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**ATTORNEY FOR PLAINTIFF  
AND THE PROPOSED CLASS**

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

**MEGAN MCATEER, individually  
and on behalf of all others similarly  
situated,**

**PLAINTIFF**

**v.**

**TARGET CORPORATION**

**DEFENDANT**

**CASE NO. 2:17-cv-7848-DSF-PLA**

**PLAINTIFF'S FIRST AMENDED  
CLASS ACTION COMPLAINT  
FOR**

- (1) VIOLATION OF THE  
CALIFORNIA UNFAIR  
COMPETITION LAW  
CALIFORNIA BUSINESS &  
PROFESSIONS CODE § 17200,  
ET SEQ.**
- (2) VIOLATION OF THE  
CALIFORNIA CONSUMER  
LEGAL REMEDIES ACT,  
CALIFORNIA CIVIL CODE §  
1750, ET SEQ.**
- (3) FALSE AND MISLEADING  
ADVERTISING IN VIOLATION  
OF BUSINESS &  
PROFESSIONS CODE § 17500,  
et seq.**
- (4) BREACH OF EXPRESS  
WARRANTY**
- (5) BREACH OF IMPLIED  
WARRANTY OF  
MERCHANTABILITY**
- (6) VIOLATION OF THE  
MAGNUSON MOSS  
WARRANTY ACT**
- (7) NEGLIGENCE**
- (8) FRAUD**
- (9) BREACH OF CONTRACT**

	<b>(10) UNJUST ENRICHMENT</b> <b>(11) DECLARATORY</b> <b>JUDGMENT</b>  <b><u>JURY TRIAL DEMANDED</u></b>
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Plaintiff Megan McAteer (“Plaintiff”), individually and on behalf of all other similarly situated, by and through their undersigned counsel, files this First Amended Class Action Complaint against Target Corporation (hereinafter “Target” or “Defendant”), alleging, upon personal knowledge as to Plaintiff’s individual actions and upon information and belief and/or counsel’s investigations as to all other matters, the following:

### **INTRODUCTION**

1. This is a class action lawsuit involving Up & Up Makeup Remover Cleansing Towelettes – Evening Calm (hereinafter, “Products”) manufactured and sold by Defendant, and purchased by Plaintiff and consumers throughout the United States.

2. Target markets its Up & Up brand as “Quality needs priced to please. With Up & Up your satisfaction is 100% guaranteed or your money back.”

3. Plaintiff and Class were not satisfied with the Products because they cause an allergic and/or strong irritating reaction, which turns the user’s face red and causes them to develop a burning sensation. The user’s skin can also get blotchy, swollen, including swelling around the eyes. Users of the Products, who suffered

1 this allergic reaction, were required to use medicine like Cortisone 10 and Benadryl  
2 to treat these injuries.

3  
4 4. The defective Products affected hundreds of thousands of consumers  
5 who purchased the Products at Target, causing damages for loss of value of the  
6 Products, anxiety, fright, irritating, burning, and/or allergic reactions caused by the  
7 chemical exposure and related expenses for treatment of these personal injuries and  
8 for other personal injuries, as described in more detail below.

### 9 10 **PARTIES**

11  
12 5. Plaintiff Megan McAteer (“McAteer”) is a citizen of the State of  
13 California, residing in Los Angeles, California.

14  
15 6. Plaintiff McAteer purchased a 25-count package of Target’s Up & Up  
16 Cleansing Towelettes – Evening Calm from Target for personal and/or household to  
17 wash her face at the Beverly Connection Target store in Los Angeles County.  
18 Plaintiff McAteer developed an allergic reaction after using the Products in which  
19 her face developed a burning sensation and turned bright red.

20  
21 7. Manufacturer Defendant Target Corporation (“Target”) is a Minnesota  
22 corporation with its principle place of business in Minnesota. At all times mentioned  
23 herein, Defendant Target manufactured, designed, and sold the Products in Targets  
24 stores and Target.com.

### 25 26 **JURISDICTION AND VENUE**

27  
28 8. This action is within the original jurisdiction of this Court pursuant to

1 28 U.S.C. § 1332(d)(2) because: (i) there are 100 or more class members, (ii) there  
2 is an aggregate amount in controversy exceeding \$5,000,000.00, exclusive of interest  
3 and costs, and (iii) there is minimal diversity because at least one plaintiff and one  
4 defendant are citizens of different States.  
5

6 9. Defendant Target maintains offices and agents, including Target stores,  
7 in the Central District of California, as part of its usual and customary business.  
8

9 10. Venue is proper in the Central District of California pursuant to 28  
10 U.S.C. § 1391 (a)(2) and (a)(3) because Plaintiff purchased the Products at the  
11 Beverly Connection Target Store in Los Angeles County, California, which is located  
12 in the Central District.  
13

#### 14 **TARGET'S MATERIAL REPRESENTATIONS AND OMISSIONS**

15  
16 11. Target markets its Up & Up brand as "Quality needs priced to please.  
17 With up & up your satisfaction is 100% guaranteed or your money back."  
18

19 12. Target's Up & Up Makeup Remover Cleansing Towelettes – Evening  
20 Calm are marketed as "ultra soft cloths" that "***gently*** removes makeup, even  
21 waterproof mascara." (emphasis added).  
22

23 13. Target's Products, however, are so harsh that they cause users' skin to  
24 develop an allergic reaction – the Products cause the users' face to develop a burning  
25 sensation that turns the skin red.  
26

27 14. Target lists the ingredients in the Products: Water, Isohexadecane,  
28 Dicaprylyl Ether, Octyldodecyl Stearoyl Stearate, Hexylene Glycol, Glycerin,

1 Ethylhexyl Hydroxystearate, Lauryl Glucoside, Propylene Glycol, Sorbitan  
 2 Monolaurate, Polyglyceryl-2 Dipolyhydroxystearate, Chamomilla Recutita  
 3 (Matricaria) Flower Extract, Centaurea Cyanus Flower Extract, Cucumis Sativus  
 4 (Cucumber), Fruit Extract, Camellia Oleifera Leaf Extract, Aloe Barbadensis Leaf  
 5 Juice, Acrylates/C10-30 Alkyl Acrylate Crosspolymer, Tocopheryl Acetate, Citric  
 6 Acid, Disodium EDTA, Aminomethyl Propanol, Phenoxyethanol, Iodopropynyl  
 7 Butylcarbamate, and Fragrance.

10 15. The only Allergens & Warnings that accompany the Target Up & Up  
 11 label are: “Keep out of reach of children. For external use only. As with most facial  
 12 cleansers, getting product in eyes may cause stinging. If this occurs, rinse eyes  
 13 thoroughly with warm water.”

16 16. Target claims “up&up[ ] makeup remover cleansing towelettes in  
 17 evening calm help **gently** remove makeup in one easy step, while providing a calming  
 18 scent. As you wipe your face, enjoy the soothing aroma released as the towelette lifts  
 19 away long-lasting makeup (including waterproof mascara). **No rinsing necessary.**  
 20 For **all** skin types.” See, [https://www.target.com/p/makeup-remover-cleansing-](https://www.target.com/p/makeup-remover-cleansing-towelettes-25-ct-up/-/A-49102557)  
 21 [towelettes-25-ct-up/-/A-49102557](https://www.target.com/p/makeup-remover-cleansing-towelettes-25-ct-up/-/A-49102557). (Emphasis added).

24 17. Target markets the product as being comparative to Neutrogena Night  
 25 Calming Makeup Remover Cleansing Towelettes. Neutrogena Night Calming  
 26 Makeup Remover Cleansing Towelettes, however, contains the following  
 27 ingredients: Cyclopentasiloxane, Isononyl Isononanoate, Isostearyl Palmitate,  
 28

1 Pentaerythrityl Tetraethylhexanoate, Cetyl Ethylhexanoate, Hexylene Glycol, PEG-  
 2 6 Caprylic/Capric Glycerides, Phenoxyethanol, Fragrance, Sucrose Cocoate,  
 3 Carbomer, Sodium Hydroxide, PEG-4 Laurate, Benzoic Acid, Dehydroacetic Acid,  
 4 Iodopropynyl Butylcarbamate, Ethylhexylglycerin, Polyaminopropyl Biguanide.  
 5 See, [http://www.neutrogena.com/skin/skin-cleansers/makeup-remover-cleansing-](http://www.neutrogena.com/skin/skin-cleansers/makeup-remover-cleansing-towelettes-night-calming/6805355.html)  
 6 [towelettes-night-calming/6805355.html](http://www.neutrogena.com/skin/skin-cleansers/makeup-remover-cleansing-towelettes-night-calming/6805355.html).  
 7  
 8

9 18. In fact, the majority of the ingredients are different. Neutrogena Night  
 10 Calming Makeup Remover Cleansing Towelettes and the Products only share four  
 11 (4)<sup>1</sup> of the same ingredients – namely, Water, Hexylene Glycol, Phenoxyethanol, and  
 12 Iodopropynyl Butylcarbamate.  
 13

14 19. Furthermore, Target markets the product as: “These hypoallergenic  
 15 towelettes are alcohol and paraben free, non-oily and gentle on eye area. They have  
 16 been dermatologist and ophthalmologist tested and are safe for contact lens wearers  
 17 to use.” See [https://www.target.com/p/makeup-remover-cleansing-towelettes-25-ct-](https://www.target.com/p/makeup-remover-cleansing-towelettes-25-ct-up/-/A-49102557)  
 18 [up/-/A-49102557](https://www.target.com/p/makeup-remover-cleansing-towelettes-25-ct-up/-/A-49102557).  
 19  
 20

21 20. Indeed, Target markets the Products as being:

- 22 • alcohol free\*<sup>[2]</sup>
- 23 • paraben free
- 24
- 25
- 26

27 <sup>1</sup> The products also share the ingredient “Fragrance,” but without discovery, Plaintiff is unsure as  
 28 to whether the fragrances are the same.

<sup>2</sup> \* does not contain ethanol, isopropanol or rubbing alcohol

- for all skin types
- Dermatologist & Ophthalmologist tested
- Gently removes makeup, even waterproof mascara.

21. Target further represents the following about the Up & Up Cleansing Towelettes:

- Skin Concern: basic care
- Recommended Skin Type: normal
- Used For: basic cleansing
- For Use On: Eye Area, Face
- Product Form: Wipe
- Product Warning: no warning applicable
- Health Facts: hypoallergenic, Contains Aloe, contains vitamin E
- Includes: Face Cleanser
- Package Quantity: 25
- TCIN: 49102557
- UPC: 074887707802
- Store Item Number (DPCI): 037-12-1530

**IRRITATING AND/OR ALLERGENIC INGREDIENTS IN  
TARGET UP & UP FACIAL CLEANSING TOWELETTES (EVENING  
CALM)**

22. Despite being touted as a product that “gently removes makeup” and “alcohol-free,” Target uses a number of harsh chemicals and known human allergens

1 in the Products, such as Octyldodecyl Stearoyl Stearate, Hexylene Glycol,  
 2 Tocopheryl Acetate, Aminomethyl Propanol, Phenoxyethanol, Iodopropynyl  
 3 Butylcarbamate, and Fragrance, among others.  
 4

### 5 **Octyldodecyl Stearoyl Stearate**

6 23. Octyldodecyl stearoyl stearate is a lipid-based synthetic skin  
 7 conditioning agent. According to the Environmental Working Group's Skin Deep®  
 8 Cosmetics Database, Octyldodecyl Stearoyl Stearate is known to be an irritant to  
 9 skin, eyes, or lungs (High Concern).<sup>3</sup>  
 10  
 11

12 24. Additionally, Octyldodecyl stearoyl stearate has been identified in a  
 13 Cosmetic Ingredient Review Assessment as a human irritant - strong evidence (only  
 14 for Products for use around the eyes, on the skin, or may be aerosolized (airborne)).  
 15

### 16 **Hexylene Glycol**

17 25. Hexylene Glycol is a small molecular weight surfactant, which  
 18 functions as a fragrance ingredient; a solvent; a viscosity decreasing agent;  
 19 emulsifier; a perfume, a skin conditioning agent; and a surfactant.<sup>4</sup> According to the  
 20 Environmental Working Group's Skin Deep® Cosmetics Database, Hexylene Glycol  
 21 is known to be an irritant to skin, eyes, or lungs. Additionally, Hexylene Glycol has  
 22 been classified as an irritant by the "European Union – Classification and Labelling  
 23  
 24  
 25

26 <sup>3</sup>[https://www.ewg.org/skindeep/ingredient/704241/OCTYLDODECYL\\_STEAROYL\\_STEARATE/#.WYxSCzw8KaM](https://www.ewg.org/skindeep/ingredient/704241/OCTYLDODECYL_STEAROYL_STEARATE/#.WYxSCzw8KaM)

27 <sup>4</sup>[http://www.ewg.org/skindeep/ingredient/702849/HEXYLENE\\_GLYCOL/#.WbabW8iGOHk](http://www.ewg.org/skindeep/ingredient/702849/HEXYLENE_GLYCOL/#.WbabW8iGOHk)  
 28 (Last Visited: 9/11/2017)

See

*Footnote continued on next page*



1 [sic]”.<sup>5</sup>

## 2 **Tocopheryl Acetate**

3  
4 26. Tocopheryl Acetate is a chemical compound that consists of acetic acid  
5 and tocopherol (vitamin E) that functions as an antioxidant, skin-conditioning agent,  
6 and skin conditioner.<sup>6</sup>

7  
8 27. The concern with Tocopheryl Acetate is that it can be potentially  
9 irritating to skin, causing redness, rashes, and potential allergic reactions.<sup>7</sup>

10 28. According to the Cosmetic Ingredient Review (CIR) of the ingredient,  
11 tocopheryl acetate is a human skin toxicant or allergen. According to the  
12 Environmental Working Group Skin Deep® Cosmetic Database, the evidence is  
13 strong.<sup>8</sup>

## 14 **Aminomethyl Propanol**

15  
16 29. Aminomethyl Propanol is a small molecular weight buffering agent that  
17 functions as a pH Adjuster and buffering agent.<sup>9</sup> According to the Environmental  
18 Working Group’s Skin Deep® Cosmetics Database, Aminomethyl Propanol is an  
19

20  
21  
22 <sup>5</sup> See

23 [http://www.ewg.org/skindeep/ingredient/702849/HEXYLENE\\_GLYCOL/#.WbabW8iGOHk](http://www.ewg.org/skindeep/ingredient/702849/HEXYLENE_GLYCOL/#.WbabW8iGOHk)  
24 (Last Visited: 9/11/2017)

25 [http://www.ewg.org/skindeep/ingredient/706569/TOCOPHERYL\\_ACETATE/#.WbafEsiGOHk](http://www.ewg.org/skindeep/ingredient/706569/TOCOPHERYL_ACETATE/#.WbafEsiGOHk)  
26 <https://www.annmariegianni.com/ingredient-watch-list-tocopheryl-acetate-the-potentially-irritating-form-of-vitamin-e/>; *See also,*

27 [http://www.ewg.org/skindeep/ingredient/706569/TOCOPHERYL\\_ACETATE/#.WbafEsiGOHk](http://www.ewg.org/skindeep/ingredient/706569/TOCOPHERYL_ACETATE/#.WbafEsiGOHk)  
28 <sup>8</sup> [http://www.ewg.org/skindeep/ingredient/706569/TOCOPHERYL\\_ACETATE/#.WbafEsiGOHk](http://www.ewg.org/skindeep/ingredient/706569/TOCOPHERYL_ACETATE/#.WbafEsiGOHk)

<sup>9</sup> [http://www.ewg.org/skindeep/ingredient/700348/AMINOMETHYL\\_PROPANOL/#.Wbagj8iGOHk](http://www.ewg.org/skindeep/ingredient/700348/AMINOMETHYL_PROPANOL/#.Wbagj8iGOHk)

*Footnote continued on next page*

1 irritant to skin, eyes, or lungs.<sup>10</sup> Additionally, Aminomethyl Propanol has been  
 2 classified as an irritant by the European Union – Classification and Labelling.<sup>11</sup>

### 4 **Phenoxyethanol**

5 30. Phenoxyethanol is a preservative used in cosmetics and personal care  
 6 Products that functions as a fragrance ingredient and preservative.<sup>12</sup> According to  
 7 the Environmental Working Group’s Skin Deep® Cosmetics Database,  
 8 Phenoxyethanol is an irritant to skin, eyes, or lungs.<sup>13</sup> Additionally, Phenoxyethanol  
 9 has been classified as an irritant by the European Union – Classification and  
 10 Labelling.<sup>14</sup>

### 13 **Iodopropynyl Butylcarbamate**

14 31. Iodopropynyl Butylcarbamate is used as a preservative in cosmetic  
 15 formulations; it is acutely toxic by inhalation and should not be used in Products that  
 16 can be aerosolized or inhaled.<sup>15</sup> Iodopropynyl Butylcarbamate functions as a  
 17 preservative.<sup>16</sup> According to the Environmental Working Group’s Skin Deep®

20 <sup>10</sup>

21 [http://www.ewg.org/skindeep/ingredient/700348/AMINOMETHYL\\_PROPANOL/#.Wbagj8iGOHk](http://www.ewg.org/skindeep/ingredient/700348/AMINOMETHYL_PROPANOL/#.Wbagj8iGOHk)

22 <sup>11</sup>

23 [http://www.ewg.org/skindeep/ingredient/700348/AMINOMETHYL\\_PROPANOL/#.Wbagj8iGOHk](http://www.ewg.org/skindeep/ingredient/700348/AMINOMETHYL_PROPANOL/#.Wbagj8iGOHk)

24 <sup>12</sup> <http://www.ewg.org/skindeep/ingredient/704811/PHENOXYETHANOL/#.Wbag4MiGOHk>

25 <sup>13</sup> <http://www.ewg.org/skindeep/ingredient/704811/PHENOXYETHANOL/#.Wbag4MiGOHk>

26 <sup>14</sup> <http://www.ewg.org/skindeep/ingredient/704811/PHENOXYETHANOL/#.Wbag4MiGOHk>

27 <sup>15</sup> [http://www.ewg.org/skindeep/ingredient/703111/IODOPROPYNYL\\_BUTYLCARBAMATE/#.WbahLsiGOHk](http://www.ewg.org/skindeep/ingredient/703111/IODOPROPYNYL_BUTYLCARBAMATE/#.WbahLsiGOHk)

28 <sup>16</sup> [http://www.ewg.org/skindeep/ingredient/703111/IODOPROPYNYL\\_BUTYLCARBAMATE/#.WbahLsiGOHk](http://www.ewg.org/skindeep/ingredient/703111/IODOPROPYNYL_BUTYLCARBAMATE/#.WbahLsiGOHk)

*Footnote continued on next page*

1 Cosmetics Database, Iodopropynyl Butylcarbamate is a human toxicant or allergen  
 2 (strong evidence) per a Cosmetic Ingredient Review Assessment.<sup>17</sup> Additionally,  
 3 Iodopropynyl Butylcarbamate has been shown in one or more human case studies to  
 4 have immune or allergenic effects.<sup>18</sup>

## 6 **Fragrance**

7  
 8 32. The word "fragrance" or "parfum" on the product label represents an  
 9 undisclosed mixture of various scent chemicals and ingredients used as fragrance  
 10 dispersants such as diethyl phthalate.<sup>19</sup> Fragrance mixes have been associated with  
 11 allergies, dermatitis, respiratory distress and potential effects on the reproductive  
 12 system.<sup>20</sup> Fragrance functions as a deodorant, masking agents, or perfuming agent.<sup>21</sup>  
 13 According to the Environmental Working Group's Skin Deep® Cosmetics Database,  
 14 Fragrance is a known human immune system toxicant or allergen according to the  
 15 Scientific Committee on Cosmetic Products and Non-Food Products Intended for  
 16 Consumers ("SCCNFP") and Tatyana Hamilton & Gillian C. de Gannes, MD.<sup>22</sup>  
 17 Additionally, one or more human case studies show significant immune or allergenic  
 18 effects.<sup>23</sup>

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22  
 23 <sup>17</sup>

24 [http://www.ewg.org/skindeep/ingredient/703111/IODOPROPYNYL\\_BUTYLCARBAMATE/#.WbahLsiGOHk](http://www.ewg.org/skindeep/ingredient/703111/IODOPROPYNYL_BUTYLCARBAMATE/#.WbahLsiGOHk)

<sup>18</sup>

25 [http://www.ewg.org/skindeep/ingredient/703111/IODOPROPYNYL\\_BUTYLCARBAMATE/#.WbahLsiGOHk](http://www.ewg.org/skindeep/ingredient/703111/IODOPROPYNYL_BUTYLCARBAMATE/#.WbahLsiGOHk)

26 <sup>19</sup> <http://www.ewg.org/skindeep/ingredient/702512/FRAGRANCE/#>

27 <sup>20</sup> <http://www.ewg.org/skindeep/ingredient/702512/FRAGRANCE/#>

28 <sup>21</sup> <http://www.ewg.org/skindeep/ingredient/702512/FRAGRANCE/#>

<sup>22</sup> <http://www.ewg.org/skindeep/ingredient/702512/FRAGRANCE/#>

<sup>23</sup> <http://www.ewg.org/skindeep/ingredient/702512/FRAGRANCE/#>

**PLAINTIFF AND THE CLASS' INJURIES**

33. Given the above, one or more of the Products' active ingredients creates an irritating and/or allergic reaction causing a burning sensation on the face and turns the face red. The effect of this ingredient(s) renders the Products dangerous and unsafe for sale as an over-the-counter product.

34. Defendant failed to properly warn consumers, including Plaintiff, either in their extensive television, print, and online marketing of the Products or on the package labeling, that they were at risk of significant injuries upon proper use of the Products. Defendant continued to conceal the dangers of the Products by failing to appropriately and fully discontinue and recall the Products, by continuing to claim the Products are gentle when properly applied, by offering more of the Products to the market and by failing to warn consumers, including Plaintiff that its Products contained known irritants

35. Plaintiff and the Class have suffered injury in fact and lost money as a result of their use of the Up & Up Makeup Remover Cleansing Towelettes – Evening Calm.

36. Several Complaints appear online complaining of the same issue:

Up and Up in purple/white makeup remover (would not recommend)  
3 out of 5 stars submitted by JenLynTN — 16 months ago

Please be careful it could cause your face to have a reaction to this product. It is a very soft wipe and smells great.

See, <https://www.target.com/p/makeup-remover-cleansing-towelettes->

25-ct-up/-/A-49102557

1 out of 5 stars

submitted by JK — 3 months ago

Caused the area under my eyes to break out in red bumps shortly after using. Never had this reaction to a makeup remover wipe before. Don't like how the wipe stretches and feels thin either. Would not recommend.

See, <https://www.target.com/p/makeup-remover-cleansing-towelettes-25-ct-up/-/A-49102557>

Ajackson87

on 11/14/2015 12:41:00 AM

More reviews by Ajackson87

Age: 25-29 Skin: Combination, Fair, Not Sure Hair: Blond, Other, Other Eyes: Hazel

I wish I would have read all the reviews sooner. My eyes and face are also burning and stinging bad. My eyes feel swollen and it only after the 2nd use. I can't believe these are still being sold after all the problems!!!

See, <https://www.makeupalley.com/product/showreview.asp/ItemId=136680/Target---Up-&-Up-Makeup-Remover-Cleansing-Towelettes/Unlisted-Brand/Eye-Makeup-Remover>

kraej22

on 1/31/2015 2:09:00 PM

More reviews by kraej22

Age: 19-24

Skin: Combination, Fair, Not Sure

Hair: Red, Other, Other

Eyes: Green

NEVER BUY THIS! - RED PUFFY ITCHY EYES

I never have problems with sensitivity to certain chemicals so I have no idea why these wipes affected me so badly. It all started two months ago when I purchased my first pack of these wipes. All was well, they removed my makeup great but I started to notice my eyelid skin getting a little rough and patchy. I tried lotion and that only helped temporarily. My makeup started to look awful on my eyelids and the problem started to get worse. I woke up one morning after using the wipes the prior night and my eyelids were swollen and itchy. I had no idea what the problem was because I always wear makeup so my eyes never had time to recover and plus I get Ipsy bags so I thought maybe it was something from a bag I got recently.

After a while I went to the doctor and she said my eye is having an allergic reaction to something (she suggested my finger nail polish as the culprit but I knew better). I eventually was so desperate that I warded off all makeup and went naked faced for a few weeks, my self-confidence started declining a bit and I missed wearing makeup so

much! It is not only something that I like to enhance my features but I have fun putting it on and buying it. My boyfriend of all people was the one to mention the makeup wipes and he bought me some all natural ones at the store because he has felt so bad for me through all of this. I wore some makeup for the first time yesterday and took my makeup off with the new wipes (Simple brand) and then I went to bed and woke up this morning with no itchy, rough or swollen eyelids! :) I decided to look up and see if anyone else has had this problem and oh man I had no idea so many people went through this as well! I just wish I would have realized what it was sooner!

I will never repurchase and honestly feel the need to ward off all other up and up products as well.

88loloxoxo88  
on 7/22/2014 7:25:00 PM  
Age: 18 & Under

Skin: Sensitive, Fair, Not Sure

Hair: Blond, Other, Other

Eyes: Blue

PLEASE DO NOT USE THIS PRODUCT! I got it at Target on sale and I thought I would try it. Big mistake. After about a week or two of using it, my under eyes got very red, swollen, itchy, dry, scaly, and wrinkly. It was so terrible! I had to wear huge sunglasses everywhere I went so nobody would notice. If you've used this product and have the same results, try a bit of Cortizone 10 or a like product. After a few days the redness and burning sensation should go away. I repeat, never use this product. Target needs to do something about this

Report Abuse  
3 of 4 people found this helpful.

See  
<https://www.makeupalley.com/product/showreview.asp/page=2/pagesize=10/ItemID=136680/>

fshadow01  
on 10/4/2013 3:11:00 AM  
Age: 30-35

Skin: Combination, Fair-Medium, Not Sure

Hair: Red, Other, Other

Eyes: Blue

I used these wipes for 2 days. The first day I didn't realize anything different. After using these the second day, hours later my face started to burn and feel like it felt like it was on fire. Like someone threw acid in my face. I cant begin to tell you what I have experienced using these wipes. My eyes are literally swollen, the corners of my eyes have burned and the skin is removed. My face is swollen, red, blotchy red marks all

over. I have a awful rash on my neck as well. I cant sleep. Right now its 2:45am, as I am writing this review. I made a appointment to see the dermatologist tomorrow morning. The pain started late last night. I missed work today. Please don't use these wipes. I use the brand name Neutrogena wipes all the time and never have experienced a problem. I am not allergic to anything besides something in this product. I have never had a reaction like this in my life. Since yesterday I have been putting vaseline all over my face all day and night to keep it moist and taking Benadryl. Today I called and made a appointment with the doctor for tomorrow morning. I hope the burning feeling stops. I could cry. This is awful!  
I hope after seeing all the reviews on here, target stops selling these. Please!!!!

See  
<https://www.makeupalley.com/product/showreview.asp/page=2/pagesize=10/ItemID=136680/>

Skye B.  
Des Moines, IA  
362 reviews  
March 2, 2016, 10:17 p.m.  
1 Star

I typically like targets brand of products but I was not impressed with. I bought the evening calm gentle makeup removing towelettes. They smell great and leave my skin feeling soft but that's where it stops. It doesn't remove my mascara easily- I have to really scrub and it still doesn't get all of it. Also this product really irritates my sensitive eyes. After using it my eyes are definitely irritated and when I wake up in the morning they are super puffy and swollen all over. Won't buy this product again.

See, [https://www.influenster.com/reviews/up-up-makeup-remover-cleansing-towelettes?review\\_sort=lowest+grade](https://www.influenster.com/reviews/up-up-makeup-remover-cleansing-towelettes?review_sort=lowest+grade).

37. Even more complaints have appeared online after this case was filed in the reply section of a news article reporting to consumers that a complaint had been filed and summarizing the allegations set forth therein. By way of example, the following replies appear in said reply section:

Laura Peterson November 5, 2017  
Burning sensation on my face when I used them. Face became beet red and stayed that way well over a hour.

teresa November 4, 2017  
left me bloches



1 Dabrona Adams November 4, 2017

2 Made me break out with hives

3 Yolanda November 4, 2017

4 Made my face red

5 Honey November 4, 2017

6 I thought I had a real bad pink eye infection my eyes were red and my  
7 face was swollen terribly, and that was after I use their makeup  
remover, let me know when I can file a claim!!

8 Debra Robinson November 4, 2017

9 My face was red and eyes was swollen. And my face was itching. Never  
10 will buy this product again it needs to be taken off the shelf.

11 See, [https://topclassactions.com/lawsuit-settlements/lawsuit-](https://topclassactions.com/lawsuit-settlements/lawsuit-news/824584-target-class-action-says-up-up-towelettes-anything-but-gentle/comment-page-19/#comments)  
12 [news/824584-target-class-action-says-up-up-towelettes-anything-but-](https://topclassactions.com/lawsuit-settlements/lawsuit-news/824584-target-class-action-says-up-up-towelettes-anything-but-gentle/comment-page-19/#comments)  
13 [gentle/comment-page-19/#comments](https://topclassactions.com/lawsuit-settlements/lawsuit-news/824584-target-class-action-says-up-up-towelettes-anything-but-gentle/comment-page-19/#comments)

## 14 COSMETIC ORGANIZATIONS

### 15 **Environmental Working Group's Skin® Deep Cosmetic Database**

16 38. Environmental Working Group ("EWG")'s Skin Deep Cosmetics  
17 Database is an online guide that currently contains information on 8,920 personal  
18 care product ingredients, culled from ingredient labels on Products and from the  
19 scientific and industry literature on personal care Products.<sup>24</sup>  
20

21  
22 39. EWG assigns a standardized name to each ingredient in the Skin Deep  
23 database, generally taken as the International Nomenclature for Cosmetic Ingredients  
24 (INCI) standard, with some exceptions where alternate names are more easily  
25 recognized by consumers.<sup>25</sup>  
26

27  
28 <sup>24</sup> <https://www.ewg.org/skindeep/site/about.php#.WbazBsiGOHk>

<sup>25</sup> <https://www.ewg.org/skindeep/site/about.php#.WbazBsiGOHk>



1           40. Each of these ingredient names is associated with a unique ingredient  
2 identification number in the EWG database.<sup>26</sup>

3  
4           41. Skin Deep goal is to provide information on how the chemicals in  
5 Products may affect one's health and the environment so that consumers can make  
6 informed purchasing decisions — and help transform the marketplace.

7  
8 **Cosmetic Ingredient Review (“CIR”) Expert Panel**

9           42. The Cosmetic Ingredient Review (“CIR”) Expert Panel, is an  
10 independent, non-profit scientific body established in 1976 and initiated by the  
11 Personal Care Products Council (the Council) at the suggestion and with the support  
12 of the Food and Drug Administration (FDA) and the Consumer Federation of  
13 America (CFA) to thoroughly review and assess the safety of ingredients used in  
14 cosmetics in the U.S.

15  
16  
17           43. The CIR Expert Panel consists of world-renowned scientists and  
18 physicians who have been publicly nominated by either consumers, scientific and  
19 medical groups, government agencies, or industry. Members of the Panel must meet  
20 the same conflict of interest requirements regarding financial interests as special non-  
21 government advisory experts to FDA.

22  
23  
24           44. This Expert Panel conducts their reviews in a science-based, open,  
25 unbiased, and transparent manner and publishes the results of its work in peer-  
26 reviewed scientific literature. FDA, CFA and the Council provide non-voting liaisons  
27

28  
<sup>26</sup> <https://www.ewg.org/skindeep/site/about.php#.WbazBsiGOHk>

1 to the panel and are actively involved in the comment and discussion process. The  
 2 CIR process includes multiple opportunities for public comment and open, public  
 3 discussion of the monograph by the Expert Panel.  
 4

### 5 CLASS ACTION ALLEGATIONS

6  
 7 1. Pursuant to Fed. R. Civ. P. 23, Plaintiff brings this class action on behalf  
 8 of the following National Class and/or California Class, collective referred to as the  
 9 “Class” or “Classes”:

10 **National Damages Class:** All residents of the United States who  
 11 purchased the Products in the United States, and who suffered  
 12 economic, personal, and/or financial injuries from use of the Product.

13 **California Damages Class:** All residents of California (the “California  
 14 Class”) who purchased the Products and who suffered economic,  
 15 personal, and/or financial injuries from use of the Product.

16 Excluded from the National Class and the California Class are: Defendant,  
 17 their officers, directors and employees, and any entity in which any Defendant has a  
 18 controlling interest, the agents, affiliates, legal representatives, heirs, attorneys at  
 19 law, attorneys in fact or assignees thereof, and the Court.

20 45. Pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d),  
 21 at least one Class member is of diverse citizenship from Defendant; there are more  
 22 than 100 Class members nationwide; and the aggregate amount in controversy  
 23 exceeds \$5,000,000 exclusive of interest and costs.  
 24

25 46. Throughout discovery in this litigation, Plaintiff may find it appropriate  
 26 and/or necessary to amend the definition of the Classes. Plaintiff will further define  
 27 and designate a class definition when they seek to certify the Classes alleged herein.  
 28

1           47.    **Ascertainable Classes:** The National and the California Classes are  
2 ascertainable in that each member can be identified using information contained in  
3 Defendant's records and through the use of electronic payment processing systems,  
4 credit cards, bank statements, paper receipts, the Products itself, and other sources.

5  
6           48.    **Common Questions of Law or Fact Predominate:** In accordance with  
7 Fed. R. Civ. P. 23(2), there are questions of law and fact common to the Classes and  
8 which predominate over any individual issues. Common questions of law and fact  
9 include, without limitation:  
10

- 11           a.     Whether the Products are, or were, defective;  
12  
13           b.     Whether Defendant owed a duty to the class members under the  
14 applicable statutes and law;  
15  
16           c.     Whether Defendant knew the Products were defective when offered  
17 for sale to the public;  
18  
19           d.     Whether Defendant misled consumers and concealed defects in the  
20 Products;  
21  
22           e.     Whether Defendant violated consumer protection and business  
23 law statutes of California (as described in more detail below);  
24  
25           f.     Whether Defendant was unjustly enriched by their sale of the  
26 defective Products to consumers;  
27  
28           g.     Whether members of the Class have suffered damages, including  
personal injuries from using the tainted and defective Products;

1           h.     Whether Defendant has breached the express or implied  
2 warranties for the Products, or the provisions of the Magnuson-Moss Warranty Act,  
3 when they are used for their intended purpose;

4           i.     Defendant's vicarious liability for the actions of their employees;

5           j.     The extent of damages caused by Defendant's willful violations;

6           k.     The type of damages and restitution that should be granted to  
7 Plaintiff and members of the Class;

8           l.     Whether Defendant breached the Implied Warranty of  
9 Merchantability as set forth in the Uniform Commercial Code;

10          m.     Whether Defendant breached the Implied Warranty of Fitness;

11          n.     Whether Plaintiff and the Classes are entitled to compensatory  
12 damages, restitution, and the amounts thereof respectively against Defendant; and

13          o.     Whether Defendant be ordered to disgorge, for the benefit of  
14 Plaintiff and the Classes, all or part of their ill-gotten profits received from the sale  
15 of the Products, and/or to make full restitution to Plaintiff and the Class members.  
16

17           49.   **Numerosity:** In accordance with Fed. R. Civ. P. 23(1), the Classes are  
18 so numerous that joinder of all members is impracticable. While the exact number  
19 is not known at this time, it is generally ascertainable by appropriate discovery, and  
20 it is believed the Classes include thousands of members, and the National Class  
21 includes millions of members.  
22

23           50.   **Typicality:** Plaintiff's claims are typical of those of the other Class  
24  
25  
26  
27  
28

1 members because Plaintiff, like every other Class member, was exposed to virtually  
2 identical conduct.

3  
4 51. **Adequacy:** Plaintiff will fairly and adequately represent and protect the  
5 interests of the Classes in that they have no disabling conflicts of interest that would  
6 be antagonistic to those of the other members of the Classes. Plaintiff seeks no relief  
7 that is antagonistic or adverse to the members of the Class and the infringement of  
8 the rights and the damages they have suffered are typical of all other Class members.

9  
10 52. Plaintiff has retained competent counsel, experienced in class action  
11 litigation and consumer protection law.

12  
13 53. **Superiority:** In accordance with Fed. R. Civ. P. 23(b), *et seq*, the class  
14 litigation is an appropriate method for fair and efficient adjudication of the claims  
15 involved. Class action treatment is superior to all other available methods for the fair  
16 and efficient adjudication of the controversy alleged herein; it will permit a large  
17 number of individual citizens of the United States to prosecute their common claims  
18 in a single forum simultaneously, efficiently, and without the unnecessary  
19 duplication of evidence, effort and expense that numerous individual actions would  
20 require. The exact number of United States consumers who purchased the Products  
21 can be obtained through discovery and from Defendant's business records; Class  
22 action treatment also will permit the adjudication of relatively small claims by certain  
23 class members, who could not individually afford to litigate a complex claim against  
24 a large corporate defendant. Further, even for those class members who could afford

1 to litigate such a claim, it would still be economically impractical, as the cost of  
 2 litigation is almost certain to exceed any recovery they would obtain.

3  
 4 54. The nature of this action and the nature of laws available to Plaintiff and  
 5 the Classes make the use of the class action device a particularly efficient and  
 6 appropriate procedure to afford relief to Plaintiff and the Classes for the wrongs  
 7 alleged because Defendant would necessarily gain an unconscionable advantage  
 8 since they would be able to exploit and overwhelm the limited resources of each  
 9 individual Class member with vastly superior financial and legal resources; the costs  
 10 of individual suits could unreasonably consume the amounts that would be recovered;  
 11 proof of a common course of conduct to which Plaintiff was exposed is representative  
 12 of that experienced by the Classes and will establish the right of each member of the  
 13 Classes to recover on the cause of action alleged; and individual actions would create  
 14 a risk of inconsistent results and would be unnecessary and duplicative of this  
 15 litigation.

16  
 17  
 18  
 19  
 20 **COUNT I**  
 21 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW**  
 22 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.***  
 23 **(ON BEHALF OF THE CALIFORNIA CLASS)**

24 55. Plaintiff hereby incorporates all paragraphs of Plaintiff's Class Action  
 25 Complaint against Defendant as if fully set forth herein.

26 56. Defendant's acts and practices, described herein, constitute unlawful,  
 27 unfair, and/or fraudulent business practices in violation of the Unfair Competition  
 28 Law, Business & Professions Code sections 17200 *et seq.* ("UCL").

1           57. Specifically, Defendant has violated the UCL by engaging in the  
2 following unlawful, unfair, and/or fraudulent business practices:

3  
4           a. Making material omissions and misrepresentations regarding the  
5 benefits and the efficacy of the Products, as discussed in the preceding paragraphs;

6           b. Making material omissions and misrepresentations regarding the  
7 Products' hazardous effects, knowing that Plaintiff and other consumers would  
8 purchase the Products in reliance upon the previously described misrepresentations;

9           c. Violating the California Legal Remedies Act, California Civil Code §  
10 1750, *et seq.* (the "CLRA");

11  
12           d. Violating Section 5 of the FTC; and/or

13           e. Breaching the Contract;

14           f. Negligence; and/or

15           g. Unjust Enrichment.

16  
17           58. These material omissions and misrepresentations were made with the  
18 actual knowledge of Defendant.

19  
20           59. Defendant intended for Plaintiff to rely upon the material omissions and  
21 misrepresentations to induce them to purchase the Products.

22  
23           60. The material omissions and misrepresentations set forth herein were  
24 material to Plaintiff, and if Plaintiff had known that the products cause allergic  
25 reaction that would burn and redden her face, Plaintiff would not have bought it.

26  
27           61. The utility of Defendant's conduct is significantly outweighed by the  
28

1 gravity of the harm they impose on Plaintiff and the Class. Defendant's acts and  
2 practices are oppressive, unscrupulous, or substantially injurious to consumers.

3  
4 62. The above-described unfair, unlawful, and/or fraudulent business  
5 practices conducted by Defendant present a threat and likelihood of harm to members  
6 of the Class in that Defendant has systematically perpetrated and continue to  
7 perpetrate the unfair, unlawful, and/or fraudulent conduct upon members of the  
8 public by engaging in the conduct described herein.

9  
10 63. Plaintiff and the Class have suffered harm as a proximate result of the  
11 wrongful conduct of the Defendant alleged herein, and therefore bring this claim for  
12 relief for restitution and disgorgement. Plaintiff is a person who has suffered injury  
13 in fact and has lost money and property as a result of such unfair competition.

14  
15 64. Pursuant to Business and Professions Code §§ 17200 and 17203,  
16 Plaintiff, on behalf of herself and the Class, seeks an order of this Court: enjoining  
17 Defendant from continuing to engage in the deceptive practices contained herein.  
18 Plaintiff further requests an order awarding Plaintiff and the Class restitution and  
19 disgorgement of profits acquired by Defendant by means of such unfair, unlawful,  
20 and/or fraudulent acts and/or practices, so as to deter Defendant and to rectify  
21 Defendant's unfair, unlawful, and/or fraudulent practices and to restore any and all  
22 monies to Plaintiff and the Class, which are still retained by Defendant, plus interest  
23 and attorneys' fees and costs pursuant to, *inter alia*, Code of Civil Procedure section  
24 1021.5.  
25  
26  
27  
28



65. As a direct and proximate result of Defendant's conduct, Plaintiff and the Class were damaged.

66. This Court may award attorney's fees to Plaintiff and the Class. Defendant's conduct, as set forth above, is likely to deceive members of the public and is immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers.

67. To the extent that the conduct as set forth above is ongoing and continues to this date, Plaintiff, the Class members, and the general public are, therefore, entitled to the relief described herein.

68. Defendant, through their deceptive trade practices as described herein, have obtained money from Plaintiff and members of the Class. Plaintiff, in fact, has been injured by Defendant's conduct, as have members of the Class.

69. Plaintiff, individually and as a member of the Class, has no adequate remedy at law for the future unlawful acts, methods, or practices as set forth above.

70. As such, Plaintiff seeks injunctive relief to enjoin the practices described herein.

71. In bringing this action, Plaintiff has engaged the services of attorneys and has incurred reasonable legal expenses in an amount to be proved at trial.

**COUNT II**  
**VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES**  
**ACT, CALIFORNIA CIVIL CODE § 1750, ET SEQ.**  
**(ON BEHALF OF THE CALIFORNIA CLASS)**

72. Plaintiff hereby incorporates all paragraphs (except those relating to

1 damages) of Plaintiff's Class Action Complaint against Defendant as if fully set forth  
2 herein.

3  
4 73. This cause of action is brought pursuant to Civil Code § 1750, et seq.,  
5 the Consumers Legal Remedies Act ("CLRA"), on behalf of a Class as defined  
6 herein.

7  
8 74. Defendant is a "person" within the meaning of Cal. Civ. Code sections  
9 1761(c) and 1770.

10  
11 75. Plaintiff and members of the proposed class are "consumers" within the  
12 meaning of Cal Civ. Code §§ 1761(d) and 1770.

13  
14 76. Defendant's Products are "goods" as defined by Cal. Civ. Code §  
15 1761(a).

16  
17 77. The policies, acts, and practices described herein were intended to result  
18 in the sale of the Products to the consuming public and violated and continue to  
19 violate § 1770(a)(5) of the CLRA by representing that the Products have  
20 characteristics, benefits, uses, or quantities which they do not have.

21  
22 78. The policies, acts, and practices described herein were intended to result  
23 in the sale of the Products to the consuming public and violated and continue to  
24 violate § 1770(a)(7) of the CLRA by representing that the Products are of a particular  
25 standard, quality, grade, or style, when they are of another.

26  
27 79. The policies, acts, and practices described herein were intended to result  
28 in the sale of the Products to the consuming public and violated and continue to

1 violate § 1770(a)(9) of the CLRA by advertising the Products with the intent not to  
2 sell them as advertised.

3  
4 80. The policies, acts, and practices described herein were intended to result  
5 in the sale of the Products to the consuming public and violated and continue to  
6 violate § 1770(a)(14) by representing that a transaction confers or involves rights,  
7 remedies, or obligations which it does not have or involve, or which are prohibited  
8 by law.

9  
10 81. The policies, acts, and practices described herein were intended to result  
11 in the sale of the Products to the consuming public and violated and continue to  
12 violate § 1770(a)(16) by representing that the subject of a transaction has been  
13 supplied in accordance with a previous representation when it has not.

14  
15 82. The policies, acts, and practices described herein were intended to result  
16 in the sale of the Products to the consuming public and violated and continue to  
17 violate § 1770(a)(19) by inserting an unconscionable provision in the contract.

18  
19 83. Defendant fraudulently deceived Plaintiff and the Class, and  
20 intentionally misrepresented and concealed material facts from Plaintiff and the  
21 Class. Said misrepresentations and concealment were done with the intention of  
22 deceiving Plaintiff and the Class and depriving them of their legal rights and money.

23  
24 84. Defendant knew that the Products do not cause the benefits and results  
25 contained in their advertisements and/or those representations made on the packaging  
26 for the Products.  
27  
28

1           85. Defendant's actions as described herein were done with conscious  
2 disregard of Plaintiff's rights and Defendant was wanton and malicious in its  
3 concealment of the same.  
4

5           86. Plaintiff and the Class have suffered injury in fact and have lost money  
6 as a result of Defendant's false representations and material omissions on the  
7 packaging of Products and for the advertisement of these Products.  
8

9           87. Defendant's unfair or unlawful acts, practices, representations,  
10 omissions, and courses of conduct, as described herein, were undertaken by  
11 Defendant in a transaction intended to result in, and which did result in, the sale or  
12 lease of goods or services to consumers.  
13

14           88. As a direct and proximate result of Defendant's violations of law,  
15 Plaintiff has been injured.  
16

17           89. Plaintiff is served each Defendant with a CLRA notification and demand  
18 letter via certified mail, return receipt requested on October 26, 2017. *See*, Exhibit B  
19 - CLRA Letter.  
20

21           90. The notice letter set forth the relevant facts, notified each Defendant of  
22 its CLRA violations, and requested that each Defendant promptly remedy those  
23 violations.  
24

25           91. Under the CLRA, a plaintiff may without prior notification file a  
26 complaint alleging violations of the CLRA that seeks injunctive relief only. Thus,  
27 Plaintiff filed this action on October 26, 2017 seeking injunctive relief only and  
28

1 expressly disclaiming all damages under CLRA.

2 92. Defendant received the CLRA notice on October 30, 2017. *See*, Exhibit  
3 C – Return Receipt.  
4

5 93. Defendant has not remedied the CLRA violations as to Plaintiff and the  
6 Class Members within the statutory period.  
7

8 94. Plaintiff, individually and on behalf of the class, has, therefore, filed this  
9 amended complaint to add claims for CLRA damages.  
10

11 95. Under the CLRA, Plaintiff is entitled to a permanent injunction  
12 prohibiting practices that violate the CLRA.

13 96. Defendant's practices, acts and courses of conduct in connection with  
14 the sale of its Products, as described above, are likely to mislead a reasonable  
15 consumer acting reasonably under the circumstances to his or her detriment. As a  
16 result of Defendant's acts and practices as alleged in this Complaint, Plaintiff and the  
17 Class are entitled to injunctive relief prohibiting Defendant from continuing in the  
18 future the unlawful, unfair or fraudulent practice as described herein and all relief  
19 allowed for violation of the CLRA.  
20

21 97. Plaintiff and the Class reasonably believed and/or depended on the  
22 material false and/or misleading information provided by, or omitted by, Defendant  
23 with respect to Defendant's unfair acts and deceptive practices.  
24

25 98. By reason of the foregoing, Defendant's unlawful methods, acts, or  
26 practices as described herein has caused damage to Plaintiff and the Class Members,  
27  
28

1 entitling them to injunctive relief.

2 99. Plaintiff, individually and as a member of the Class, has no adequate  
3 remedy at law for the future unlawful acts, methods, or practices as set forth above.

4 100. Pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiff, on behalf of  
5 Plaintiff's self and the Class, demand judgment against Defendant under the CLRA  
6 for injunctive and equitable relief to enjoin the practices described herein.  
7

8 101. Plaintiff also seeks all damages available pursuant to the CLRA.

9 102. Pursuant to § 1780(d) of the CLRA, attached hereto as Exhibit A is the  
10 affidavit showing that this action has been commenced in the proper forum.  
11

12 103. In bringing this action, Plaintiff has engaged the services of attorneys  
13 and has incurred reasonable legal expenses in an amount to be proved at trial.  
14

15 104. Plaintiff is also entitled to recover their attorneys' fees, costs, and  
16 expenses.  
17

18 **COUNT III**  
19 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF**  
20 **BUSINESS & PROFESSIONS CODE § 17500, et seq.**  
21 **(ON BEHALF OF THE CALIFORNIA CLASS)**

22 105. Plaintiff repeats and realleges the allegations set forth in the preceding  
23 paragraphs, and incorporates the same as if set forth herein.

24 106. This cause of action is brought pursuant to Business and Professions  
25 Code § 17500, et seq., on behalf of a Class consisting of all persons who purchased  
26 the Products in the United States for personal use  
27

28 107. In their advertising of the Product, Defendant made false and misleading

1 statements regarding the benefits and the efficacy of the Product, as discussed in the  
2 preceding paragraphs.

3  
4 108. Defendant's advertising claims about the Products, as alleged in the  
5 preceding paragraphs, are false, misleading, unsubstantiated and unreasonable. In  
6 addition, Defendant deliberately omitted material facts regarding the Products'  
7 hazardous effects, knowing that Plaintiff and other consumers would purchase the  
8 Products in reliance upon the previously described misrepresentations.

9  
10 109. Defendant is aware that the claims that they make about the Products  
11 are false, misleading, unsubstantiated, and unreasonable. Defendant is also aware of  
12 the Products' defects, i.e. causing irritation, burning, and other adverse effects  
13 including but not limited to causing rashes, blotchy skin, swelling, swelling and itchy  
14 eyes.

15  
16 110. Plaintiff and other consumers were entitled to disclosure of these  
17 defects, as the risk of these dangers would be a material fact in a consumer's decision  
18 to purchase the Products and Defendant's disclosure is the only way consumers could  
19 have learned of these risks.

20  
21 111. As alleged in the preceding paragraphs, the misrepresentation and  
22 omission by Defendant of the material facts detailed above constitutes false  
23 advertising within the meaning of California Business & Professions Code § 17500.

24  
25 112. In addition, Defendant's use of various forms of advertising media to  
26 advertise, call attention to or give publicity to the sale of goods or merchandise that  
27  
28

1 are not as represented constitutes unfair competition, unfair, deceptive, untrue or  
2 misleading advertising, and an unlawful business practice within the meaning of  
3 Business & Professions Code §§ 17200 and 17531, which advertisements have  
4 deceived and are likely to deceive the consuming public, in violation of Business &  
5 Professions Code § 17500.  
6

7  
8 113. Pursuant to Business & Professions Code §§ 17203 and 17535, Plaintiff  
9 and the members of the Class seek an order of this Court enjoining Defendant from  
10 continuing to engage, use, or employ their practice of advertising the sale and use of  
11 the Products.  
12

13 114. Likewise, Plaintiff and the members of the Class seek an order requiring  
14 Defendant to disclose such dangers of its Products as described herein, and  
15 additionally request an order awarding Plaintiff restitution of the money wrongfully  
16 acquired by Defendant by means of responsibility attached to Defendant's failure to  
17 disclose the existence and significance of said misrepresentations and defects in an  
18 amount to be determined at trial.  
19  
20

21 115. Plaintiff and the Class have suffered injury in fact and have lost money  
22 as a result of Defendant's omissions and false representations. Indeed, Plaintiff  
23 purchased the Products in reliance on Defendant's claims the Product was safe and  
24 capable of delivering the advertised benefits. Plaintiff would not have purchased the  
25 Product if she had known that the advertising as described herein was false.  
26  
27

28  
**COUNT IV**  
**BREACH OF EXPRESS WARRANTY**



(ON BEHALF OF ALL CLASSES)

116. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing paragraphs of this Complaint as if fully set forth herein.

117. Defendant was and is at all relevant times “merchants” within the meaning of the Uniform Commercial Code (“UCC”).

118. Defendant manufactured, distributed, and marketed the Products, which are “goods” within the meaning of the UCC and other applicable commercial codes.

119. Defendant expressly warranted in their marketing and packaging of the Products that said Products are a safe, more effective product than other makeup removing towelettes, marketed as “ultra soft cloths” that “*gently* removes makeup, even waterproof mascara” and that the Products are for “all skin types.” In reality, the Products are so harsh that they cause users’ skin to develop a reaction; to wit, a burning sensation that turns the skin red, blotchy, swollen, including swelling around the eyes. As a result, the user of the Products is required to use medicine like Cortisone 10 and Benadryl.

120. Defendant’s claims constitute an affirmation of fact that became part of the basis of the bargain and created an express warranty that the goods would conform to the stated promise. Plaintiff placed importance on Defendant’s claims.

121. All conditions precedent to Defendant’s liability under this contract have been performed by Plaintiff and the Class.

122. Defendant breached the terms of its warranties by not providing

1 Products that can perform as advertised.

2 123. If Defendant attempts to limit the remedies to which Plaintiff and  
3 members of the proposed Classes are entitled, or the period within which to bring  
4 claims, Defendant is estopped by their direct misrepresentations to consumers  
5 regarding the nature of the Products. In addition, and in the alternative, any such  
6 limitation is unconscionable and void based on Defendant's knowledge of the defect  
7 at the time of sale, and because any such limitation creates a warranty that fails of its  
8 essential purpose. By virtue of the defective design or manufacture, Defendant knew  
9 or should have known that the Products were at all times defective, including at the  
10 time Plaintiff and Class members purchased the Products.

11 124. Defendant has received sufficient and timely notice of the breaches of  
12 warranty alleged herein. Despite this notice and Defendant's knowledge, Defendant  
13 refuses to honor its warranty, even though it knows of the inherent defect in the  
14 Products. In addition, Defendant thousands of complaints and other notices from its  
15 customers nationwide advising it of the defects in its Products.

16 125. As a direct and proximate cause of Defendant's breach of express  
17 warranties, Plaintiff and Class members have sustained damages, an economic loss  
18 equal to the total purchase price of these unfit Products, or the difference in value  
19 between the Products as warranted and the Products as actually sold, as well as  
20 consequential and incidental damages, in the aggregate, in excess of \$5 million.

21  
22 **COUNT V**  
23 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
24  
25  
26  
27  
28

**(ON BEHALF OF ALL CLASSES)**

126. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing paragraphs of this Complaint as if fully set forth herein.

127. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller of the Products, impliedly warranted that the Products were of merchantable quality and, among other warranties, that the Products would pass without objection in the trade or industry, and were fit for the ordinary purpose for which Products are used.

128. Because of the Products problems described herein, the Products cannot perform their ordinary purpose and would not pass without objection in the trade and industry.

129. Defendant breached their implied warranties by selling, marketing, and promoting Products with a defect that caused a painful allergic reaction for users of the Products.

130. Any language used by Defendant to attempt to exclude or limit the availability of implied warranties, remedies, or the period within which to bring claims, is barred by their direct misrepresentations to consumers regarding the existence and nature of the defect. In addition, and in the alternative, any such limitation is unconscionable and void because of Defendant's knowledge of the defect at the time of sale, it fails to conform to the requirements limiting implied warranties under the applicable laws, and because any such limitation creates a

1 warranty that fails of its essential purpose. By virtue of the defective design or  
 2 manufacture, Defendant knew or should have known that the Products were at all  
 3 times defective, including at the time Plaintiff and Class members purchased the  
 4 Products.  
 5

6 131. The practices of the Defendant in manufacturing and selling defective  
 7 Products also constitute a breach of implied warranty of merchantability under the  
 8 various state statutes where Plaintiff resides, and where Defendant resides and does  
 9 business throughout the United States.  
 10

11 132. As a direct and proximate cause of Defendant's breach of implied  
 12 warranties, Plaintiff and Class members have sustained damages, an economic loss  
 13 equal to the total purchase price of these unfit Products, or the difference in value  
 14 between the Products as warranted and the Products as actually sold.  
 15

16 133. Defendant has received sufficient and timely notice of the breaches of  
 17 warranty alleged herein. Despite this notice and Defendant's knowledge, Defendant  
 18 refuses to honor its warranty, even though it knows of the inherent defect in the  
 19 Products. In addition, Defendant thousands of complaints and other notices from its  
 20 customers nationwide advising it of the defects in its Products.  
 21

22  
 23  
 24 **COUNT VI**  
**VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**  
 25 **(ON BEHALF OF ALL CLASSES)**

26 134. Plaintiff repeats, realleges, and incorporates by reference each of the  
 27 foregoing paragraphs of this Complaint as if fully set forth herein.  
 28

1           135. The Magnuson-Moss Consumer Products Warranties Act, 15 U.S.C. §§  
2           2301, *et seq.*, provides a private right of action by purchasers of consumer Products  
3           against manufacturers or retailers who fail to comply with the terms of an express or  
4           implied warranty. See 15 U.S.C. § 2310(d)(1). As demonstrated herein, Defendant  
5           failed to comply with the terms of their express and implied warranties with regard  
6           to the defective Products.  
7

9           136. The Products are “consumer products” as that term is defined in §  
10          2301(1) of the Magnuson-Moss Warranty Act, because they are tangible personal  
11          property distributed in commerce and held for sale to consumers for normal  
12          household purposes.  
13

14          137. Plaintiff and members of the proposed Class are “consumers,” as that  
15          term is defined in § 2301(3) of the Magnuson-Moss Warranty Act.  
16

17          138. Defendant is a “warrantor,” as that term is defined in § 2301(5) of the  
18          Magnuson-Moss Warranty Act. Defendant offered express and implied warranties  
19          on their Products that put Defendant in privity with Plaintiff and the Class.  
20

21          139. Defendant’s written affirmations of fact, promises and/or descriptions,  
22          as alleged herein, are “written warranties” within the meaning of § 2301(6) of the  
23          Magnuson-Moss Warranty Act.  
24

25          140. Defendant’s “implied warranties” are within the meaning of § 2301(7)  
26          of the Act.  
27

28          141. As a direct and proximate result of Defendant’s breaches of the

1 Magnuson- Moss Warranty Act, Plaintiff and Class members have sustained  
2 damages, an economic loss equal to the total purchase price of these unfit Products,  
3 or the difference in value between the Products as warranted and the Products as  
4 actually sold, as well as consequential and incidental damages.  
5

6  
7 **COUNT VII**  
8 **NEGLIGENCE**  
9 **(ON BEHALF OF ALL CLASSES)**

10 142. Plaintiff repeats, realleges, and incorporates by reference each of the  
11 foregoing paragraphs of this Complaint as if fully set forth herein.

12 143. Defendant owed a duty of care to Plaintiff and the Class in their testing,  
13 development, design, manufacturing, marketing, and sale of the Products.

14 144. Use of the Products as intended or reasonably foreseeable by Defendant  
15 involved the risk of an allergic reaction when used to remove makeup and other  
16 adverse effects.  
17

18 145. As manufacturers, distributors, and/or sellers of the Products, Defendant  
19 had a legal duty to warn consumers of the risks and dangers associated with the  
20 Products' use.  
21

22 146. Target has received thousands of customer complaints of allergic  
23 reaction from the Products on various different platforms, examples of which are  
24 cited herein. Upon receiving these complaints, Defendant had a legal duty to warn  
25 customers that the Products could cause an allergic reaction when used to remove  
26 makeup.  
27  
28

1           147. Defendant breached this duty of care when they negligently failed to  
2 warn consumers about the defects and risks associated with the Products.

3  
4           148. Defendant knew or should have known of the Products' defects and  
5 risks as previously described and knew that without a warning from Defendant,  
6 Plaintiff and the Class could not reasonably be aware of the defects and risks. The  
7 absence of warnings is a blatant failure to exercise reasonable care.

8  
9           149. In addition, Defendant did not adequately design or test the Products,  
10 thereby breaching their duty of care to Plaintiff and the Class by providing them with  
11 dangerous and defective Products.

12  
13           150. Defendant knew or reasonably should have known that the Products can  
14 cause allergic reaction when used to remove makeup. By marketing and selling the  
15 Products regardless of these known dangers, Defendant breached their duty to  
16 exercise reasonable care.

17  
18           151. Defendant knew or should have known that their failure to exercise  
19 reasonable care by performing inadequate testing could result in injury and economic  
20 damage to Plaintiff and the Class.

21  
22           152. Plaintiff and the Class have suffered injury in fact and lost money as a  
23 direct and proximate cause of Defendant's failure to adequately test the Products.

24  
25                           **COUNT VIII**  
26                           **FRAUD**  
27                           **(ON BEHALF OF ALL CLASSES)**

28           153. Plaintiff repeats, realleges, and incorporates by reference each of the

1 foregoing paragraphs of this Complaint as if fully set forth herein.

2 154. Defendant has engaged in a common scheme of fraud, through which  
3 they intentionally deceived consumers by failing to disclose health risks and defects  
4 in the Products, including to Plaintiff and members of the proposed Classes.  
5

6 155. Defendant perpetrated the common scheme of fraud complained of  
7 herein by omitting, or failing to disclose to Plaintiff and the Classes, that the Products  
8 were defective and that in many cases they were not fit for household use.  
9

10 156. In addition to their failure to disclosure, Defendant made uniform  
11 misrepresentations, in writing, that the Products were safe to use for normal  
12 household purposes, that they were suitable for all skin types , and for the purposes  
13 for which they were sold.  
14

15 157. Because the Products caused an allergic and/or irritating reaction as  
16 indicated herein, they were in fact not suitable for household purposes, and Defendant  
17 knew they were not suitable for removing makeup. In fact, the Products are so harsh  
18 that they cause users' skin to develop a reaction; to wit, a burning sensation that turns  
19 the skin red.  
20

21 158. Plaintiff and the members of the Proposed Classes justifiably relied on  
22 Defendant's material omissions and failures to disclose.  
23

24 159. As a direct and proximate result of Defendant's common scheme of  
25 fraud, Plaintiff and Class were damaged.  
26  
27

28 **COUNT IX**



**BREACH OF CONTRACT  
(ON BEHALF OF ALL CLASSES)**

160. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing paragraphs of this Complaint as if fully set forth herein.

161. Plaintiff and the Class entered into a contract with Defendant to purchase the Products in which they paid money and conferred a benefit on Defendant.

162. All conditions precedent to Defendant's liability under this contract have been performed by Plaintiff and the Class.

163. Defendant breached their contract with Plaintiff and the Class by providing defective products which did not perform as advertised.

164. Plaintiff and the Class did not receive the benefit of their bargain; therefore, they have suffered injury in fact and lost money as a result of Defendant's breach.

**COUNT X  
UNJUST ENRICHMENT  
(in the alternative to Breach of Contract)  
(ON BEHALF OF ALL CLASSES)**

165. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing paragraphs of this Complaint as if fully set forth herein.

166. To the detriment of Plaintiff and members of the Proposed Classes, Defendant has been, and continues to be, unjustly enriched as a result of their wrongful conduct alleged herein.

167. Plaintiff and the members of the Proposed Classes conferred a benefit

1 on Defendant when they paid Defendant for Products with a defect that resulted in a  
2 value far less than the retail price of the Products.

3  
4 168. Defendant was unjustly enriched by the sale of the defective Products  
5 as described herein, and Plaintiff and members of the Proposed Classes were unable  
6 to return the Products as it was impractical or impossible to return the Products or the  
7 cost and time involved in returning to the retail location outweighed the benefit of  
8 receiving a refund.

9  
10 169. Defendant unfairly, deceptively, unjustly and/or unlawfully accepted  
11 said benefits, which under the circumstances, would be unjust to allow Defendant to  
12 retain.

13  
14 170. Because no reasonable consumer would purchase Products knowing  
15 that it might cause an allergic reaction and/or irritation on the faces of the individuals  
16 of all skin types – i.e., the exact individuals to whom Defendant marketed the  
17 Products, the Products are worthless.

18  
19 171. Plaintiff and members of the Proposed Classes, therefore, seek  
20 disgorgement of all wrongfully obtained profits received by Defendant as a result of  
21 their inequitable conduct as more fully stated herein.

22  
23  
24 **COUNT XI**  
25 **DECLARATORY JUDGMENT**  
26 **(ON BEHALF OF ALL CLASSES)**

27 172. Plaintiff repeats, realleges, and incorporates by reference each of the  
28 foregoing paragraphs of this Complaint as if fully set forth herein.

1           173. An actual and justiciable controversy exists between Defendant and  
2 Plaintiff and Class.

3  
4           174. Plaintiff and members of the Proposed National and the California Class  
5 are entitled to a declaration from this Court that Defendant's conduct is unlawful and  
6 in violation of applicable laws as described herein.

7  
8                                   **PRAYER FOR RELIEF**

9           WHEREFORE, Plaintiff, on behalf of themselves and the members of the  
10 Proposed Classes, demand judgment as follows:

11  
12           A. For an order certifying the proposed class pursuant to Rule 23 of the  
13 Federal Rules of Civil Procedure, appointing Plaintiff and his counsel to represent  
14 the proposed class, appointing counsel for Plaintiff as lead counsel for the respective  
class;

15           B. An order awarding declaratory relief and temporarily and permanently  
16 enjoining Defendant from continuing the unlawful, deceptive, fraudulent, and unfair  
17 business practices alleged in this Complaint;

18           C. Appropriate injunctive relief;

19           D. A declaration that Defendant is financially responsible for all Class  
20 notice and the administration of Class relief;

21           E. An order that the Court enter judgment against Defendant for restitution,  
22 disgorgement, punitive damages, statutory damages, treble damages, and exemplary  
23 damages under applicable law, and compensatory damages for economic loss,  
diminished value, and out-of-pocket costs in an amount to be determined at trial.

24           F. An order awarding any applicable statutory and civil penalties;

25           G. An order requiring Defendant to pay both pre- and post-judgment  
26 interest on any amounts awarded;

27  
28           H. An award of costs, expenses, and attorneys' fees as permitted by law;

1 and

2 I. Such other or further relief as the Court may deem appropriate, just, and  
3 proper under the circumstances.

4 **JURY DEMAND**

5  
6 WHEREFORE, Plaintiff demands a trial by jury on all issues so triable as a  
7 matter of right.

8 Dated: December 1, 2017

9 By: /s/ Francis J. "Casey" Flynn, Jr.

10 Francis J. "Casey" Flynn, Jr.

11 CA State Bar No. 304712

12 6220 W 3rd St # 415

13 Los Angeles, CA 90036

14 Telephone: 314-662-2836

15 Email: francisflynn@gmail.com

16 Jasper D. Ward IV (*seeking admission pro*  
17 *hac vice*)

18 Ashton Smith (*seeking admission pro hac*  
19 *vice*)

20 **JONES WARD PLC**

21 The Pointe

22 1205 E. Washington St., Suite 111

23 Louisville, Kentucky 40206

24 Telephone: (502) 882-6000

25 Facsimile: (502) 587-2007

26 Email: jasper@jonesward.com

27 ashton@jonesward.com

28 **ATTORNEY FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

29 I HEREBY CERTIFY that on December 1, 2017, I electronically filed the  
30 foregoing with the Clerk of the Court using the Court's CM/ECF system, which will  
31 send a notice of electronic filing to all counsel of record.

32 /s/ Francis J. "Casey" Flynn, Jr.

# **EXHIBIT A**

Francis “Casey” J. Flynn, Jr.  
CA State Bar No. 304712  
Law Office of Francis J. Flynn  
6220 W. 3<sup>rd</sup> St., #115  
Los Angeles, CA 90036  
P. 323-424-4194  
francisflynn@gmail.com

*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MEGAN MCATEER, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

TARGET CORPORATION

Defendant.

Case No.:

**DECLARATION PURSUANT TO  
CAL. CIV. CODE SECTION §  
1780(d)**

I, Megan McAteer, declare as follows:

1. I am the Plaintiff in the above captioned action.

2. I make this Affidavit pursuant to California Civil Code § 1780(d) and in support of PLAINTIFF’S CLASS ACTION COMPLAINT, which alleges, *inter alia*, violations of the Consumer Legal Remedies Act, California Civil Code Section 1780, *et seq.* for injunctive relief only.

3. This action is brought in the County of Los Angeles, the county in which I reside, Defendant Target Corporation is doing business, and the transaction or any substantial portion thereof occurred.

4. I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge.

# **EXHIBIT B**





**Law Office of Francis J. Flynn, Jr., Esq.**

6220 W 3<sup>rd</sup> Street, #115 ~ Los Angeles, California 90036-3173 ~ T: (323) 424-4194

October 26, 2017

**VIA CERTIFIED U.S. MAIL**  
**RETURN RECEIPT REQUESTED**

Attn: General Counsel  
Target Corporation  
1000 Nicollet Mall  
Minneapolis, MN 55403

**Re: NOTICE OF VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT, CAL. CIV. CODE §§ 1750 *ET SEQ.* (“CLRA”) AND 30 DAY RIGHT TO CURE UNDER SECTION 1782. NOTICE OF VIOLATION OF MAGNUSON-MOSS WARRANTY ACT, 15 U.S.C. § 2301. THIS IS A DEMAND LETTER AND MUST BE FORWARDED TO THE APPROPRIATE PARTY FOR IMMEDIATE RESOLUTION. FAILURE TO RESPOND TO THIS MAY RESULT IN ACTION BEING TAKEN.**

Dear General Counsel:

**Please note that this correspondence, and the information contained herein, is subject to the protection afforded settlement conduct, statements, and / or negotiations, under California Evidence Code §§ 1152 through 1154, the Federal Rules of Evidence 408, and other similar laws. Nothing contained herein shall be deemed to be an admission, limitation, and/or waiver, of any of my clients’ rights, remedies, or defenses, either at law or in equity, all of which rights, remedies, and defenses are hereby expressly reserved.**

Pursuant to CAL. CIVIL CODE § 1782(a), this notice is sent by certified or registered mail, return receipt requested, to Target Corporation’s principal place of business.

**PLEASE TAKE NOTICE** that, for the reasons stated below, Target Corporation is in violation of the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* (“CLRA”), the Unfair Competition Law (“UCL”), Business and Professions Code §§ 17200 *et seq.*, and other state and federal common law and statutes for the reasons set forth in this letter.

This notice is served on you by Megan McAteer (“Plaintiff”), and all other members of the class of similarly situated persons she seeks to represent. Please direct all communications or responses regarding this Notice to the following counsel, who Plaintiff has retained to represent Plaintiff and others similarly situated in a class action against Defendant to obtain damages, restitution, injunctive relief, and/or other relief described more fully below from Defendant as a result of Defendant’s breach of its express contract with Plaintiff and for its use of unfair, unlawful, unethical, unconscionable, and/or deceptive methods of competition and/or unfair, unlawful,

unethical, unconscionable, and/or deceptive trade practices in violation of the common law and various federal and state statutes, including, but not limited to, California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* (“CLRA”) as it relates to Defendant’s Sales and/or Marketing of Target’s Up & Up Makeup Removing Cleansing Towelettes and 100% satisfaction guarantee or your *money back*

Francis J. “Casey” Flynn, Jr.  
Law Offices of Francis J. Flynn, Jr.  
6220 W. Third Street, #115  
Los Angeles, California 90036-3169  
Tele: 314-662-2836  
Email: francisflynn@gmail.com

If you intend to cure these violations as set forth below in the Remedies Section, please notify counsel within 30 days of receipt of this notice.

### **STATEMENT OF VIOLATIONS**

Please take note that it has come to the attention of consumers, including Plaintiff, who purchased one or more Target Up & Up Makeup Remover Cleansing Towelettes in Evening Calm, that Target Corporation has engaged in deceptive and misleading consumer practices in connection with the marketing and sale of Target Up & Up Makeup Remover Cleansing Towelettes in Evening Calm (“Wipes”), in violation of the Consumers Legal Remedies Act (“CLRA”), CAL. CIV. CODE § 1750 *et seq.* Specifically, our investigation has revealed that Target markets its Up & Up brand as “Quality needs priced to please. With up & up your satisfaction is 100% guaranteed or your *money back*.” Target’s Up & Up Makeup Remover Cleansing Towelettes in Evening Calm are marketed as “ultra soft cloths” that “***gently*** removes makeup, even waterproof mascara.” (emphasis added). Target’s Wipes, however, are so harsh that they cause users’ skin to develop a reaction – the Wipes cause the users’ face to develop a burning sensation that turns the skin red.

Target claims “up&up[ ] makeup remover cleansing towelettes in evening calm help gently remove makeup in one easy step, while providing a calming scent. As you wipe your face, enjoy the soothing aroma released as the towelette lifts away long-lasting makeup (including waterproof mascara). No rinsing necessary. For all skin types.” See, <https://www.target.com/p/makeup-remover-cleansing-towelettes-25-ct-up/-/A-49102557>.

Target continues: “These hypoallergenic towelettes are alcohol and paraben free, non-oily and gentle on eye area. They have been dermatologist and ophthalmologist tested and are safe for contact lens wearers to use.” See, <https://www.target.com/p/makeup-remover-cleansing-towelettes-25-ct-up/-/A-49102557>.

Target further markets the wipes as being:

- alcohol free\*<sup>[1]</sup>

---

<sup>1</sup> \* does not contain ethanol, isopropanol or rubbing alcohol

- paraben free
- for all skin types
- Dermatologist & Ophthalmologist tested
- Gently removes makeup, even waterproof mascara

Target further represents the following about the Up & Up Cleansing Towelettes:

- Skin Concern: basic care
- Recommended Skin Type: normal
- Used For: basic cleansing
- For Use On: Eye Area, Face
- Product Form: Wipe
- Product Warning: no warning applicable
- Health Facts: hypoallergenic, Contains Aloe, contains vitamin E
- Includes: Face Cleanser
- Package Quantity: 25
- TCIN: 49102557
- UPC: 074887707802
- Store Item Number (DPCI): 037-12-1530

Despite being touted as a product that “gently removes makeup” and is “alcohol-free,” Target uses a number of harsh chemicals and known human allergens and/or irritants in the Product, such as Octyldodecyl Stearoyl Stearate, Hexylene Glycol, Tocopheryl Acetate, Aminomethyl Propanol, Phenoxyethanol, Iodopropynyl Butylcarbamate, and Fragrance, among others.

In our investigation of this matter, we have found similar complaints online against Target Corporation regarding the same Up & Up Facial Cleansing Towelette (Evening Calm) issues. For example, among others:

**Up and Up in purple/white makeup remover (would not recommend)**

3 out of 5 stars submitted by JenLynTN — 16 months ago

Please be careful it could cause your face to have a reaction to this product. It is a very soft wipe and smells great.

See, <https://www.target.com/p/makeup-remover-cleansing-towelettes-25-ct-up/-/A-49102557>

1 out of 5 stars

submitted by JK — 3 months ago

Caused the area under my eyes to break out in red bumps shortly after using. Never had this reaction to a makeup remover wipe before. Don't like how the wipe stretches and feels thin either. Would not recommend.

See, <https://www.target.com/p/makeup-remover-cleansing-towelettes-25-ct-up/-/A-49102557>

Ajackson87  
on 11/14/2015 12:41:00 AM  
More reviews by Ajackson87

Age: 25-29 Skin: Combination, Fair, Not Sure Hair: Blond, Other, Other Eyes:  
Hazel

I wish I would have read all the reviews sooner. My eyes and face are also burning and stinging bad. My eyes feel swollen and it only after the 2nd use. I can't believe these are still being sold after all the problems!!!

*See,*  
<https://www.makeupalley.com/product/showreview.asp/ItemId=136680/Target---Up-&-Up-Makeup-Remover-Cleansing-Towelettes/Unlisted-Brand/Eye-Makeup-Remover>

kraej22  
on 1/31/2015 2:09:00 PM  
More reviews by kraej22  
Age: 19-24  
Skin: Combination, Fair, Not Sure  
Hair: Red, Other, Other  
Eyes: Green

#### NEVER BUY THIS! - RED PUFFY ITCHY EYES

I never have problems with sensitivity to certain chemicals so I have no idea why these wipes affected me so badly. It all started two months ago when I purchased my first pack of these wipes. All was well, they removed my makeup great but I started to notice my eyelid skin getting a little rough and patchy. I tried lotion and that only helped temporarily. My makeup started to look awful on my eyelids and the problem started to get worse. I woke up one morning after using the wipes the prior night and my eyelids were swollen and itchy. I had no idea what the problem was because I always wear makeup so my eyes never had time to recover and plus I get Ipsy bags so I thought maybe it was something from a bag I got recently.

After a while I went to the doctor and she said my eye is having an allergic reaction to something (she suggested my finger nail polish as the culprit but I knew better). I eventually was so desperate that I warded off all makeup and went naked faced for a few weeks, my self-confidence started declining a bit and I missed wearing makeup so much! It is not only something that I like to enhance my features but I have fun putting it on and buying it. My boyfriend of all people was the one to mention the makeup wipes and he bought me some all natural ones at the store because he has felt so bad for me through all of this. I wore some makeup for the first time yesterday and took my makeup off with the new wipes (Simple brand)

and then I went to bed and woke up this morning with no itchy, rough or swollen eyelids! :) I decided to look up and see if anyone else has had this problem and oh man I had no idea so many people went through this as well! I just wish I would have realized what it was sooner!

I will never repurchase and honestly feel the need to ward off all other up and up products as well.

88loloxoxo88  
on 7/22/2014 7:25:00 PM  
Age: 18 & Under

Skin: Sensitive, Fair, Not Sure

Hair: Blond, Other, Other

Eyes: Blue

PLEASE DO NOT USE THIS PRODUCT! I got it at Target on sale and I thought I would try it. Big mistake. After about a week or two of using it, my under eyes got very red, swollen, itchy, dry, scaly, and wrinkly. It was so terrible! I had to wear huge sunglasses everywhere I went so nobody would notice. If you've used this product and have the same results, try a bit of Cortizone 10 or a like product. After a few days the redness and burning sensation should go away. I repeat, never use this product. Target needs to do something about this

Report Abuse

3 of 4 people found this helpful.

*See*

<https://www.makeupalley.com/product/showreview.asp/page=2/pagesize=10/ItemID=136680/>

fshadow01  
on 10/4/2013 3:11:00 AM  
Age: 30-35

Skin: Combination, Fair-Medium, Not Sure

Hair: Red, Other, Other

Eyes: Blue

I used these wipes for 2 days. The first day I didn't realize anything different. After using these the second day, hours later my face started to burn and feel like it felt like it was on fire. Like someone threw acid in my face. I cant begin to tell you what I have experienced using these wipes. My eyes are literally swollen, the

corners of my eyes have burned and the skin is removed. My face is swollen, red, blotchy red marks all over. I have a awful rash on my neck as well. I cant sleep. Right now its 2:45am, as I am writing this review. I made a appointment to see the dermatologist tomorrow morning. The pain started late last night. I missed work today. Please don't use these wipes. I use the brand name Neutrogena wipes all the time and never have experienced a problem. I am not allergic to anything besides something in this product. I have never had a reaction like this in my life. Since yesterday I have been putting vaseline all over my face all day and night to keep it moist and taking Benadryl. Today I called and made a appointment with the doctor for tomorrow morning. I hope the burning feeling stops. I could cry. This is awful! I hope after seeing all the reviews on here, target stops selling these. Please!!!!

*See*

<https://www.makeupalley.com/product/showreview.asp/page=2/pagesize=10/ItemID=136680/>

Skye B.

Des Moines, IA

362 reviews

March 2, 2016, 10:17 p.m.

1 Star

I typically like targets brand of products but I was not impressed with. I bought the evening calm gentle makeup removing towelettes. They smell great and leave my skin feeling soft but that's where it stops. It doesn't remove my mascara easily- I have to really scrub and it still doesn't get all of it. Also this product really irritates my sensitive eyes. After using it my eyes are definitely irritated and when I wake up in the morning they are super puffy and swollen all over. Won't buy this product again.

*See,* [https://www.influenster.com/reviews/up-up-makeup-remover-cleansing-towelettes?review\\_sort=lowest+grade](https://www.influenster.com/reviews/up-up-makeup-remover-cleansing-towelettes?review_sort=lowest+grade).

Plaintiff purchased from the Beverly Connection Target store in Los Angeles County for personal and/or household purposes a 25-count package of Target's Up & Up Makeup Remover Cleansing Towelettes in Evening Calm to wash her face. Plaintiff McAteer developed an allergic reaction after using the Wipes in which her face developed a burning sensation and turned bright red.

As set forth more fully above, Target Corporation's acts and practices in connection with the sale of the Wipes are in violation of California's Consumer Legal Remedies Act § 1770, *et seq.* of the CLRA in that, among other things, Target Corporation:

- (1) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have § 1770(a)(5);



- (2) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another § 1770(a)(7);
- (3) Advertises goods or services with intent not to sell them as advertised § 1770(a)(9);
- (4) Represents that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law § 1770(a)(14);
- (5) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not § 1770(a)(16); and/or
- (6) Inserts an unconscionable provision in the contract § 1770(a)(19).

Plaintiff and others similarly situated have suffered injury and loss of money or property because they purchased Wipes they otherwise would not have purchased, paid more for the wipes than they would have paid, and paid money and/or used resources to attempt to remove the product from their face when it started to burn and to cover up the redness of the face when it became agitated.

Your company has committed multiple violations of the CRLA as well as the California law of unfair competition (California Business and Professions Code § 17200). California's UCL prohibits "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code. § 17200. "Because [the UCL] is written in the disjunctive, it establishes three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent. *Herron v. Best Buy Co. Inc.*, 924 F. Supp. 2d 1161, 1168 (E.D. Cal. 2013).

An act can be alleged to violate any or all of the three prongs of the UCL—unlawful, unfair, or fraudulent." *Berryman v. Merit Prop. Mgm't, Inc.*, 152 Cal.App.4th 1544, 1554 (2007); see also *Klein v. Chevron U.S.A., Inc.*, 202 Cal.App.4th 1342, 1374 (2012).

Here, your company has engaged in "unlawful" acts and/or practices by violating the common law (breach of contract, negligent failure to warn, negligent failure to test, breach of express warranty, implied warranty of merchantability, breach of implied warranty of fitness for a particular purpose, violation of the Magnuson Moss Act, fraud, and unjust enrichment, the CLRA, California Civil Code § 1750, *et. seq.*, the California False and Misleading Advertising in Violation of California Civil Code § 17500, *et. seq.*, Breach of Implied Warranty of Merchantability (Cal. Com. Code § 2314).

Here, your company has also engaged in "unfair" acts and/or practices. There is no single definition for the phrase "unfair business practices." It is an evolving concept reflecting the ingenuity of unscrupulous business persons in concocting new schemes to gain advantage at someone else's expense. The existence of an unfair business practice is a question of fact determined in light of all the circumstances surrounding a case. See, *People ex rel. Bill Lockyer v. Fremont Life Ins. Co.*, 104 Cal.App. 4th 508, 128 Cal.Rptr.2d 463, Cal.App. 2 Dist., 2002." (emphasis added). See *Plumlee v. Pfizer, Inc.*, No. 13cv0414, 2014 WL 4275519, at \*5 (N.D. Cal.

Aug. 29, 2014) (“A business practice violates the unfair prong of the UCL if it is contrary to ‘established public policy or if it is immoral, unethical, oppressive or unscrupulous and causes injury to consumers which outweighs its benefits.’”)

Defendant’s acts and/or practices also fall within the meaning of fraudulent acts and/or practices. Whether a practice is deceptive, fraudulent, or unfair is “generally a question of fact which requires ‘consideration and weighing of evidence from both sides.’”

Your conduct also constitutes a violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301.

### **REQUESTED REMEDIES**

PLAINTIFF HEREBY DEMANDS THAT WITHIN THIRTY (30) DAYS after the date on which this Notice is served on you, you remedy your violations by doing the following:

A. Disseminate a notice reasonably intended to reach all purchasers of Target Up & Up Makeup Remover Cleansing Towelettes in a form approved by the above counsel, setting forth the fact that the Wipes contain ingredients which are known to be an irritant to the skin or eyes, are known allergens, and warning potential buyers that the product should not be used around the eyes, and notifying consumers regarding a full refund to anyone who was not 100% satisfied with the Wipes.

B. Subject to monitoring and confirmation by above counsel, provide to each Class Member reimbursement for all expenses already incurred because of the Wipes;

C. Immediately cease marketing and selling the Wipes unless you first notify purchasers of the nature of the ingredients, and otherwise immediately cease to engage in the violations of the Consumers Legal Remedies Act and Magnuson-Moss Warranty Act and other statutory and/or common laws as set forth above.

D. Pay into a Court-approved escrow account an amount of money sufficient to pay Plaintiff’s attorneys’ fees and costs.

Please contact Counsel identified above if you would like to discuss this matter further.

If Defendant fails to respond to Plaintiff’s demand within thirty (30) days after receipt of this letter, Plaintiff will amend Plaintiff’s class action complaint to add damages under the CLRA.

Sincerely,



Francis J. “Casey” Flynn, Jr.



U.S. Postal Service  
CERTIFIED MAIL® RECEIPT  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®  
MINNEAPOLIS, MN 55403

**OFFICIAL USE**

0611 17

BALLWIN, MN 55403

Postmark Here 63017

4/26/2017

Certified Mail Fee	\$3.35
Extra Services & Fees (check box, add fee as appropriate)	\$2.75
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$0.70
Total Postage and Fees	\$6.80

Sent To  
Attn: General Counsel  
Target Corporation  
1000 Nicollet Mall  
Minneapolis, MN 55403

City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7016 1970 0001 0869 8199

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BALLWIN  
15455 MANCHESTER RD  
BALLWIN  
MO  
63011-9998  
2804080611  
10/26/2017 (800)275-8777 3:42 PM

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Product Description	Sale Qty	Final Price
First-Class Mail Letter (Domestic) (MINNEAPOLIS, MN 55403) (Weight:0 Lb 1.40 Oz) (Expected Delivery Day) (Monday 10/30/2017)	1	\$0.70
Certified (@USPS Certified Mail #) (7016197000108698199)	1	\$3.35
Return Receipt (@USPS Return Receipt #) (9590940229847094171987)	1	\$2.75

Total \$6.80

Credit Card Remitd \$6.80  
(Card Name:VISA)

(Approval #:026843)  
(Transaction #:254)

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data rates may apply. You may also visit USPS.com USPS Tracking or call 1-800-222-1811.

In a hurry? Self-service kiosks offer quick and easy check-out. Any Retail Associate can show you how.

\*\*\*\*\*  
BRIGHTEN SOMEONE'S MAILBOX. Greeting cards available for purchase at select Post Offices.  
\*\*\*\*\*

Order stamps at usps.com/shop or call 1-800-Stamp24. Go to usps.com/clicknship to print shipping labels with postage. For other information call 1-800-ASK-USPS.

\*\*\*\*\*  
Get your mail when and where you want it with a secure Post Office Box. Sign up for a box online at usps.com/poboxes.  
\*\*\*\*\*

All sales final on stamps and postage  
Refunds for guaranteed services only  
Thank you for your business

UNITED STATES POSTAL SERVICE  
HOLIDAY HIRING!  
August 25, 2017 to September 13, 2017  
\$12.00/hour - \$16.98/hour  
MUST APPLY ONLINE  
AND CREATE YOUR PROFILE  
www.usps.com/careers  
Search for jobs in MISSOURI & ILLINOIS  
MUST APPLY FOR EACH POSITION  
CHECK DAILY FOR

# **EXHIBIT C**

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Attn: General Counsel  
Target Corporation  
1000 Nicollet Mall  
Minneapolis, MN 55403



9590 9402 2984 7094 1719 87

2. Article Number (Transfer from service label)

7016 1970 0001 0869 8199

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

☒ X

☐ Agent  
☐ Addressee

B. Received by (Printed Name)

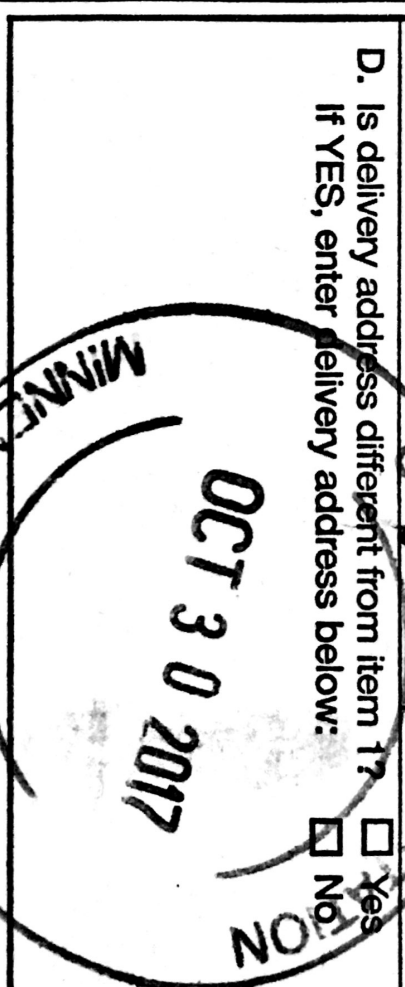
C. Date of Delivery

D. Is delivery address different from item 1?  
If YES, enter delivery address below:

☐ Yes  
☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

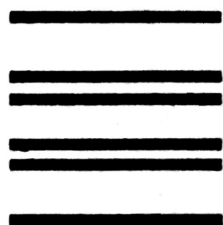


Domestic Return Receipt

**USPS TRACKING #**



9590 9402 2984 7094 1719 87



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

**United States  
Postal Service**

• Sender: Please print your name, address, and ZIP+4® in this box •

Francis J. "Casey" Flynn, Jr.  
Law Offices of Francis J. Flynn, Jr.  
6220 W. Third Street, #115  
Los Angeles, California 90036-3169

