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 Ashley Lynne Popowitz, Nasreen Haris and the  
 9 putative Classes

10 *Additional counsel on signature page*

11 **IN THE UNITED STATES DISTRICT COURT**  
 12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 BRITTANY SEBASTIAN, ASHLEY  
 14 LYNNE POPOWITZ, and NASREEN  
 15 HARIS, individually, and on behalf of  
 others similarly situated,

16 Plaintiffs,

17 vs.

18 KIMBERLY-CLARK  
 19 CORPORATION; KIMBERLY-  
 20 CLARK WORLDWIDE, INC.; and  
 21 KIMBERLY-CLARK GLOBAL  
 SALES, LLC,

22 Defendants.

**Case No.: 17-CV-00442-WQH-JMA**  
**Case No.: 18-CV-00046-WQH-JMA**

**CONSOLIDATED CLASS ACTION  
 COMPLAINT FOR:**

1. **UNFAIR AND UNLAWFUL BUSINESS ACTS AND PRACTICES (CAL. BUS & PROF. CODE §17200 ET SEQ.);**
2. **DECEPTIVE ADVERTISING PRACTICES (CAL. BUS & PROF.CODE §§ 17500, ET SEQ.);**
3. **CONSUMER LEGAL REMEDIES ACT (CAL. CIV. CODE § 1750, ET SEQ.);**
4. **FLORIDA’S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT FLA. STAT. §§ 501.201, ET SEQ.**
5. **BREACH OF EXPRESS WARRANTY; AND**
6. **QUASI-CONTRACT. (DEMAND FOR JURY TRIAL)**

1 Plaintiffs Brittany Sebastian, Ashley Lynne Popowitz, and Nasreen Haris,  
2 individually, and on behalf of others similarly situated, by and through their  
3 undersigned counsel, hereby file this First Amended Class Action Complaint against  
4 Defendants Kimberly-Clark Corporation, Kimberly-Clark Worldwide, Inc., and  
5 Kimberly-Clark Global Sales, LLC (collectively “Defendant” or “Kimberly-Clark”)  
6 and states as follows:

7 **NATURE OF THE ACTION**

8 1. This case arises out of Defendant’s unlawful merchandising practices with  
9 respect to its Huggies Natural Care Baby Wipes, which are offered for sale in  
10 numerous configurations, including soft packages containing 32 or 56 wipes, “pop-up  
11 tubs” containing 40 or 64 wipes, “Clutch n’ Clean” packages, and refill packages  
12 containing numerous wipes (collectively, the “Products”). Defendant falsely and  
13 deceptively labels and advertises the Products as being “natural,” “gentle,”  
14 “hypoallergenic,” and made with the “simplest formula for a gentle clean.” Contrary  
15 to these material representations and omissions, the Products contain non-natural,  
16 synthetic chemical ingredients, and Defendant’s claims are therefore false, deceptive  
17 and misleading.

18 2. Among other synthetic ingredients, the Products contain phenoxyethanol.  
19 The U.S. Food and Drug Administration (“FDA”) has stated that phenoxyethanol is “a  
20 preservative that is primarily used in cosmetics and medications” and that it can  
21 “depress the central nervous system and may cause vomiting and diarrhea” in infants.  
22 In addition, the French Agence Nationale de Securite du Medicament et des Produits  
23 de Sante has cautioned consumers not to use wipes containing phenoxyethanol on  
24 children under the age of three because of health concerns related to “reproductive and  
25 developmental toxicity.”

26 3. Plaintiffs Brittany Sebastian, Ashley Lynne Popowitz, and Nasreen Haris  
27 (collectively, “Plaintiffs”) bring this action individually and on behalf of those  
28 similarly situated. Plaintiffs seek to represent a National Class, and California and

1 Florida Subclasses (defined *infra.*). Plaintiffs seek damages, interest thereon,  
2 reasonable attorneys' fees and costs, restitution, other equitable relief, and  
3 disgorgement of all benefits Defendant has enjoyed from its unlawful and/or deceptive  
4 business practices, as detailed herein. In addition, Plaintiffs seek injunctive relief to  
5 stop Defendant's unlawful conduct in the labeling and marketing of the Products.  
6 Plaintiffs make these allegations based on their personal knowledge as to themselves  
7 and their own acts and observations and, otherwise, on information and belief based on  
8 investigation of counsel.

9 **JURISDICTION AND VENUE**

10 4. This Court has original jurisdiction over this action pursuant to 28 U.S.C.  
11 § 1332(d) because this is a class action in which: (1) there are over 100 members in the  
12 proposed class; (2) members of the proposed class have a different citizenship from  
13 Defendant; and (3) the claims of the proposed class members exceed \$5,000,000 in the  
14 aggregate.

15 5. This Court has personal jurisdiction over Kimberly-Clark because  
16 Defendant's contacts with the forum are continuous and substantial, and Defendant  
17 intentionally availed itself of the markets within California through its sales of the  
18 Products to California consumers.

19 6. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because  
20 Defendant engages in continuous and systematic business activities within the State of  
21 California. Moreover, a substantial part of the events and omissions giving rise to the  
22 claims alleged herein occurred in this District. *See also* Declaration of Brittany  
23 Sebastian Regarding Venue Pursuant to Cal. Civ. Code § 1780(d), attached hereto as  
24 Exhibit A.

25 **PARTIES**

26 7. Plaintiff Brittany Sebastian is a resident of San Diego, California, who  
27 purchased Huggies Natural Care wipes during the class period, as described below.  
28 Plaintiff's claim is typical of all Class members in this regard. In addition, the

1 advertising and labeling on the package of the Product purchased by Plaintiff is typical  
2 of the advertising and labeling of the Products purchased by members of the Class.

3 8. Plaintiff Ashley Lynne Popowitz is a resident and citizen of Florida,  
4 residing in Broward County, who purchased Huggies Natural Care wipes during the  
5 class period, as described below. Plaintiff's claim is typical of all Class members in  
6 this regard. In addition, the advertising and labeling on the package of the Products  
7 purchased by Plaintiff is typical of the advertising and labeling of the Products  
8 purchased by members of the Class.

9 9. Plaintiff Nasreen Haris is a resident of Dublin, California, who purchased  
10 Huggies Natural Care wipes during the class period, as described below. Plaintiff's  
11 claim is typical of all Class members in this regard. In addition, the advertising and  
12 labeling on the package of the Products purchased by Plaintiff is typical of the  
13 advertising and labeling of the Products purchased by members of the Class.

14 10. Defendant Kimberly-Clark Corporation is a Delaware corporation with its  
15 principal place of business at 401 North Lake Street, Neenah, Wisconsin 54956.

16 11. Defendant Kimberly-Clark Worldwide, Inc. and Defendant Kimberly-  
17 Clark Global Sales, LLC are Delaware corporations with principal offices at 351  
18 Phelps Drive, Irving, Texas 75038. Upon information and belief, Kimberly-Clark  
19 Worldwide, Inc. and Kimberly-Clark Global Sales, LLC are wholly-owned  
20 subsidiaries of Defendant Kimberly-Clark Corporation.

21 12. Defendant and its agents promoted, marketed and sold the Products at  
22 issue in this jurisdiction and in this judicial district. The unfair, unlawful, deceptive,  
23 and misleading advertising and labeling of the Products was prepared and/or approved  
24 by Defendant and its agents, and was disseminated by Defendant and its agents  
25 through labeling and advertising containing the misrepresentations alleged herein.

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28

**FACTUAL ALLEGATIONS**

**A. Contrary to Defendant’s Representations that the Products Are Natural, the Products Contain Numerous Synthetic Ingredients, Including Phenoxyethanol, Which Is Potentially Toxic to Babies**

13. Kimberly-Clark manufactures, markets, promotes, advertises, and sells baby-care products, including under the “Huggies Natural Care” brand name. According to the huggies.com website, the Products are “America’s #1 branded baby wipe,” and are comprised of “gentle ingredients” for “sensitive skin.”

14. Seeking to profit from consumers’ desire for safer and natural products free from synthetic and harmful ingredients, Kimberly-Clark markets and labels the Products as, among other things “natural,” “gentle,” and “hypoallergenic.”

15. Kimberly-Clark also advertises the Products as being “[h]ypoallergenic, fragrance and alcohol free, with a touch of aloe and Vitamin E, these wipes feature our simplest formula ever for a gentle clean.”

**Gentle ingredients**

Hypoallergenic, fragrance and alcohol free, with a touch of aloe and Vitamin E, these wipes feature our simplest formula ever for a gentle clean.

[Click here](#) for more information on Huggies® ingredients.

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16. Further, on the packaging of the Products, Defendant represents the Products as being natural, both by the prominent representation “Natural Care” and by the Products’ various packaging designs, which include nature images, such as green coloring and leaves.



17. Despite advertising the Products as being “natural,” “gentle,” “hypoallergenic” and made with a “simple formula,” the wipes actually contain non-natural, synthetic, and/or artificial ingredients, including phenoxyethanol, caprylyl glycol, cocamidopropyl betaine, and sodium citrate.

**Huggies® Natural Care® Wipes**

Solution Ingredients	Purpose
Water/Eau/Aqua	Helps clean skin
Phenoxyethanol	Helps keep wipes fresh
Butoxy PEG-4 PG-Amodimethicone	Helps wipe glide across baby’s skin
Aloe Barbadensis Leaf Extract	Aloe Vera
Caprylyl Glycol	Helps keep skin soft and smooth
Cocamidopropyl Betaine	Helps clean skin
Malic Acid	Helps keep the wipes pH balanced
Sodium Citrate	Helps keep sheet white
Tocopheryl Acetate	Vitamin E

18. According to the FDA, phenoxyethanol is a preservative, which can

1 depress the central nervous system and may cause vomiting and diarrhea in infants.<sup>1</sup>

2 19. In addition, the FTC charged several companies with falsely claiming in  
3 online advertisements that their products were all-natural or 100% natural when those  
4 products contained non-natural, synthetic ingredients, including phenoxyethanol.<sup>2</sup> The  
5 charged companies were barred from making similar representations in the future.<sup>3</sup>

6 20. Furthermore, a May 2012 report from the French Agence Nationale de  
7 Securite du Medicament et des Produits de Sante cautioned consumers not to use wipes  
8 containing phenoxyethanol on children under the age of three because of health  
9 concerns related to “reproductive and developmental toxicity.”

10 21. The Material Safety Data Sheet (MSDS) on phenoxyethanol states that it  
11 can cause skin and lung irritation, and that it may also be toxic to the kidneys, nervous  
12 system, and liver, and repeated, long-term exposure can cause organ damage. The  
13 MSDS further states that the toxic effects can occur through inhalation, skin exposure,  
14 and ingestion.

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17 <sup>1</sup>[http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2008/ucm116900.h](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2008/ucm116900.htm)  
18 [tm](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2008/ucm116900.htm) (last accessed Nov. 17, 2016).

19 <sup>2</sup> [https://www.ftc.gov/news-events/press-releases/2016/04/four-companies-agree-stop-](https://www.ftc.gov/news-events/press-releases/2016/04/four-companies-agree-stop-falsely-promoting-their-personal-care/)  
20 [falsely-promoting-their-personal-care/](https://www.ftc.gov/news-events/press-releases/2016/04/four-companies-agree-stop-falsely-promoting-their-personal-care/) (last accessed Nov. 17, 2016);  
21 <https://www.ftc.gov/system/files/documents/cases/160412shikai-cmpt.pdf>; (last  
22 [accessed Nov. 17, 2016](https://www.ftc.gov/system/files/documents/cases/160412shikai-cmpt.pdf));  
23 <https://www.ftc.gov/system/files/documents/cases/160412rockymountaincmpt.pdf>;  
24 <https://www.ftc.gov/system/files/documents/cases/160412rockymountaincmpt.pdf>;  
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<https://www.ftc.gov/system/files/documents/cases/160412edenbodyworkscmpt.pdf>;  
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<https://www.ftc.gov/system/files/documents/cases/160412beyondcoastalcmpt.pdf>; (last  
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<https://www.ftc.gov/system/files/documents/cases/160412beyondcoastalcmpt.pdf>;  
(last accessed Nov. 17, 2016);  
[https://www.ftc.gov/system/files/documents/cases/160412californianaturelcmpt-](https://www.ftc.gov/system/files/documents/cases/160412californianaturelcmpt-exhibits.pdf)  
[exhibits.pdf](https://www.ftc.gov/system/files/documents/cases/160412californianaturelcmpt-exhibits.pdf) (last accessed Nov. 17, 2016).

<sup>3</sup> [https://www.ftc.gov/news-events/press-releases/2016/07/ftc-approves-four-final-](https://www.ftc.gov/news-events/press-releases/2016/07/ftc-approves-four-final-orders-barring-companies-making-false-all/)  
orders-barring-companies-making-false-all/ (last accessed Nov. 17, 2016).

1           22. According to Hazard Notifications from the Globally Harmonized System  
2 of Classification and Labeling of Chemicals (GHS), phenoxyethanol presents a  
3 category 2 danger for skin irritation, a category 4 danger for acute oral toxicity if  
4 swallowed, and a category 2A danger for causing serious eye damage or eye irritation.

5           23. In addition to phenoxyethanol, the Products contain other synthetic  
6 ingredients.

7           24. Caprylyl glycol is a synthetic skin conditioning agent and preservative.  
8 As with phenoxyethanol, the FTC previously charged several companies with falsely  
9 claiming in advertisements that their products were all-natural or 100% natural when  
10 those products contained non-natural, synthetic ingredients, including caprylyl glycol.  
11 The charged companies were barred from making similar representations in the future.

12           25. Cocamidopropyl betaine is a synthetic surfactant that has been associated  
13 with skin irritation and allergic dermatitis. In fact, cocamidopropyl betaine was named  
14 Allergen of the Year in 2004 by the American Contact Dermatitis Society.

15           26. Sodium citrate is a synthetic chemical that can be used as an emulsifier,  
16 acidity regulator, and preservative. Sodium citrate is recognized in Federal  
17 Regulations as a synthetic.<sup>4</sup>

18           27. Accordingly, because the Products contain phenoxyethanol, caprylyl  
19 glycol, cocamidopropyl betaine, and sodium citrate, they are mislabeled, misleading,  
20 and misbranded under both federal and state law.

21           28. 7 U.S.C. § 6502(21) defines the term “synthetic” as “a substance that is  
22 formulated or manufactured by a chemical process or by a process that chemically  
23 changes a substance extracted from naturally occurring plant, animal, or mineral  
24 sources, except that such term shall not apply to substances created by naturally  
25 occurring biological processes.”

26  
27  
28 <sup>4</sup> See 7 C.F.R. §205.605(b).



1           29. Furthermore, Merriam-Webster defines “natural” as “existing in or  
2 produced by nature: not artificial.”

3           30. In addition, the FTC has cautioned that “[m]arketers that are using terms  
4 such as natural must ensure that they can substantiate whatever claims they are  
5 conveying to reasonable consumers. If reasonable consumers could interpret a natural  
6 claim as representing that a product contains no artificial ingredients, then the marketer  
7 must be able to substantiate that fact.”<sup>5</sup>

8           31. Reasonable consumers, including Plaintiffs, expect a product that is  
9 labeled or advertised as being “natural” to be free of synthetic, highly processed,  
10 and/or non-natural ingredients.

11           32. Likewise, reasonable consumers, including Plaintiffs, expect that baby  
12 care products that are labeled or advertised as being “natural,” “gentle” and  
13 “hypoallergenic” to be free from harmful and/or potentially toxic ingredients.

14           33. Consumers have become increasingly concerned about the effects of  
15 synthetic ingredients in personal-care products. Indeed, consumers, including  
16 Plaintiffs, are willing to pay, and have paid, a premium for products advertised,  
17 marketed, and labeled as “natural” over products containing non-natural, synthetic  
18 ingredients.<sup>6</sup>

19           34. Kimberly-Clark materially misled and failed to adequately inform  
20 consumers, including Plaintiffs, that the Products contain non-natural, synthetic  
21 ingredients.

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23  
24 <sup>5</sup> Guides for the Use of Environmental Marketing Claims, 75 FR 63552-01, 63586  
25 (Oct. 15, 2010).

26 <sup>6</sup> In 2010, for example, nationwide sales of natural products totaled \$117 billion.  
27 [http://www.npainfo.org/NPA/About\\_NPA/NPA/AboutNPA/AbouttheNaturalProducts](http://www.npainfo.org/NPA/About_NPA/NPA/AboutNPA/AbouttheNaturalProductsAssociati on.aspx?hkey=8d3a15ab-f44f-4473-aa6e-ba27ccebcb8)  
28 [Associati on.aspx?hkey=8d3a15ab-f44f-4473-aa6e-ba27ccebcb8](http://www.npainfo.org/NPA/About_NPA/NPA/AboutNPA/AbouttheNaturalProductsAssociati on.aspx?hkey=8d3a15ab-f44f-4473-aa6e-ba27ccebcb8) (last visited Jan. 25,  
2017).

1           35. Based on Defendant’s uniform material misrepresentations and omissions,  
2 consumers have purchased the Products to their detriment.

3           **B. Plaintiffs Purchased the Misbranded Product**

4           36. Plaintiff Brittany Sebastian purchased a soft package of Huggies Natural  
5 Care wipes, containing 32 wipes, from a Target store in Encinitas, California between  
6 August and November, 2016 for approximately \$1.47. Plaintiff purchased the Product  
7 for personal and family use.

8           37. Plaintiff Ashley Lynne Popowitz purchased multiple soft packages of  
9 Huggies Natural Care wipes from Publix and Costco locations in Broward County,  
10 Florida, during the Class Period. Most recently, in or about October of 2016, Plaintiff  
11 purchased a soft package of Huggies Natural Care wipes, containing 56 wipes.  
12 Plaintiff Popowitz purchased the Products for personal and family use, including for  
13 use on her baby son.

14           38. Plaintiff Nasreen Haris made several purchases of Huggies’ wipes in the  
15 last approximately two years in either 32 and 56 Huggies wipes, tubs containing 40 and  
16 64 Huggies wipes, “Clutch n Clean” packages containing Huggies Wipes, and re-fill  
17 packages containing (i.e. 552, 624 ct.) and for Huggies wipes from various stores,  
18 including Safeway, Walmart, and Costco in and around Walnut Creek and San Ramon  
19 California.

20           39. Plaintiffs relied on Kimberly-Clark’s representations in making the  
21 decision to purchase the Products, including that the Product is “natural.”

22           40. At the time Plaintiffs purchased the Products, Plaintiffs did not know, and  
23 had no reason to know, that the Product labels and advertising were misleading,  
24 deceptive and unlawful as set forth herein. Plaintiffs would not have purchased the  
25 Products, or would have purchased the same on different terms, if they had known the  
26 truth.

27           41. It is possible, however, that Plaintiffs would purchase the Products in the  
28 future if the Products were properly labeled, and/or the ingredients complied with the

1 labeling and advertising statements, including that they only contained “natural”  
2 ingredients, and no longer contained phenoxyethanol, caprylyl glycol, cocamidopropyl  
3 betaine, and sodium citrate.

4 **CLASS DEFINITION AND CLASS ALLEGATIONS**

5 42. Plaintiffs bring this action as a class action pursuant to Federal Rules of  
6 Civil Procedure 23(b)(2) and 23(b)(3) on behalf of themselves, on behalf of all others  
7 similarly situated, and as a member the Classes defined as follows (collectively, the  
8 “Class”):

9 All citizens of the United States who, within the relevant statute  
10 of limitations periods, purchased Defendant’s Products  
11 (“Nationwide Class”);

12 All citizens of California who, within four years prior to the  
13 filing of the initial Complaint, purchased Defendant’s Products  
14 (“California Subclass”);

15 All citizens of the Florida who, within four years prior to the  
16 filing of this First Amended Complaint, purchased Defendant’s  
17 Products (“Florida Subclass”).

18 43. Excluded from the Class are: (i) Defendant, its assigns, successors, and  
19 legal representatives; (ii) any entities in which Defendant has controlling interests;  
20 (iii) federal, state, and/or local governments, including, but not limited to, their  
21 departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or  
22 subdivisions; (iv) all persons presently in bankruptcy proceedings or who obtained a  
23 bankruptcy discharge in the last three years; and (v) any judicial officer presiding over  
24 this matter and person within the third degree of consanguinity to such judicial officer.

25 44. Plaintiffs reserve the right to amend or otherwise alter the class definition  
26 presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in  
27 response to facts learned through discovery, legal arguments advanced by Defendant,  
28 or otherwise.

45. This action is properly maintainable as a class action pursuant to Federal  
Rule of Civil Procedure 23 for the reasons set forth below.

1           46. **Numerosity**: Members of the Class are so numerous that joinder of all  
2 members is impracticable. Upon information and belief, the Class consist of hundreds  
3 of thousands of purchasers dispersed throughout the United States, and the Subclasses  
4 likewise consists of hundreds of thousands of purchasers throughout the States of  
5 California and Florida, respectively. Accordingly, it would be impracticable to join all  
6 members of the Class before the Court.

7           47. **Common Questions Predominate**: There are numerous and substantial  
8 questions of law or fact common to all members of the Class that predominate over any  
9 individual issues. Included within the common questions of law or fact are:

- 10           • Whether, contrary to Defendant’s uniform, material representations  
11           and omissions, the Products are not natural;
- 12           • Whether, contrary to Defendant’s uniform, material representations  
13           and omissions, the Products are not comprised of “gentle ingredients,”  
14           and/or are not hypoallergenic;
- 15           • Whether Defendant engaged in unlawful, unfair or deceptive business  
16           practices by advertising and selling its Products;
- 17           • Whether Defendant violated California Bus. & Prof. Code § 17200, *et*  
18           *seq.*; Cal. Bus. & Prof. Code § 17500, *et seq.*; and the Consumers  
19           Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*;
- 20           • Whether Defendant violated FDUPTA, Fla. Stat. §§ 501.201, *et seq.*;
- 21           • Whether Defendant committed a breach of express warranty;
- 22           • Whether Plaintiffs and the Class are entitled to equitable and/or  
23           injunctive relief;
- 24           • Whether Plaintiffs and the Class members have sustained damage as a  
25           result of Defendant’s unlawful conduct;
- 26           • The proper measure of damages sustained by Plaintiffs and Class  
27           Members; and
- 28           • Whether Defendant was unjustly enriched by its deceptive practices.

1           48. **Typicality:** Plaintiffs' claims are typical of the claims of the members of  
2 the Class they seek to represent because Plaintiffs, like the Class members, purchased  
3 Defendant's misbranded Products. Defendant's unlawful, unfair and/or fraudulent  
4 actions concern the same business practices described herein irrespective of where they  
5 occurred or were experienced. Plaintiffs and the Class sustained similar injuries  
6 arising out of Defendant's conduct. Plaintiffs' and Class Member's claims arise from  
7 the same practices and course of conduct and are based on the same legal theories.

8           49. **Adequacy:** Plaintiffs are adequate representatives of the Classes they seek  
9 to represent because their interests do not conflict with the interests of the members of  
10 the Classes Plaintiffs seek to represent. Plaintiffs will fairly and adequately protect the  
11 interests of members of the Class and have retained counsel experienced and  
12 competent in the prosecution of complex class actions, including complex questions  
13 that arise in consumer protection litigation.

14           50. **Superiority and Substantial Benefit:** A class action is superior to other  
15 methods for the fair and efficient adjudication of this controversy, since individual  
16 joinder of all members of the Class is impracticable and no other group method of  
17 adjudication of all claims asserted herein is more efficient and manageable for at least  
18 the following reasons:

- 19           a. The claims presented in this case predominate over any questions of  
20 law or fact, if any exists at all, affecting any individual member of  
21 the Class;
- 22           b. Absent a Class, the members of the Class will continue to suffer  
23 damage and Defendant's unlawful conduct will continue without  
24 remedy while Defendant profits from and enjoys its ill-gotten gains;
- 25           c. Given the size of individual Class members' claims, few, if any,  
26 members could afford to or would seek legal redress individually  
27 for the wrongs Defendant committed against them, and absent  
28 members have no substantial interest in individually controlling the

1 prosecution of individual actions;

2 d. When the liability of Defendant has been adjudicated, claims of all  
3 members of the Class can be administered efficiently and/or  
4 determined uniformly by the Court; and

5 e. This action presents no difficulty that would impede its  
6 management by the Court as a class action, which is the best  
7 available means by which Plaintiffs and members of the Class can  
8 seek redress for the harm caused to them by Defendant.

9 51. Because Plaintiffs seek relief for all members of the Class, the prosecution  
10 of separate actions by individual members would create a risk of inconsistent or  
11 varying adjudications with respect to individual members of the Class, which would  
12 establish incompatible standards of conduct for Defendant.

13 52. The prerequisites to maintaining a class action for injunctive or equitable  
14 relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to  
15 act on grounds generally applicable to the Class, thereby making appropriate final  
16 injunctive or equitable relief with respect to the Class as a whole.

17 53. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P.  
18 23(b)(3) are also met as questions of law or fact common to Class members  
19 predominate over any questions affecting only individual members, and a class action  
20 is superior to other available methods for fairly and efficiently adjudicating the  
21 controversy.

22 54. Plaintiffs and Plaintiffs' counsel are unaware of any difficulties that are  
23 likely to be encountered in the management of this action that would preclude its  
24 maintenance as a class action.

25 ///

26 ///

27 ///

1 **CAUSES OF ACTION**

2  
3 **FIRST CAUSE OF ACTION**  
4 **Unfair and Unlawful Business Acts and Practices**  
5 **(Business and Professions Code § 17200, *et seq.*)**  
6 **(for the California Subclass)**

7 55. Plaintiff Sebastian re-alleges and incorporates by reference the allegations  
8 contained in the preceding paragraphs of this complaint, as though fully set forth  
9 herein.

10 56. Defendant’s conduct constitutes an unfair business act and practice  
11 pursuant to California Business & Professions Code §§ 17200, *et seq.* (the “UCL”).  
12 The UCL provides, in pertinent part: “Unfair competition shall mean and include  
13 unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or  
14 misleading advertising . . . .”

15 57. Plaintiff Sebastian brings this claim seeking equitable and injunctive relief  
16 to stop Defendant’s misconduct, as complained of herein, and to seek restitution of the  
17 amounts Defendant acquired through the unfair, unlawful, and fraudulent business  
18 practices described herein.

19 58. Defendant’s knowing conduct, as alleged herein, constitutes an “unfair”  
20 and/or “fraudulent” business practice, as set forth in California Business & Professions  
21 Code §§ 17200-17208.

22 59. Defendant’s conduct was and continues to be unfair and fraudulent  
23 because, directly or through its agents and employees, Defendant made uniform  
24 materially false representations and omissions that the Products were “natural,”  
25 “gentle,” and “hypoallergenic,” when in fact they were not.

26 60. Defendant is aware that the representations and omissions it has made  
27 about the Products were and continue to be false and misleading.

28 61. Defendant had an improper motive—to derive financial gain at the  
expense of accuracy or truthfulness—in its practices related to the labeling and

1 advertising of the Products.

2 62. There were reasonable alternatives available to Defendant to further  
3 Defendant's legitimate business interests, other than the conduct described herein.

4 63. Defendant's misrepresentations of material facts, as set forth herein, also  
5 constitute an "unlawful" practice because they violate California Civil Code §§ 1572,  
6 1573, 1709, 1710, 1711, and 1770, as well as the common law.

7 64. Defendant's conduct in making the representations described herein  
8 constitutes a knowing failure to adopt policies in accordance with and/or adherence to  
9 applicable laws, as set forth herein, all of which are binding upon and burdensome to  
10 its competitors. This conduct engenders an unfair competitive advantage for  
11 Defendant, thereby constituting an unfair business practice under California Business  
12 & Professions Code §§ 17200-17208.

13 65. In addition, Defendant's conduct was, and continues to be, unfair, in that  
14 its injury to countless purchasers of the Products is substantial, and is not outweighed  
15 by any countervailing benefits to consumers or to competitors.

16 66. Moreover, Plaintiff Sebastian and members of the California Subclass  
17 could not have reasonably avoided such injury. Defendant's uniform, material  
18 representations and omissions regarding the Products were likely to deceive, and  
19 Defendant knew or should have known that its representations and omissions were  
20 untrue and misleading. Plaintiff Sebastian purchased the Products in reliance on the  
21 representations made by Defendant, as alleged herein.

22 67. Plaintiff Sebastian and members of the California Subclass have been  
23 directly and proximately injured by Defendant's conduct in ways including, but not  
24 limited to, the monies paid to Defendant for the Products that lacked the characteristics  
25 advertised, interest lost on those monies, and consumers' unwitting support of a  
26 business enterprise that promotes deception and undue greed to the detriment of  
27 consumers, such as Plaintiff and Subclass members.

28



1           68. As a result of the business acts and practices described above, Plaintiff  
2 and members of the California Subclass, pursuant to § 17203, are entitled to an Order  
3 enjoining such future wrongful conduct on the part of Defendant and such other Orders  
4 and judgments that may be necessary to disgorge Defendant’s ill-gotten gains and to  
5 restore to any person in interest any money paid for the Products as a result of the  
6 wrongful conduct of Defendant.

7           69. Pursuant to Civil Code § 3287(a), Plaintiff Sebastian and the California  
8 Subclass are further entitled to pre-judgment interest as a direct and proximate result of  
9 Defendant’s unfair and fraudulent business conduct. The amount on which interest is  
10 to be calculated is a sum certain and capable of calculation, and Plaintiff Sebastian and  
11 the California Subclass are entitled to interest in an amount according to proof.

12   **SECOND CAUSE OF ACTION**  
13   **Deceptive Advertising Practices**  
14   **(California Business & Professions Code §§ 17500, et seq.)**  
15   ***(for the California Subclass)***

16           70. Plaintiff Sebastian re-alleges and incorporates by reference the allegations  
17 contained in the preceding paragraphs of this complaint, as though fully set forth  
18 herein.

19           71. California Business & Professions Code § 17500 prohibits “unfair,  
20 deceptive, untrue or misleading advertising . . . .”

21           72. Defendant violated § 17500 when it represented, through its false and  
22 misleading advertising and other express representations, that Defendant’s Products  
23 possessed characteristics and value that they did not actually have.

24           73. Defendant’s deceptive practices were specifically designed to induce  
25 reasonable consumers like Plaintiff Sebastian to purchase the Products. Defendant’s  
26 uniform, material representations and omissions regarding the Products were likely to  
27 deceive, and Defendant knew or should have known that its uniform representations  
28 and omissions were untrue and misleading. Plaintiff Sebastian purchased the Products  
in reliance on the representations made by Defendant, as alleged herein.

1           74. Plaintiff Sebastian and members of the California Subclass have been  
2 directly and proximately injured by Defendant’s conduct in ways including, but not  
3 limited to, the monies paid to Defendant for the Products that lacked the characteristics  
4 advertised, interest lost on those monies, and consumers’ unwitting support of a  
5 business enterprise that promotes deception and undue greed to the detriment of  
6 consumers, such as Plaintiff and Subclass members.

7           75. The above acts of Defendant, in disseminating material misleading and  
8 deceptive representations and statements throughout California to consumers,  
9 including Plaintiff Sebastian and members of the California Subclass, were and are  
10 likely to deceive reasonable consumers in violation of § 17500.

11           76. In making and disseminating the statements alleged herein, Defendant  
12 knew or should have known that the statements were untrue or misleading, and acted in  
13 violation of § 17500.

14           77. Defendant continues to engage in unlawful, unfair and deceptive practices  
15 in violation of §17500.

16           78. As a direct and proximate result of Defendant’s unlawful conduct in  
17 violation of § 17500, Plaintiff Sebastian and members of the California Subclass,  
18 pursuant to § 17535, are entitled to an Order of this Court enjoining such future  
19 wrongful conduct on the part of Defendant, and requiring Defendant to disclose the  
20 true nature of its misrepresentations.

21           79. Plaintiff Sebastian and members of the California Subclass also request an  
22 Order requiring Defendant to disgorge its ill-gotten gains and/or award full restitution  
23 of all monies wrongfully acquired by Defendant by means of such acts of false  
24 advertising, plus interests and attorneys’ fees.

25                           **THIRD CAUSE OF ACTION**  
26                           **Consumer Legal Remedies Act**  
27                           **(Cal. Civ. Code § 1750, *et seq.*)**  
28                           ***(for the California Subclass)***

80. Plaintiff Sebastian re-alleges and incorporates by reference the allegations

1 contained in the preceding paragraphs of this complaint, as though fully set forth  
2 herein.

3 81. Plaintiff Sebastian brings this action pursuant to California’s Consumer  
4 Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*

5 82. The CLRA provides that “unfair methods of competition and unfair or  
6 deceptive acts or practices undertaken by any person in a transaction intended to result  
7 or which results in the sale or lease of goods or services to any consumer are  
8 unlawful.”

9 83. The Products are “goods,” as defined by the CLRA in California Civil  
10 Code §1761(a).

11 84. Defendant is a “person,” as defined by the CLRA in California Civil Code  
12 §1761(c).

13 85. Plaintiff Sebastian and members of the California Subclass are  
14 “consumers,” as defined by the CLRA in California Civil Code §1761(d).

15 86. Purchase of the Products by Plaintiff Sebastian and members of the  
16 California Subclass are “transactions,” as defined by the CLRA in California Civil  
17 Code §1761(e).

18 87. Kimberly-Clark violated Section 1770(a)(5) by representing that the  
19 Products have “characteristics, . . . uses [or] benefits . . . which [they] do not have” in  
20 that the Products are falsely labeled and advertised as being, among other things,  
21 “natural,” “gentle,” and “hypoallergenic.” Defendant knew that consumers will often  
22 pay more for products with these attributes and has unfairly profited from its false and  
23 misleading claims.

24 88. Similarly, Kimberly-Clark violated section 1770(a)(7) by representing that  
25 the Products “are of a particular standard, quality, or grade . . . if they are of another”  
26 by falsely and deceptively labeling and advertising the Products as, among other  
27 things, “natural,” “gentle,” and “hypoallergenic.”  
28

1 89. In addition, Kimberly-Clark violated section 1770(a)(9) by advertising the  
2 Products “with intent not to sell them as advertised” in that the Products are falsely  
3 labeled and advertised as, among other things, “natural,” “gentle,” and  
4 “hypoallergenic.”

5 90. Defendant’s uniform, material, representations and omissions regarding  
6 the Products were likely to deceive, and Defendant knew or should have known that its  
7 representations and omissions were untrue and misleading.

8 91. Plaintiff Sebastian and members of the California Subclass could not have  
9 reasonably avoided such injury. Plaintiff and members of the California Subclass were  
10 unaware of the existence of facts that Defendant suppressed and failed to disclose; and,  
11 Plaintiff Sebastian and members of the California Subclass would not have purchased  
12 the Products and/or would have purchased them on different terms had they known the  
13 truth.

14 92. Plaintiff Sebastian and members of the California Subclass have been  
15 directly and proximately injured by Defendant’s conduct. Such injury includes, but is  
16 not limited to, the purchase price of the Products and/or the price of the Products at the  
17 prices at which they were offered.

18 93. Given that Defendant’s conduct violated § 1770(a)(5), Plaintiff Sebastian  
19 and members of the California Subclass are entitled to seek and seek injunctive relief  
20 to put an end to Defendant’s violations of the CLRA.

21 94. Moreover, Defendant’s conduct is malicious, fraudulent, and wanton in  
22 that Defendant intentionally misled and withheld material information from consumers  
23 to increase the sale of the Products.

24 95. Pursuant to California Civil Code § 1782(a), Plaintiff Sebastian on her  
25 own behalf, and on behalf of members of the California Subclass, notified Defendant  
26 of the alleged violations of the Consumer Legal Remedies Act. Despite giving  
27 Defendant 30-days from the date of the notification letter to provide appropriate relief  
28 for violations of the CLRA, Defendant has failed to provide any such relief. As such,

1 Plaintiff Sebastian also seeks compensatory, monetary and punitive damages, in  
2 addition to equitable and injunctive relief, and requests that this Court enter such  
3 Orders or judgments as may be necessary to restore to any person in interest any  
4 money which may have been acquired by means of such unfair business practices, and  
5 for such other relief as is provided in California Civil Code § 1780 and in the Prayer  
6 for Relief.

7 96. Plaintiff Sebastian further requests that the Court enjoin Defendant from  
8 continuing to employ the unlawful methods, acts, and practices alleged herein pursuant  
9 to § 1780(a)(2).

10 **FOURTH CAUSE OF ACTION**  
11 **Violations of Florida’s Deceptive and Unfair Trade Practices Act, FLA. STAT. §§**  
12 **501.201, *et seq.***  
13 ***(for the Florida Subclass)***

14 97. Plaintiff re-alleges and incorporates by reference the allegations contained  
15 in the preceding paragraphs of this Complaint, as though fully set forth herein.

16 98. Plaintiff Popowitz brings this count on behalf of herself and a class of  
17 similarly situated Florida Products purchasers.

18 99. The express purpose of Florida’s Deceptive and Unfair Trade Practices  
19 Act, FLA. STAT. §§ 501.201, *et seq.* (“FDUTPA”) is to “protect the consuming public .  
20 . . from those who engage in unfair methods of competition, or unconscionable,  
21 deceptive, or unfair acts or practices in the conduct of any trade or commerce.” FLA.  
22 STAT. § 501.202(2).

23 100. Section 501.204(1), Florida Statutes, declares as unlawful “[u]nfair  
24 methods of competition, unconscionable acts or practices, and unfair or deceptive acts  
25 or practices in the conduct of any trade or commerce.”

26 101. The sale of the Products was a consumer transaction within the meaning  
27 and scope of FDUTPA.

28 102. Plaintiff Popowitz is a consumer as defined by Section 501.23, Florida  
Statutes.

1 103. The Products are “goods” within the meaning of FDUTPA and Defendant  
2 is engaged in trade or commerce within the meaning and scope of FDUTPA.

3 104. Defendant’s unfair and deceptive practices are likely to mislead—and  
4 have misled—the reasonable consumer, including Plaintiff Popowitz and members of  
5 the nationwide and Florida Subclass.

6 105. Defendant has violated FDUTPA by engaging in the unfair and deceptive  
7 practices described above, which offends public policies and are immoral, unethical,  
8 and unscrupulous, and substantially injurious to consumers.

9 106. Specifically, Defendant has represented that the Products are “natural”  
10 when, in fact, the Products are made with non-natural, synthetic, and/or potentially  
11 harmful ingredients, including phenoxyethanol.

12 107. Plaintiff Popowitz and members of the Florida Subclass have been  
13 aggrieved by Defendant’s unfair and deceptive practices violating FDUTPA, in that  
14 they paid a premium for Defendant’s mislabeled Products.

15 108. Reasonable consumers rely on Defendant to honestly represent the true  
16 nature of the Products’ ingredients.

17 109. Defendant has deceived reasonable consumers, including Plaintiff  
18 Popowitz and members of the Florida Subclass, into believing that the Products were  
19 among other things, “natural,” “gentle,” and “hypoallergenic” when they were not.

20 110. Plaintiff Popowitz and members of the Florida Subclass make claims  
21 hereunder for injunctive relief, damages, punitive damages, restitution, disgorgement,  
22 attorneys’ fees and costs.

23 **FIFTH CAUSE OF ACTION**  
24 **Breach of Express Warranty**  
25 ***(for the Nationwide Class and California Subclass)***

26 111. Plaintiffs re-allege and incorporate by reference the allegations contained  
27 in the preceding paragraphs of this Complaint, as though fully set forth herein.  
28

1 112. By advertising and selling the Products at issue, Defendant made promises  
2 and affirmations of fact on the Products' packaging, and through its marketing and  
3 advertising, as described above. This labeling and advertising constitutes express  
4 warranties and became part of the basis of the bargain between Plaintiffs and members  
5 of the Class, and Defendant.

6 113. Defendant purports, through its advertising, to create express warranties  
7 that the Products are, among other things, "natural," "gentle," and "hypoallergenic."

8 114. Despite Defendant's express warranties about the nature of the Products,  
9 the ingredients in the Products are not natural, gentle, and/or hypoallergenic, and the  
10 Products were, therefore, not what Defendant represented them to be.

11 115. Accordingly, Defendant breached express warranties about the Products  
12 and their qualities because the Products do not conform to Defendant's affirmations  
13 and promises.

14 116. As a direct and proximate result of Defendant's breach of express  
15 warranty, Plaintiffs and members of the Class were harmed in the amount of the  
16 purchase price they paid for the Products. Further, Plaintiffs and members of the Class  
17 have suffered and continue to suffer economic losses and other general and specific  
18 damages including, but not limited to, the amounts paid for the Products, and any  
19 interest that would have accrued on those monies, in an amount to be proven at trial.

20 **SIXTH CAUSE OF ACTION**  
21 **QUASI-CONTRACT**  
22 *(for the Nationwide Class and California Subclass)*

23 117. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs  
24 as if fully set forth herein.

25 118. By purchasing the Products, Plaintiffs and members of the Class conferred  
26 a benefit on Defendant in the form of the purchase price of the Products.

27 119. Defendant had knowledge of such benefits.

28 120. Defendant appreciated the benefit because, were consumers not to

1 purchase the Products, Defendant would not generate revenue from the sales of the  
2 Products.

3 121. Defendant's acceptance and retention of the benefit is inequitable and  
4 unjust because the benefit was obtained by Defendant's fraudulent and misleading  
5 representations and omissions.

6 122. Equity cannot in good conscience permit Defendant to be economically  
7 enriched for such actions at the expense of Plaintiffs and members of the Class, and  
8 therefore restitution and/or disgorgement of such economic enrichment is required

9 **PRAYER**

10 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly  
11 situated, pray for judgment against Defendant as follows:

12 A. For an order certifying the Nationwide Class, the California Subclass, and  
13 Florida Subclass under Rule 23 of the Federal Rules of Civil Procedure; naming  
14 Plaintiffs as representative of the nationwide Class and respective Subclasses; and  
15 naming Plaintiffs' attorneys as Class Counsel to represent the Class and Subclasses;

16 B. For an order declaring that Defendant's conduct violates the statutes and laws  
17 referenced herein.

18 C. For an order awarding, as appropriate, compensatory and monetary damages,  
19 restitution or disgorgement to Plaintiffs and the Class for all causes of action;

20 D. For an order requiring Defendant to immediately cease and desist from  
21 selling its misbranded Products in violation of law; enjoining Defendant from  
22 continuing to label, market, advertise, distribute, and sell the Products in the unlawful  
23 manner described herein; and ordering Defendant to engage in corrective action;

24 E. For an order awarding attorneys' fees and costs;

25 F. For an order awarding punitive damages;

26 G. For an order awarding pre-and post-judgment interest; and

27 H. For such other and further relief as the Court deems just and proper.  
28



1 DATED: February 22, 2018

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