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6 Individually and on behalf of all others
7 similarly situated individuals

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 TINA KALAJIAN, individually and on behalf of
12 a class of similarly situated individuals,

Case No.:

13 Plaintiff,

CLASS ACTION COMPLAINT

14 v.

- 1. Cal. Comm. Code §2313
- 2. Cal. Civil Code §1750
- 3. Cal. Bus. & Profs. Code §17500
- and
- 4. Cal. Bus. & Profs. Code §17200

15 RITE AID CORPORATION, a Delaware
16 Corporation, and DOES 1 through 100,
17 inclusive;

DEMAND FOR JURY TRIAL

18
19 Defendants.

20
21 Plaintiff Tina Kalajian (“Plaintiff”), individually and on behalf of all others similarly
22 situated, through the undersigned attorneys, upon personal knowledge as to her own actions and
23 status, and upon information and belief based upon the investigation of counsel as to the remaining
24 allegations, allege as follows:

25
26 **I. INTRODUCTION**

27 1. This is a California statewide consumer class action brought by Plaintiff individually
28 and on behalf of all individuals (“Class Members”) who purchased Defendants’ “Rite Aid Renewal

1 After Sun Gel” (collectively referred to as “the Product”) for personal use and not for resale.

2 2. Defendants advertise, market, sell, and distribute the Product. The Product's label
3 declares it to be made of "Aloe" and it depicts a green multi-leafed aloe plant, implying that aloe
4 vera is present in the Product. According to the Product’s ingredient label, it contains “Aloe
5 Barbadosis Leaf Juice Powder.”
6

7 3. In reality, according to independent laboratory tests, Defendants’ *Product contains*
8 *no actual Aloe Vera at all.*

9 4. Defendants’ conduct breaches its express warranties with consumers, violates the
10 California Consumer Legal Remedies Act, the California False Advertising Act, and the California
11 Unlawful, and Fraudulent Business Practices Act.

12 5. Plaintiff brings this action on behalf of herself and a class of purchasers to stop
13 Defendants from mislabeling its skin gel as containing “Aloe” and/or “Aloe Barbadosis Leaf Juice
14 Powder” as an ingredient in the product. In addition, Plaintiff, on behalf of herself and the proposed
15 class, seeks restitution and other equitable, injunctive, declaratory, and monetary relief as set forth
16 below.
17

18 **II. PARTIES**

19 6. At all times relevant hereto, Plaintiff Tina Kalajian was a resident and citizen of Los
20 Angeles, California. In 2017 she purchased the Product at a Rite Aid retail location on Wilshire
21 Boulevard and S. Burnside Ave in Los Angeles, California for personal use. Plaintiff read the
22 Product label in the Rite Aid store before she brought the Product. Plaintiff relied on the label’s
23 representations, including the images on the front of the Product and the ingredient list on the back
24 of the Product which misled her into believing that the Product contained Aloe Vera. The supposed
25 Aloe Vera content of the Product was material to her decision to purchase, because she wanted Aloe
26 Vera for its commonly understood recuperative skin-healing and sunburn-relief qualities.
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1 7. Plaintiff would not have purchased the Product had she known the Product did not
2 contain Aloe Vera. Plaintiff suffered an injury in fact by purchasing the Product. Defendants' false,
3 fraudulent, unfair, deceptive, and misleading practices set forth in this Complaint were the
4 proximate cause of Plaintiff's injuries. Plaintiff's damages are the price she paid for the Product
5 plus applicable sales taxes.
6

7 8. Defendant, Rite Aid Corporation is a Delaware corporation with its headquarters and
8 principal place of business in Camp Hill, Pennsylvania. Rite Aid Corporation is thus treated as a
9 citizen of the state of Pennsylvania. It maintains a registered agent for service of process at C T
10 Corporation System, 818 W 7th Street, Suite 930, Los Angeles, California 90017. Plaintiff is
11 informed and believes that there are approximately 570 Rite Aid Corporation retail locations in the
12 State of California.
13

14 9. PLAINTIFF is currently ignorant of the true names and capacities, whether
15 individual, corporate, associate, or otherwise, of the Defendants sued herein under the fictitious
16 names DOES 1 through 1,000, inclusive, and therefore, sues each such Defendant by such fictitious
17 names. Plaintiff will seek leave to amend this complaint to allege the true names and capacities of
18 said fictitiously named Defendants when their true names and capacities have been ascertained.
19 Plaintiff is informed and believes and based thereon alleges that each of the fictitiously named Doe
20 Defendants is legally responsible in some manner for the events and occurrences alleged herein, and
21 for the damages suffered by Plaintiff.
22

23 10. All Defendants, including Does 1 through 1,000, are collectively referred to as
24 "Defendants."

25 11. Whenever this complaint refers to any act of Defendants, the allegations shall be
26 deemed to mean the act of those defendants named in the particular cause of action, and each of
27 them, acting individually, jointly and severally, unless otherwise alleged.
28

1 18. "The global market for Aloe Vera products is estimated to have reached \$13 billion,
2 according to information presented at a recent workshop held by the International Aloe Science
3 Council."

4 19. Defendants sell the Product with the front label of the bottle clearly referring to the
5 Product as "with Aloe."
6

7 20. The name "After Sun Gel," the net weight, the terms, "with Aloe," "No Added
8 Color" and "Soothes & Cools" are the representations on the front of the Product. Together with a
9 prominently stylized illustration of the multiple green leaves of an aloe plant that further conveys
10 the importance of aloe as a Product ingredient, these claims comprise the entire front panel. The
11 front packaging of the Product is the same or substantially similar to the below image:

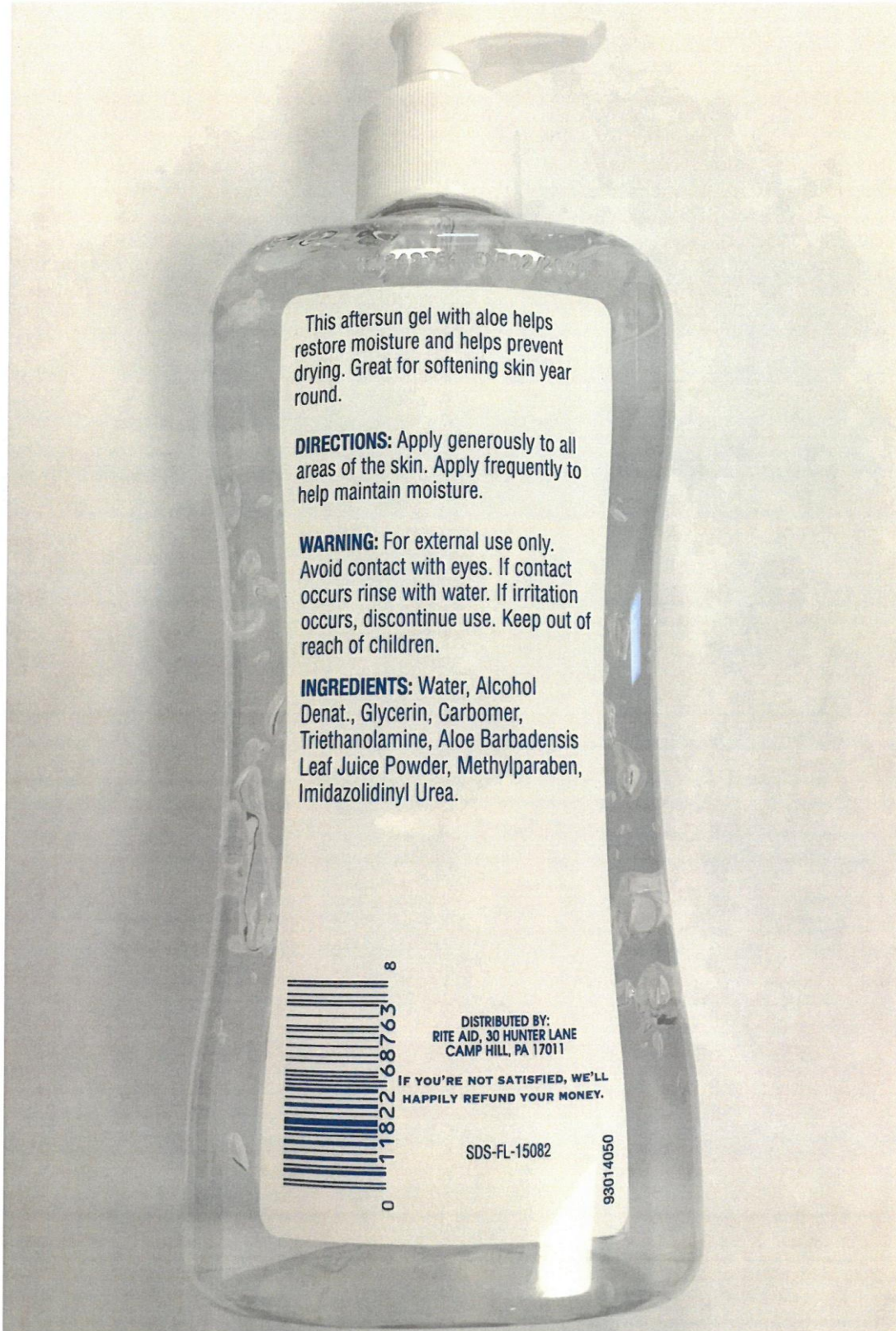
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21. On the back, the ingredients list includes "Aloe Barbadensis Leaf Juice Powder" as the fifth inactive ingredient. The back packaging of the Product is the same or substantially similar to the below image:

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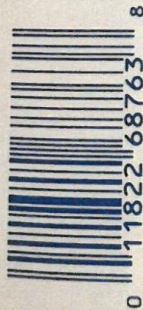


This aftersun gel with aloe helps restore moisture and helps prevent drying. Great for softening skin year round.

DIRECTIONS: Apply generously to all areas of the skin. Apply frequently to help maintain moisture.

WARNING: For external use only. Avoid contact with eyes. If contact occurs rinse with water. If irritation occurs, discontinue use. Keep out of reach of children.

INGREDIENTS: Water, Alcohol Denat., Glycerin, Carbomer, Triethanolamine, Aloe Barbadensis Leaf Juice Powder, Methylparaben, Imidazolidinyl Urea.



DISTRIBUTED BY:
RITE AID, 30 HUNTER LANE
CAMP HILL, PA 17011

IF YOU'RE NOT SATISFIED, WE'LL
HAPPILY REFUND YOUR MONEY.

SDS-FL-15082

93014050

1 22. Plaintiff's counsel had Defendants' Product tested utilizing proton nuclear magnetic
2 resonance spectrometry (H-NMR), and the results show that it does not contain any Aloe Vera or
3 Aloe Barbadensis Leaf Juice Powder. Furthermore, Acemannan, a signature Aloe Vera chemical
4 component that indicates the presence of Aloe, was not detected in the sample of Defendants'
5 product.
6

7 23. According to the American Herbal Pharmacopeia - Monograph on Aloe Vera Leaf,
8 Aloe Vera Leaf Extract, and Aloe Vera Inner Leaf Extract (2013), aloe leaf extract should contain
9 not less than 5% dry weight of acetylated polysaccharides (Acemannan) and not more than 5% dry
10 weight of isocitric acid as determined by H-NMR. Products that do not contain Acemannan do not
11 contain Aloe Vera and should not be labeled as aloe products.
12

13 24. According to the International Aloe Science Council ("IASC"), "[p]roducts that do
14 not contain Acemannan are not considered to be true aloe vera."
15

16 25. The IASC tests aloe products and certifies those products that truly contain aloe, as
17 indicated by the presence of aloe's signature chemical marker, Acemannan.
18

19 26. Improper manufacturing and storage processes can produce products with little or no
20 Acemannan.
21

22 27. The results of H-NMR testing commissioned by Plaintiff's counsel on a bottle of the
23 same Product as Plaintiff purchased show no trace of aloe. As such, Defendants' descriptions of the
24 Product as being made with "Aloe" or "Aloe Barbadensis Leaf Juice Powder" are false, deceptive,
25 and misleading.
26

27 28. The difference between the Product promised and the Product sold is significant. The
28 lack of Aloe Vera in the Product diminishes its value to zero. Consumers, including Plaintiff and
Class Members, would not have purchased the Product had they known the Product contains no
detectable amount of aloe.

1 29. Defendants knew or should have known the Product contains no detectable amount
2 of aloe, and it developed and knowingly employed a marketing strategy designed to deceive
3 consumers. In developing the Product labels, Defendants misrepresented the aloe content of the
4 Product on the Product label, which misrepresentations were communicated to every person who
5 purchased the Product via the words and picture on the label.
6

7 30. Many companies sell lotions and gels designed to "cool" and "moisturize" the skin,
8 but only a small percentage of those products include aloe, which is widely sought as a natural
9 treatment for burns and sunburn. Consumers looking for relief from the medicinal/healing
10 properties associated with aloe would not have purchased Defendants' Product had they known the
11 truth.
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13 31. The purpose of Defendants' scheme was to stimulate sales and enhance Defendants'
14 profits.
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16 32. At all relevant times, Defendants directed the above-referenced statements and
17 claims to consumers in general and Class Members in particular, as evidenced by their eventual
18 purchases of the Product.
19

20 33. Plaintiff and the other Class Members were in fact misled by Defendants'
21 representations and marketing of its Product.
22

23 34. The absence of Aloe Vera leaves no reason to purchase the Product at all, since other
24 proven and less-expensive products exist.
25

26 35. The Product is a "cosmetic" as defined under 21 U.S.C.S. § 321(i).
27

28 36. Defendants' deceptive statements violate 21 U.S.C.S. § 362(a), which deems a
cosmetic product misbranded when the label contains a statement that is "false or misleading in any
particular."
29

1 **California Class (“Class” and/or “Class Members”):** All individuals who, from
2 four years prior to filing of this Complaint through to date of certification purchased
3 Rite Aid Renewal After Sun Gel in California.

4 43. Excluded from the Class are Defendants, any entity in which Defendants have a
5 controlling interest, and Defendants’ agents, legal representatives, predecessors, successors, assigns,
6 franchisees and employees. Also excluded from the Class are the judge and staff to whom this case
7 is assigned, and any member of the judge’s immediate family.

8 44. Plaintiff reserves the right to revise the definition of the Class based on facts learned
9 during discovery.

10 45. **Numerosity - Federal Rule of Civil Procedure 23(a)(1).** The exact number of
11 persons in the Class, as herein identified and described, is unknown but is estimated to number in
12 the thousands. The Class is so numerous that joinder of individual members herein is impracticable.
13 The precise number of Class Members is presently unknown to Plaintiff, but may be ascertained
14 from Defendants’ books and sales records. Class Members may be notified of the pendency of this
15 action by mail, email, Internet and instore postings, and/or publication.

16 46. Plaintiff will fairly and adequately represent and protect the interests of the other
17 members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting
18 complex litigation and class actions. Plaintiff and his counsel are committed to vigorously
19 prosecuting this action on behalf of the members of the Class, and have the financial resources to do
20 so. Neither Plaintiff nor her counsel has any interest adverse to those of the other members of the
21 Class.

22 47. Absent a class action, most members of the Class would find the cost of litigating
23 their claims to be prohibitive, and will have no effective remedy. The class treatment of common
24 questions of law and fact is also superior to multiple individual actions or piecemeal litigation in
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1 that it conserves the resources of the courts and the litigants, and promotes consistency and
2 efficiency of adjudication.

3 48. Defendants have acted and failed to act on ground generally applicable to the
4 Plaintiff and the other members of the Class in falsely advertising and mislabeling its products as
5 containing aloe vera, requiring the Court's imposition of uniform relief to ensure compatible
6 standards of conduct toward members of the Classes.
7

8 49. The factual and legal basis of Defendants' liability to Plaintiff and to Class members
9 are the same, resulting in injury to the Plaintiff and to all of the other Class members as a result of
10 the Defendants' conduct of falsely advertising and mislabeling its products as containing aloe vera.
11 Plaintiff and Class members have suffered harm and damages a result of Defendants' unlawful and
12 wrongful conduct.
13

14 50. **Commonality and Predominance- Federal Rule of Civil Procedure 23(a)(2) and**
15 **23(b)(3).** There are many questions of law and fact common to the claims of Plaintiff and the Class
16 members, and those questions predominate over any questions that may affect individual members
17 of each Class. Common questions for the Classes include but are not limited to the following:

- 18 a) Whether Defendants' name of the product and use of images of aloe vera plant leafs
19 constitute an express warranty that the product contains aloe vera;
20
21 b) Whether Defendants breached their express warranties with Plaintiff and class members;
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23 c) Whether Defendants' labeling is unlawful, unfair, deceptive, or misleading to reasonable
24 consumers under UCL;
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26 d) Whether Defendants' conduct violates Cal. Bus. & Profs. Code §17200, Cal. Civil Code
27 §1750, and the Cal. Bus. & Profs. Code §17500.
28
29 e) Whether Defendants' product contain aloe vera or aloe barbadensis;
30
31 f) Whether a reasonable consumer would expect that products labeled with an image of a

1 green leaf and the words "with aloe" would in fact contain aloe vera or aloe barbadensis
2 as an ingredient;

- 3 g) Whether, as a result of Defendants' conduct, Plaintiff and the class members are entitled
4 to equitable relief and/or other relief, and, if so, the nature of such relief; and
5
6 h) The method of calculation and extent of damages for Plaintiff and members of the
7 Classes.

8 51. Defendants engaged in a common course of conduct giving rise to the legal rights
9 Plaintiff seeks to enforce, on behalf of herself and the other Class Members. Similar or identical
10 statutory and common law violations, business practices, and injuries are involved. Individual
11 questions, if any, pale in comparison, in both quality and quantity, to the numerous common
12 questions that dominate this action.
13

14 52. **Typicality - Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical
15 of the claims of the other members of the Class because, among other things, all Class Members
16 were comparably injured through Defendants' uniform misconduct described above. Further, there
17 are no defenses available to Defendants that are unique to Plaintiff or to any particular Class
18 Members.
19

20 53. **Adequacy of Representation - Federal Rule of Civil Procedure 23(a)(4).** Plaintiff
21 is an adequate Class representative because her interests do not conflict with the interests of the
22 other Class Members she seeks to represent; she has retained counsel competent and experienced in
23 complex class action litigation; and she will prosecute this action vigorously. Plaintiff and the
24 undersigned counsel will fairly and adequately protect the Classes' interests.
25

26 54. **Insufficiency of Separate Actions- Federal Rule of Civil Procedure 23(b)(1).**
27 Absent a representative class action, members of the Classes would continue to suffer the harm
28 described herein, for which they would have no remedy. Even if separate actions could be brought

1 by individual consumers, it would not be desirable. The resulting multiplicity of lawsuits would
2 cause undue burden and expense for both the Court and the litigants, as well as create a risk of
3 inconsistent rulings and adjudications that might be dispositive of the interests of similarly situated
4 purchasers, substantially impeding their ability to protect their interests, while establishing
5 incompatible standards of conduct for Defendants. The proposed Classes thus satisfy the
6 requirements of Fed. R. Civ. P. 23(b)(1).
7

8 55. **Superiority - Federal Rule of Civil Procedure 23(b)(3).** A class action is superior
9 to any other available means for the fair and efficient adjudication of this controversy, and no
10 unusual difficulties are likely to be encountered in the management of this class action. The
11 damages or other financial detriment suffered by Plaintiff and the other members of the Classes are
12 relatively small compared to the burden and expense that would be required to individually litigate
13 their claims against Defendants, so it would be impracticable for Class Members to individually
14 seek redress for Defendants' wrongful conduct. Even if Class Members could afford individual
15 litigation, the court system could not. Individualized litigation would create a potential for
16 inconsistent or contradictory judgments, and increase the delay and expense to all parties and the
17 court system. By contrast, the class action device presents far fewer management difficulties and
18 provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a
19 single court.
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21 herein.

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VI. CLAIMS ALLEGED

FIRST CLAIM FOR RELIEF

Violation of the California Commercial Code, Section 2313,

Breach of Express Warranty

(On behalf of Plaintiff and the Class Against All Defendants)

56. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

57. Defendants produced, advertised, marketed, and distributed products with the affirmation of fact, promise, and description on the packaging that the product contained aloe vera, aloe gel, or Aloe Barbadensis Leaf Juice Powder.

58. These written promises became part of the basis of the bargain between the parties and thus constitutes an express warranty, which the Defendants breached; the Product did not contain Aloe.

59. Plaintiff and members of the Class relied on these affirmations of fact, promises, and descriptions in that they were part of the basis of the bargain under which Plaintiff and members of the Class purchased Defendants' products.

60. Defendants breached these express warranties by producing, distributing, and marketing products to Plaintiff and Class members that did not conform to the affirmations of fact, promises, and/or descriptions made on the packaging (i.e., that the product contained aloe vera, aloe gel, or Aloe Barbadensis Leaf Juice Powder).

61. Defendants have been on notice of their breach of these express warranties as they manufactured the product and designed the labeling. Further, they knew or should have known that its Product contained no detectable levels of aloe vera, aloe gel, or Aloe Barbadensis Leaf Juice

1 Powder and that the Product does not conform to Defendants' affirmations and promises described
2 above.

3 62. Plaintiff and members of the Class would not have purchased the Product had they
4 known its true nature, namely that it does not contain any aloe vera, aloe gel, or Aloe Barbadensis
5 Leaf Juice Powder.
6

7 63. As a proximate result of Defendants' breach of its express warranty, Plaintiff and
8 members of the Class sustained damages, including but not limited to the purchase price of the
9 product and/or the premium paid for the product.

10 64. Plaintiff, on behalf of herself and the Class, is entitled to damages and other legal
11 and equitable relief, including, a right of reimbursement, as well as costs, expenses and attorneys'
12 fees.
13

14 65. Plaintiff brings this action as a private attorney general, and to vindicate and enforce
15 an important right affecting the public interest. Plaintiff and the Class are therefore entitled to an
16 award of attorneys' fees under Code of Civil Procedure section 1021.5 for bringing this action.

17 66. On April 3, 2017, prior to filing this Complaint, Plaintiff sent Defendants a pre-suit
18 demand letter requesting the relief sought in this Complaint and notifying Defendants of the alleged
19 breach of express warranty related to Defendants' marketing and labeling of its Product.
20 Defendants responded to Plaintiff, denying any wrongdoing on their part.
21

22 **SECOND CLAIM FOR RELIEF**

23 **Violations of the Consumers Legal Remedies Act,**

24 **California Civil Code Section 1750, et seq.**

25 **(On behalf of Plaintiff and the Class Against All Defendants)**

26
27 67. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully
28 set forth herein.

1 68. The California Consumer Legal Remedies Act, Section 1750 of the California Civil
2 Code (CLRA), protects consumers against fraud, unlawful practices, and unconscionable
3 commercial practices in connection with the sale of any merchandise.

4 69. Plaintiff and members of the Class are “consumers” as defined by Section 1761(d) of
5 California Code because they sought or acquired Defendants’ good for personal, family, or
6 household purposes.
7

8 70. Defendants’ products are “goods” within the meaning of Section 1761(a) of the
9 California Civil Code as they are tangible chattels bought for personal, family, or household
10 purposes.

11 71. Defendants are “Persons” under the CLRA. Cal. Civ. Code. §1761(c).

12 72. Plaintiff and the putative Class members’ purchases of the Product constitute
13 “Transactions” under the CLRA. Cal. Civ. Code §1761(e).
14

15 73. Defendants manufactured, licensed, distributed, and marketed products containing
16 aloe vera, aloe gel, or Aloe Barbadensis Leaf Juice Powder when, in fact, they do not. Such conduct
17 constitutes a violation of the California Consumer Legal Remedies Act as specified below.

18 74. Defendants’ conduct violated and continues to violate the Consumer Legal Remedies
19 Act by engaging in the following practices proscribed by section 1770(a), subsections (2), (5), (7),
20 and (9) of the California Civil Code, respectively, in transactions with Plaintiff and members of the
21 Class, which were intended to result in, and did result in, the sale of the products in that Defendants:
22 misrepresenting the source, sponsorship, approval, or certification of goods or services;
23 misrepresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses,
24 benefits, or quantities which they do not have; representing that goods or services are of a particular
25 standard, quality, or grade ... if they are of another; and advertising goods or services with intent not
26 to sell them as advertised.
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1 the product had they known that did not contain any aloe vera, aloe gel, or Aloe Barbadensis Leaf
2 Juice Powder.

3 81. Defendants' use of statements and imagery on the product packaging and name had
4 the capacity, likelihood and tendency to deceive and confuse consumers into believing that the
5 product contained aloe vera, aloe gel, or Aloe Barbadensis Leaf Juice Powder.
6

7 82. Defendants, as the manufacturers and designers of its packaging, knew or should
8 have known, with the exercise of reasonable care, that the products they were offering to consumers
9 do not contain any aloe vera, aloe gel, or Aloe Barbadensis Leaf Juice Powder and that consumers
10 would be misled into believing that the products contained those ingredients. Therefore, Defendants
11 knew or should have known that their statements were untrue and misleading.
12

13 83. Plaintiff and members of the Class were induced to purchase and/or pay a premium
14 for Defendants' product based on Defendants' untrue and misleading statements.

15 84. Plaintiff and members of the Class were aware of and reasonably relied on
16 Defendants' untrue and misleading statements.

17 85. Defendants disseminated untrue and misleading statements about the ingredients and
18 quality of its products with the intent not to sell them as advertised.

19 86. Pursuant to section 17535 of the California Business and Professions Code, Plaintiff,
20 on behalf of herself and the Class seeks restitution and a Court order enjoining Defendants from
21 such future conduct and any other such orders as may be necessary to rectify Defendants'
22 mislabeling and false advertising, including requiring Defendants to cease misrepresenting that its
23 products contain aloe vera, aloe gel, or Aloe Barbadensis Leaf Juice Powder.
24

25 87. Plaintiff brings this action as a private attorney general, and to vindicate and enforce
26 an important right affecting the public interest. Plaintiff and members of the Class are therefore
27
28

1 entitled to an award of attorneys' fees under Code of Civil Procedure section 1021.5 for bringing
2 this action.

3
4 **FOURTH CLAIM FOR RELIEF**
5 **Violations of California Business & Professions Code,**
6 **Section 17200, *et seq.*, Unlawful, Unfair and**
7 **Fraudulent Business Acts and Practices**
8 **(On behalf of Plaintiff and the Class Against All Defendants)**

9 88. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully
10 set forth herein.

11 89. Section 17200 of the California Business & Professions Code, known as the Unfair
12 Competition Law ("UCL"), prohibits any "unlawful, unfair or fraudulent business act or unfair,
13 deceptive, untrue or misleading advertising..." Section 17200 specifically prohibits any ""unlawful
14 business act or practice."

15 90. The UCL borrows violations of other law and statutes and considers those violations
16 also to constitute violations of California law.

17 91. Defendants' acts and practices as detailed herein, were at all times during the Class
18 Period, and continue to be, acts of unfair competition. Defendants have engaged in unlawful, unfair
19 or fraudulent business acts and/or practices within the meaning of California Business &
20 Professions Code, section 17200, *et seq.* Defendants need only violate one of the three prongs to be
21 held strictly liable.

22 92. Defendants have engaged in "unlawful" business acts and practices by
23 manufacturing, promoting, and distributing products as containing aloe vera, aloe gel, or Aloe
24 Barbadensis Leaf Juice Powder, when, in fact, none of those ingredients are in the product.
25 Defendants' business acts and practices violate the California Business and Professions Code,
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1 section 17500, *et seq.* and the California Consumer Legal Remedies Act, California Civil Code,
2 Section 1750, *et seq.*, as alleged herein.

3 93. Defendants' acts and practices are further "unlawful" because the Product is
4 "misbranded" under 21 U.S.C. 362(a) – "[a] cosmetic is considered misbranded – (a) if its labeling
5 is false or misleading in any particular". The Product is further mislabeled under 21 C.F.R. § 701 .1
6 (b), which deems cosmetics misbranded when "(t)he labeling of a cosmetic which contains two or
7 more ingredients [is designated] in such labeling by a name which includes or suggests the name of
8 one or more but not all such ingredients." This is deemed misbranding "even though the names of
9 all such ingredients are stated elsewhere in the labeling."
10

11 94. Defendants declare "aloe vera" and/or "aloe gel" on their packaging as a
12 characterizing ingredient even where aloe vera, aloe gel, or Aloe Barbadensis Leaf Juice Powder is
13 not actually present in the product.
14

15 95. The product is therefore misbranded under both 21 U.S.C. 362(a) and under 21
16 C.F.R. § 701 .1 (b) because the packaging is false and misleading in that it conveys the message that
17 aloe vera, aloe gel, or Aloe Barbadensis Leaf Juice Powder is contained in the product.

18 96. Defendants' aloe vera and aloe gel products are marketed and sold for relief of burns,
19 sunburns, and similar skin conditions that benefit from the healing properties of aloe, but because
20 the Product does not actually contain any aloe vera, aloe gel, or Aloe Barbadensis Leaf Juice
21 Powder, it is unlawfully misbranded under the FDA's regulations.
22

23 97. Plaintiff reserves the right to identify additional provisions of the law violated by
24 Defendants as further investigation and discovery warrants.

25 98. Defendants' failure to comply with the above statutes and regulations constitute an
26 unlawful business act or practice.
27
28

1 99. Section 17200 of the California Business & Professional Code also prohibits any
2 "unfair business act or practice." As described above, Defendants have engaged in "unfair" business
3 acts or practices in that they falsely labeled products as containing aloe vera, aloe gel, or Aloe
4 Barbadensis Leaf Juice Powder, when, in fact, those products do not contain any of those
5 ingredients.
6

7 100. The gravity of the harm to Plaintiff and members of the Class outweighs any
8 arguable utility of Defendants' conduct. Plaintiff's injury is substantial, is not outweighed by any
9 countervailing benefit to consumers or competition, and is not one that consumers could have
10 reasonably avoided.

11 101. Defendants' conduct offends California public policy tethered to the California
12 Consumer Legal Remedies Act, the California False Advertising Law, and the FDCA, which are
13 intended to preserve fair competition, to protect consumers from market distortions, and to allow
14 consumers to make informed choices in their purchasing products.
15

16 102. Defendants' actions are immoral, unethical, unscrupulous, and offend established
17 public policy, and have injured Plaintiff and other members of the Class.

18 103. Section 17200 also prohibits any "fraudulent business act or practice." Defendants'
19 conduct constituted "fraudulent" business acts or practices in that their conduct had a tendency and
20 likelihood to deceive persons to whom such conduct was and is targeted by falsely labeling products
21 as containing aloe vera, aloe gel, or Aloe Barbadensis Leaf Juice Powder, when, in fact, they do not.
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23 104. Plaintiff and members of the Class were deceived by Defendants' representations as
24 to whether the products contained aloe vera, aloe gel, or Aloe Barbadensis Leaf Juice Powder.

25 105. Plaintiff and members of the Class reasonably relied on Defendants' representations.
26 As the California Supreme Court has explained, "Simply stated: labels matter. The marketing
27 industry is based on the premise that labels matter, that consumers will choose one product over
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1 another similar product based on its label and various tangible and intangible qualities they may
2 come to associate with a particular source." *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 328
3 2 (2011).

4 106. Plaintiff and members of the Class have suffered injuries as a direct and proximate
5 result of the unlawful, unfair, and fraudulent business practices of Defendants in that they purchased
6 products that they would not have purchased, or they would have paid less for the products, had
7 they known that the products did not contain any aloe vera, aloe gel, or Aloe Barbadensis Leaf Juice
8 Powder.

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10 107. Pursuant to section 17203 of the California Business and Professions Code, Plaintiff,
11 on his own behalf and on behalf of the Class, seeks restitution and a Court order enjoining
12 Defendants from such future conduct and any other such orders that may be necessary to rectify the
13 unlawful, unfair, and fraudulent business practices of Defendants, including requiring Defendants to
14 cease mislabeling its products as containing aloe vera, aloe gel, or Aloe Barbadensis Leaf Juice
15 Powder.

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17 108. Plaintiff brings this action as a private attorney general, and to vindicate and enforce
18 an important right affecting the public interest. Plaintiff and members of the Class are therefore
19 entitled to an award of attorneys' fees under Code of Civil Procedure section 1021.5 for bringing
20 this action.

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22 WHEREFORE, Plaintiff Tina Kalajian, on behalf of herself and members of the Class, prays
23 for the following relief:

- 24 a) An order certifying the Class as defined above;
25 b) An award of actual damages;
26 c) An injunction requiring Defendants to cease misrepresenting that their products
27 contain aloe vera, aloe gel, or Aloe Barbadensis Leaf Juice Powder and requiring
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- Defendants to provide a notice to consumers who already purchased the product;
- d) For any and all other relief available under Business and Professions Code sections 17200, *et. seq.*, including but not limited to disgorgement of profits received through Defendants' unfair business practices and restitution;
 - e) An award of reasonable attorneys' fees and costs;
 - f) For pre-judgment interest on the sums owing; and
 - g) For such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable. Plaintiff also respectfully requests leave to amend this Complaint to conform to evidence, if such amendment is needed for trial.

Dated: September 14, 2017

LATTIE | MALANGA | LIBERTINO, LLP

By: /s/ Gerald B. Malanga
Gerald B. Malanga, Esq.
Attorneys for Plaintiff Tina Kalajian,
individually and on behalf of all others
similarly situated