  
24 Class Counsel to represent the Class Subclass members;
- 25 B. For an order declaring that Defendant’s conduct violates the  
26 statutes referenced herein;
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