IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

JENNIFER M. PARROT, individually and on behalf of all others similarly situated, Plaintiff, v. FAMILY DOLLAR, INC. Defendant.	**Case No.: 1:17−cv−00222** **Honorable Jorge L. Alonso** **CLASS ACTION** **JURY TRIAL DEMANDED**

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiff JENNIFER M. PARROT ("Plaintiff"), individually and on behalf of other Illinois consumers, through the undersigned attorneys, upon personal knowledge as to her own actions and status, and upon information and belief based upon the investigation of counsel as to the remaining allegations, alleges as follows:

I. INTRODUCTION

1. This is an Illinois consumer class action brought by Plaintiff on behalf of all individuals ("Class Members") who purchased Defendant Family Dollar, Inc.'s ("Defendant" or "Family Dollar") Tropic Sun Aloe Vera Gel (the "Product") for personal use and not for resale.

2. Defendant advertises, markets, sells, and distributes the Product. The Product's label declares it to be "Made with 100% Pure Aloe." The Product's label prominently describes the Product as "Aloe Vera Gel," containing "Aloe Barbadensis Leaf Juice," along with the image of an aloe plant.

3. In reality, according to independent laboratory tests, ***Defendant's Product contains no actual Aloe Vera at all***.

4. The Product's label is false, deceptive, and misleading, in violation of the Federal Food Drug & Cosmetics Act and its parallel state statutes, and almost every state warranty, consumer protection, and product labeling law in the United States.

II. PARTIES

5. During the relevant period, Plaintiff and the other Class Members purchased the Product in Illinois through numerous brick-and-mortar Family Dollar retail locations. Plaintiff and Class Members suffered an injury-in-fact proximately caused by the false, fraudulent, unfair, deceptive, and misleading practices set forth in this Complaint.

6. Plaintiff Jennifer M. Parrot is a resident and citizen of Markham, Illinois. In or about 2015 and/or 2016, she purchased the Product at a Family Dollar store near her home for her own use. Plaintiff Parrot read the Product label in Defendant's store before she bought the Product. Plaintiff relied on the label's representations (text, images, and characteristics), which misled her into believing that the product contained Aloe Vera. The supposed, claimed aloe content of the Product was material to her purchase decision because she wanted aloe for its commonly understood skin-healing and sunburn-relief qualities.

7. Plaintiff would not have purchased the Product had she known the Product did not contain aloe, or else she would have paid significantly less for the Product. Plaintiff Parrot suffered an injury-in-fact by purchasing the Product, or else by paying more than she otherwise would had she known that it did not contain the aloe content as claimed on the Product's label. The false, fraudulent, unfair, deceptive, and misleading practices set forth in this Complaint were the proximate cause of Plaintiff's injuries. Plaintiff Parrot's damages are the price she paid for the Product, plus applicable sales taxes; or else the difference between the price she paid and the market value price had Defendant not mislabeled the Product with the false claims regarding aloe

content, plus applicable sales taxes applied to the price she did pay.

8. Defendant Family Dollar, Inc. is incorporated in the State of North Carolina, with its principal place of business at 10401 Monroe Road, Matthews, NC 28105-5349.

III. JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over Plaintiff's class claims pursuant to 28 U.S.C. § 1332(d), because the combined claims of the proposed Class Members exceed $5,000,000 and because Defendant is a citizen of a different state than the named Plaintiff and Class Members.

10. This Court has personal jurisdiction over Defendant because Defendant regularly conducts business in this District.

11. Venue is proper in this District pursuant to: (1) 28 U.S.C. § 1391(b)(2), in that a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District; and (2) 28 U.S.C. § 1391(b)(3), in that Defendant is subject to personal jurisdiction in this District.

IV. FACTUAL ALLEGATIONS

12. Aloe Vera gel is made from an extract of the leaf of the Aloe Vera plant. Aloe Barbadensis is the scientific name of an aloe plant species that is widely used in the manufacturing of consumer products.

13. Aloe Vera is used in many products marketed for burn and/or sunburn relief. It is also a popular folk remedy, believed by some to treat everything from hypertension to the common cold when ingested.

14. A 1999 study in the British Journal of General Practice found that consuming Aloe Vera might help lower cholesterol and reduce glucose levels.[1] Naturally, these findings sparked renewed interest in products containing Aloe Vera.

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

16. Defendant sells the Product in a bottle with a front label that clearly refers to the Product as an "Aloe Vera Gel" product made with "100% Pure Aloe":

[1] B. K. Vogler & E. Ernst, *Aloe vera: a systematic review of its clinical effectiveness*, Brit. J. of Gen. Prac., Oct. 1999, at 823, *available at* http://bjgp.org/content/bjgp/49/447/823.full.pdf (last visited June 4, 2018).

[2] Hank Schultz, *Global aloe market estimated at $13 billion*, NUTRA Ingredients-USA, http://www.nutraingredients-usa.com/Markets/Global-aloe-market-estimated-at-13-billion (last visited June 4, 2018).

17. The "Aloe Vera Gel" representation is in a much larger font with more contrast than other label representations and claims. The label also includes a prominent stylized illustration of the aloe plant to further convey the importance of aloe as a Product ingredient. Further, upon information and belief, Defendant added a green color and placed the gel in a clear bottle so consumers would notice the green gel, which consumers associate with the aloe plant's green leaves. However, the natural color of aloe gel is clear. In changing the natural color of the aloe gel in the Product, upon information and belief, Defendant purposefully changed the Product to deceptively appeal to consumers' connection between green gel and aloe.

18. On the back of the Product, the label claims that the Product is "made from fresh Aloe Vera leaves," and the ingredients list includes "Aloe Barbadensis Leaf Juice" as a predominant ingredient:

19. Plaintiff's counsel had Defendant's Product tested, and the results show that it does not contain any Aloe Vera or Aloe Barbadensis Leaf Juice. Furthermore, Acemannan, a signature Aloe Vera chemical component that indicates the presence of Aloe, was not detected in the sample of Defendant's Product.

20. According to the American Herbal Pharmacopeia – *Monograph on Aloe Vera Leaf, Aloe Vera Leaf Juice, and Aloe Vera Inner Leaf Juice* (2013), aloe leaf extract should contain not less than 5% dry weight of acetylated polysacchardies (Acemannan) and not more than 5% dry weight of isocitric acid as determined by proton nuclear magnetic resonance spectrometry (H-NMR). Products that do not contain Acemannan do not contain Aloe Vera and should not be labeled as aloe products.

21. According to the International Aloe Science Council ("IASC"), "[**p**]**roducts that do not contain Acemannan are not considered to be true aloe vera**."[3]

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

23. Improper manufacturing and storage processes can result in products with little or no Acemannan.

24. The results of H-NMR testing commissioned by Plaintiff's counsel on a bottle of the same Product as Plaintiff purchased show no trace of aloe. As such, Defendant's descriptions of the Product as made with "100% Pure Aloe Vera," and "fresh Aloe Vera leaves," and containing "Aloe" or "Aloe Barbadensis Leaf Juice" are false, deceptive, and misleading.

[3] *Aloe vera Frequently Asked Questions*, The International Aloe Science Council, http://www.iasc.org/Consumers/AloeVeraFAQ.aspx (last visited June 4, 2018) (emphasis in original).

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

V. DEFENDANT'S KNOWLEDGE OF PRODUCT INGREDIENTS

26. When it placed the Product in the stream of commerce, Defendant intentionally utilized a descriptive but generic product trade name that: (a) describes the product category to which the brand belongs (here, "aloe vera"); and (b) emphasizes a product characteristic that will figure prominently in the consumer's decision whether to buy the Product or not (here, "100% Pure Aloe"). See photo at ¶ 16. This trade name choice denotes that the Defendant knew the Product's actual product category and actual product characteristics at the time that it labeled, packaged, and placed the Product in the stream of commerce.

27. Furthermore, on the back label of the Product, as shown in the photo at ¶ 18, Defendant's own sister corporation name, "Family Dollar Services, Inc.," demonstrates that Defendant Family Dollar, Inc. itself participated in the designing, packaging, and labeling of the Product, with the intent of selling the Product in its own retail stores.

28. Family Dollar Services, Inc., operates as a subsidiary of Family Dollar Stores, Inc., and is incorporated in the State of North Carolina, with a principal place of business at 10401 Monroe Road, Matthews, NC 28105-5349. These places of incorporation and business location are identical to those of the Defendant; thus, it is reasonable to presume that the knowledge of one entity is known by the other and shared by Defendant.

29. Defendant, either itself or through its sister corporation, Family Dollar Services, Inc., chose and determined a descriptive trade name ("Aloe Vera Gel") that clearly indicates that it is aware of the contents of the Product packaging. Then, it labeled and listed those characteristics and ingredients, prominently claiming and representing to consumers that it knows and is selling those ingredients in each of its Product bottles. Yet the Product actually contains no detectable amount of aloe, despite the numerous claims made on the Product's packaging and label.

30. Defendant intentionally developed and knowingly employed a descriptive trade name, packaging, labeling, and marketing strategy that is designed to deceive consumers into purchasing a product that does not have the characteristics promised.

31. Defendant, having determined the trade name, the product category, and listed the Product's characteristics and ingredients on its own labeling, knew or should have known the Product actually contains no detectable amount of aloe. Yet, Defendant developed and knowingly employed a marketing strategy designed to deceive consumers.

32. Specifically, Defendant employs a Quality & Compliance Program ("Q&C Program") designed "to monitor and ensure compliance with applicable laws, regulations, and corporate quality standards."[4] The Q&C Program requires that products, including the Product, be tested prior to sale, including pre-production, during production, and post-production testing.[5]

33. Defendant's Q&C Program includes "an inspection of key product characteristics during production," and all suppliers are required to provide complete and

[4] Family Dollar Quality & Compliance Program (Aug. 2017), at 4, *available at* http://www.familydollar.com/content/dam/familydollarcorporate/pdfs/Family%20Dollar%20Quality%20and%20Compliance%20Program.pdf (last visited June 4, 2018).
[5] *Id.* at 9.

accurate product manufacturing specifications for products sold to Defendant.[6] In addition, Defendant mandates that suppliers must provide it with "Top of Production" samples, which are evaluated for "conformance to product specifications and packaging."[7] Accordingly, Defendant knew or should have known that the Product, contrary to its packaging, contains no detectable amount of aloe based on its own Q&C Program.

34. The purpose of Defendant's scheme was to stimulate sales and enhance Defendant's profits by labeling its Product with product characteristics ("Aloe Vera Gel," "100% Pure Aloe," and "made from fresh Aloe Vera leaves") that would figure prominently in consumers' decisions, despite its Product lacking those very characteristics. Namely, Defendant knew or should have known through its Q&C Program that its Product was not "Made with 100% Pure Aloe" or did not contain the advertised levels of Aloe Barbadensis leaf juice. Defendant mislabeled its Product to induce consumers to purchase the Product, even though the Product does not contain the advertised levels of ingredients and lacked the characteristics consumers seek when purchasing an "Aloe Vera Gel."

35. In developing the Product labels, Defendant misrepresented the aloe content of the Product on the Product label, which misrepresentations were communicated to every person who purchased the Product via the words and pictures on the label.

36. Many companies sell lotions and gels designed to "cool" and "moisturize" the skin; but only a small percentage of those products include aloe, which is widely sought as a treatment for burns and sunburn. The back of Defendant's Product label even claims that the Product "helps to soothe and cool sunburned or dry skin." Consumers looking for burn and sunburn relief from the medicinal/healing properties typically associated with aloe would not

[6] *Id.* at 10-11.
[7] *Id.* at 17.

have purchased Defendant's Product had they known the truth, or else would have paid significantly less for the Product.

37. At all relevant times, Defendant directed the above-referenced statements and claims to consumers in general and Class Members in particular, as evidenced by their eventual purchases of the Product.

38. Plaintiff and the other Class Members were in fact misled by Defendant's representations and marketing of its Product.

39. The absence of Aloe Vera leaves no reason to purchase the Product at all, since other proven and less-expensive products exist. If a reason still existed to purchase the Product, the absence of Aloe Vera would significantly lower the Product's market value price.

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

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

42. The FDA promulgated regulations for compliance with the Food Drug & Cosmetics Act ("FDCA") at 21 C.F.R. §§ 701, *et seq.*, (for cosmetics).

43. Defendant's Product is misbranded under 21 C.F.R. § 701.1(b), which deems cosmetics misbranded when "[t]he labeling of a cosmetic which contains two or more ingredients [is designated] in such labeling by a name which includes or suggests the name of one or more but not all such ingredients." This is deemed misbranding "even though the names of all such ingredients are stated elsewhere in the labeling."

44. "Aloe Barbadensis Leaf Juice" is the third of fifteen ingredients listed on the Product's back label, although the front label proclaims that the product is "Made with 100%

Pure Aloe." 21 C.F.R. § 701.3(a) requires "[t]he label on each package of a cosmetic [to] bear the name of each ingredient in descending order of predominance . . . ."

45. It is impossible that the Product is made with "100% pure Aloe" or that "Aloe Barbadensis Leaf Juice" could be the third most predominant ingredient in the Product, since the Product contains none of the chemical markers of Aloe Vera. The labeling is thus a violation of 21 C.F.R. § 701.3(a).

46. 21 C.F.R. § 701.3(c)(2)(i)(b) also requires all Carbomer compounds in cosmetics to be identified by their specific type, *e.g.*, Carbomer 934, 934P, 940, 941, 960, or 961. Defendant's labels violate this standard and merely list the ingredient "Carbomer."

47. The introduction of misbranded cosmetics into interstate commerce is prohibited under the FDCA and all parallel state statutes.

48. Had Plaintiff or the other Class Members known about Defendant's scheme to sell the Product as misbranded cosmetics that lacked the claimed ingredients and characteristics, they would not have purchased the Product, or else they would have paid significantly less for the Product.

VI. CLASS ACTION ALLEGATIONS

49. Plaintiff brings this action individually and as a representative of all others similarly situated, pursuant to Federal Rule of Civil Procedure 23, on behalf of the below-defined Class:

> All residents of the State of Illinois who, within four (4) years of the filing of this Complaint, purchased the Product for personal use and not for resale.

Excluded from the Class are Defendant and its affiliates, parents, subsidiaries, employees, officers, agents, and directors. Also excluded are any judicial officers presiding over this matter and the members of their immediate families and judicial staff.

50. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of her claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

51. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the Class are so numerous that their individual joinder herein is impracticable. On information and belief, Class Members number in the thousands. The precise number of Class Members is presently unknown to Plaintiff, but may be ascertained from Defendant's books and sales records. Class Members may be notified of the pendency of this action by mail, email, Internet and in-store postings, and/or publication.

52. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** Common questions of law and fact exist as to all Class Members and predominate over questions affecting only individual Class Members. Such common questions of law or fact include:

a. Whether the marketing, advertising, packaging, labeling, and other promotional materials for the Product are deceptive;

b. Whether Defendant's actions violate the state statutes invoked below;

c. Whether Defendant breached an express warranty to Plaintiff and Class Members; and

d. Whether Defendant breached an Implied Warranty of Merchantability to Plaintiff and Class Members.

53. Defendant engaged in a common course of conduct giving rise to the legal rights Plaintiff seeks to enforce, on behalf of herself and the other Class Members. Similar or identical

statutory and common law violations, business practices, and injuries are involved. Individual questions, if any, pale in comparison, in both quality and quantity, to the numerous common questions that dominate this action.

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

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

56. **Insufficiency of Separate Actions – Federal Rule of Civil Procedure 23(b)(1).** Absent a representative class action, members of the Class would continue to suffer the harm described herein, for which they would have no remedy. Even if separate actions could be brought by individual consumers, it would not be desirable. The resulting multiplicity of lawsuits would cause undue burden and expense for both the Court and the litigants, as well as create a risk of inconsistent rulings and adjudications that might be dispositive of the interests of similarly situated purchasers, substantially impeding their ability to protect their interests, while establishing incompatible standards of conduct for Defendant. The proposed Class thus satisfies the requirements of Fed. R. Civ. P. 23(b)(1).

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

VII. CLAIMS ALLEGED

FIRST COUNT

Breach of Express Warranty, 810 Ill. Comp. Stat. 5/2-313
(On behalf of the proposed Class)

58. Plaintiff incorporates paragraphs 1 through 57 as if fully set forth herein.

59. Plaintiff brings this claim against Defendant on behalf of herself and the proposed Class of all Illinois purchasers of Defendant's Products.

60. Plaintiff and each member of the Class formed a contract with Defendant upon purchasing the Product. The terms of the contract included the promises and affirmations of fact made by Defendant on the Product's packaging and through marketing and advertising, as described above. This labeling, marketing, and advertising constitute express warranties and

became part of the basis of the bargain, and are part of the standardized contract between Plaintiff and the members of the Class on the one hand and Defendant on the other.

61. Plaintiff and the members of the Class performed all conditions precedent to Defendant's liability under this contract when they purchased the Product.

62. Defendant breached express warranties about the Product and its qualities because Defendant's statements about the Product were false and the Product does not conform to Defendant's affirmations and promises described above.

63. Defendant had actual knowledge, through its Q&C Program, that its Product contains no detectable levels of Aloe Vera and that the Product does not conform to Defendant's affirmations and promises described above. See ¶¶ 32-33.

64. Plaintiff and the members of the Class would not have purchased the Product had they known its true nature, namely that it does not contain any Aloe Vera, or else they would have paid significantly less for the Product.

65. Plaintiff and members of the Class did not know and could not have known or independently confirmed at the point of sale the veracity of Defendant's statements regarding the ingredients and characteristics of the Product.

66. As a result of Defendant's breach of warranty, Plaintiff and each member of the Class has been damaged in an amount equal to the purchase price of the Product, plus any consequential damages resulting from his/her purchase, including sales taxes; or else the difference between the price paid and the Product's market value price had Defendant not mislabeled the Product with the false claims regarding aloe content (and reflecting its true characteristics and actual ingredients), plus any consequential damages resulting from his/her purchase, including sales taxes applied to the purchase price actually paid.

67. On March 10, 2017, prior to filing her First Amended Complaint, Plaintiff sent Defendant a pre-suit demand letter requesting the relief sought in that First Amended Complaint and notifying Defendant of the alleged breach of express warranty related to Defendant's marketing and labeling of its Product.

SECOND COUNT

Breach of Implied Warranty, 810 Ill. Comp. Stat. 5/2-315 (On behalf of the proposed Class)

68. Plaintiff incorporates paragraphs 1 through 57 as if fully set forth herein.

69. Plaintiff brings this claim against Defendant on behalf of herself and the proposed Class of all Illinois purchasers of Defendant's Products.

70. Defendant knew and intended that Plaintiff and members of the Class would be the ultimate consumers of the Product. Specifically, Defendant marketed its product as an "Aloe Vera Gel" with prominent references to the aloe plant and its healing/medicinal purposes.

71. Defendant sold the Product into the stream of commerce, and Defendant is a merchant with respect to goods such as the Product at issue.

72. The Product was not merchantable at the time of sale, because it did not conform—nor could it have conformed—to Defendant's representations as alleged herein. Specifically, Defendant's Product does not contain Aloe Vera, aloe gel, or Aloe Barbadensis leaf juice as claimed and represented on the Product's label, making it unmerchantable and unfit for its ordinary purpose as a topical aloe preparation and sunburn treatment.

73. Plaintiff and the other members of the Class did not receive the benefit of their bargain in purchasing the Product.

74. After-sun aloe products like Defendant's Product are marketed and sold for relief of burns, sunburns, and similar conditions that benefit from the healing properties of aloe. Because Defendant's Product does not contain Aloe Vera, it is unfit for these ordinary intended purposes.

75. Plaintiff and the other members of the Class were injured by purchasing an aloe after-sun Product that does not contain aloe. But for Defendant's misrepresentations and deception, Plaintiff and members of the Class would not have purchased Defendant's Product, or else would have paid significantly less for the Product.

76. Defendant had actual knowledge, through its Q&C Program, that its Product contained no detectable levels of Aloe Vera and that the Product was not merchantable at the time of sale. See ¶¶ 32-33.

77. As a result of Defendant's breach of warranty, Plaintiff and each member of the Class has been damaged in an amount equal to the purchase price of the Product, plus any consequential damages resulting from his/her purchase, including sales taxes; or else the difference between the price paid and the Product's market value price had Defendant not mislabeled the Product with the false claims regarding aloe content (and reflecting its true characteristics and actual ingredients), plus any consequential damages resulting from his/her purchase, including sales taxes applied to the purchase price actually paid.

78. On March 10, 2017, Plaintiff sent Defendant a pre-suit demand letter, prior to filing her First Amended Complaint, requesting the relief sought in that First Amended Complaint and notifying Defendant of the alleged breach of the implied warranty of merchantability for Defendant's Product.

THIRD COUNT

Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1, *et seq.*
(On behalf of the proposed Class)

79. Plaintiff incorporates paragraphs 1 through 57 as if fully set forth herein.

80. Plaintiff brings this claim against Defendant on behalf of herself and the proposed Class of all Illinois purchasers of Defendant's Products.

81. Plaintiff has standing to pursue a cause of action for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (the "ICFA"), 815 Ill. Comp. Stat. 505/1, *et seq.*, because Plaintiff has suffered an injury-in-fact and lost money as a result of Defendant's actions as set forth herein.

82. The ICFA prohibits the use of unfair or deceptive business practices in the conduct of trade or commerce. The ICFA is to be liberally construed to effectuate its purpose.

83. The IFCA provides:

> § 2. Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

815 Ill. Comp. Stat. 505/2.

84. Illinois has expressly adopted the federal food, drug, and cosmetic labeling requirements as its own: "[a] federal regulation automatically adopted pursuant to this Act takes effect in this State on the date it becomes effective as a Federal regulation." 410 Ill. Comp. Stat.

620/21. Thus, a violation of federal food, drug and cosmetic labeling laws is also an independent violation of Illinois law and actionable as such.

85. Pursuant to 410 Ill. Comp. Stat. 620/19, which mirrors 21 U.S.C. § 362(a), "[a] cosmetic is misbranded – (a) If its labeling is false or misleading in any particular."

86. Defendant intended that Plaintiff and each of the other members of the Class would rely upon Defendant's unfair and deceptive conduct in knowingly mislabeling the Product, and that a reasonable person would, in fact, be misled by this unfair and deceptive conduct.

87. Defendant knew or should have known, through its Q&C Program, that its representations of fact concerning the Product are material and likely to mislead consumers. See ¶¶ 32-33.

88. Plaintiff relied on Defendant's label misrepresentations and claims that the Product contained aloe, and these misrepresentations and aloe claims are the proximate cause of Plaintiff's and the other Class Members' purchases of Defendant's Product and Plaintiff's and the other Class Members' corresponding economic losses.

89. Defendant's practices, acts, and course of conduct in marketing and selling the mislabeled Product are likely to mislead a reasonable consumer acting reasonably under the circumstances to his or her detriment. Like Plaintiff, members of the Class would not have purchased the Product had they known that it contained no actual Aloe Vera, or else would have paid significantly less for the Product.

90. Plaintiff and members of the Class have been directly and proximately damaged by Defendant's actions.

91. As a result of the Defendant's use or employment of unfair or deceptive acts or business practices, Plaintiff and each member of the Class has been damaged in an amount equal to the purchase price of the Product, plus any consequential damages resulting from his/her purchase, including sales taxes; or else the difference between the price paid and the Product's market value price had Defendant not mislabeled the Product with the false claims regarding aloe content (and reflecting its true characteristics and actual ingredients), plus any consequential damages resulting from his/her purchase, including sales taxes applied to the purchase price actually paid.

92. In addition, Defendant's conduct showed malice, motive, and a reckless disregard of the truth such that an award of punitive damages is appropriate.

VIII. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all claims in this Complaint so triable. Plaintiff also respectfully requests leave to amend this Complaint to conform to the evidence, if such amendment is needed for trial.

IX. REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class proposed in this Complaint, respectfully requests that the Court enter judgment as follows:

A. Declaring that this action is a proper class action, certifying the Class requested herein, designating Plaintiff as Class Representative, and appointing the undersigned counsel as Class Counsel;

B. Ordering Defendant to pay actual damages to Plaintiff and the other members of the Class;

C. Ordering Defendant to pay statutory damages, as provided by the applicable statutes invoked above, to Plaintiff and the other members of the Class;

D. Ordering Defendant to pay restitution to Plaintiff and the other members of the Class;

E. Ordering Defendant to pay attorneys' fees and litigation costs;

F. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and

G. Ordering such other and further relief as may be just and proper.

Dated: June 5, 2018

s/Gregory F. Coleman

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*Pro Hac Vice Application Forthcoming

Attorneys for the Plaintiff and the Putative Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Second Amended Class Action Complaint was filed June 5, 2018, via the electronic filing system of the United States District Court for the Northern District of Illinois, which will automatically serve all counsel of record.

s/Gregory F. Coleman
Gregory F. Coleman