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*Counsel for Plaintiff*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

KI BURKE, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

KITTRICH CORPORATION,

Defendant.

**Case No. 2:18-cv-6819**

**CLASS ACTION COMPLAINT**

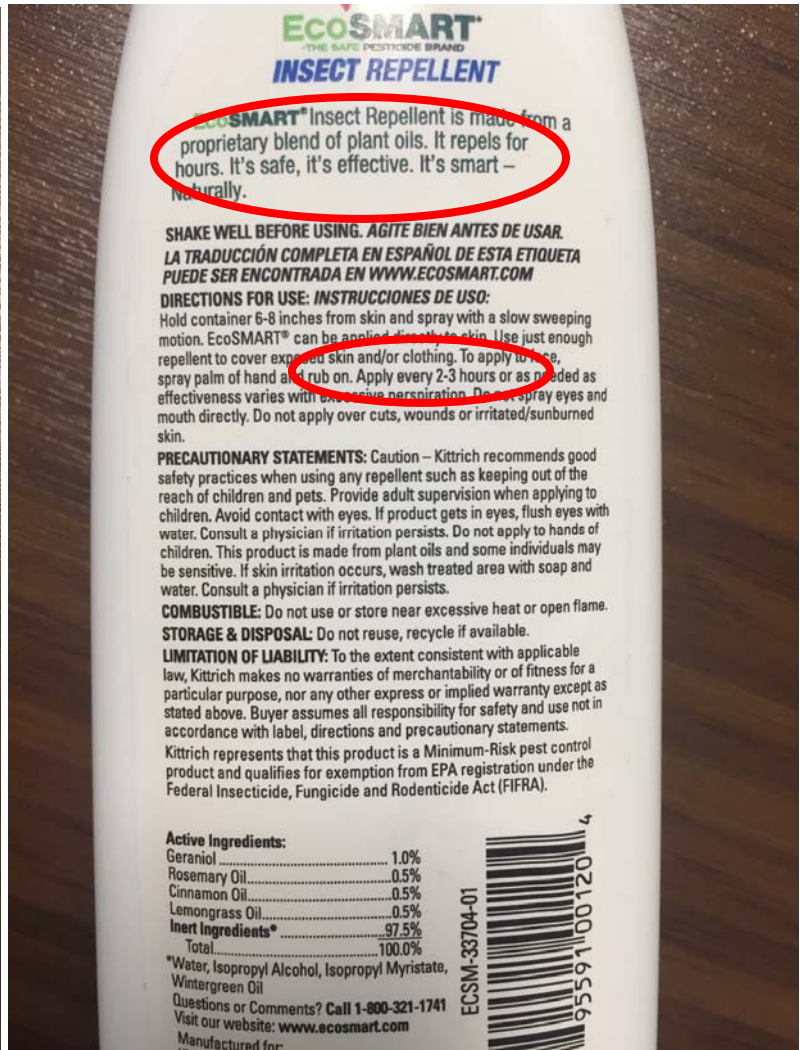
**JURY TRIAL DEMANDED**

1 Plaintiff Ki Burke (“Plaintiff”), by and through her attorneys, makes the  
2 following allegations pursuant to the investigation of her counsel and based upon  
3 information and belief, except as to allegations specifically pertaining to herself and  
4 her counsel, which are based on personal knowledge, against Defendant Kittrich  
5 Corporation (“Defendant”).

### 6 NATURE OF ACTION

7 1. This is a class action lawsuit on behalf of purchasers of Ecosmart Insect  
8 Repellent (the “Product” or “EcoSmart”) in the United States.

9 2. Defendant represents that the Product is an “insect repellent” that  
10 “keeps away mosquitoes” and “repels for hours.” The instructions direct users to  
11 “apply every 2-3 hours.”



1           3.       Unfortunately for consumers however, the Product is a complete sham.  
2       Scientific evidence shows that the Product does not repel mosquitoes. The product is  
3       ineffective and worthless.

4           4.       Independent laboratory testing commissioned by Plaintiff’s counsel in  
5       early 2018 revealed that the Product was ineffective in repelling Aedes mosquitoes  
6       and Culex mosquitoes – the two most worrisome and common species of mosquitoes  
7       found in the United States. Defendant’s Product failed the laboratory testing almost  
8       immediately. All of the test subjects were bitten by both species of mosquitoes  
9       within the first testing interval—half an hour. This is a stark contrast from  
10      Defendant’s representation that the Product should be applied “every 2-3 hours.”  
11      Photographs of some of the Product’s test subjects being bitten by mosquitoes  
12      shortly after application of the Product are shown below:





1 substantially reduced price for the Product, had she known that these representations  
2 were false and misleading.

3 8. Defendant Kittrich Corporation is a California corporation with its  
4 principal place of business at 1585 W. Mission Boulevard, Pomona CA 91766.

5 9. Defendant manufactures, markets, and distributes the Product  
6 throughout the United States.

7 **JURISDICTION AND VENUE**

8 10. This Court has subject matter jurisdiction over this action pursuant to 28  
9 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate  
10 amount in controversy exceeds \$5,000,000, exclusive of interest, fees, and costs, and  
11 at least one Class member is a citizen of a state different from one Defendant.

12 11. This Court has personal jurisdiction over Defendant Kittrich  
13 Corporation because Defendant's principal place of business is in this District and  
14 because Defendant conducts substantial business within California such that  
15 Defendant has significant, continuous, and pervasive contacts with the State of  
16 California.

17 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because  
18 Defendant does substantial business in this District, a substantial part of the events  
19 giving rise to Plaintiff's claims took place within this District (*e.g.*, the research,  
20 development, design, and marketing of the Product), and Defendant's principal place  
21 of business is in this District.

22 **CLASS REPRESENTATION ALLEGATIONS**

23 13. Ms. Burke seeks to represent a class defined as all persons in the United  
24 States who purchased EcoSmart Insect Repellent (the "Class"). Excluded from the  
25 Class are persons who made such purchase for purpose of resale.

26 14. Ms. Burke also seeks to represent a subclass defined as all Class  
27 members who purchased EcoSmart Insect Repellent in California (the "California  
28 Subclass").

1           15. Members of the Class and California Subclass are so numerous that  
2 their individual joinder herein is impracticable. On information and belief, members  
3 of the Class and California Subclass number in the millions. The precise number of  
4 Class members and their identities are unknown to Plaintiff at this time but may be  
5 determined through discovery. Class members may be notified of the pendency of  
6 this action by mail and/or publication through the distribution records of Defendant  
7 and third-party retailers and vendors.

8           16. Common questions of law and fact exist as to all Class members and  
9 predominate over questions affecting only individual Class members. Common legal  
10 and factual questions include, but are not limited to whether Defendant's labeling,  
11 marketing and promotion of the Product is false and misleading.

12           17. The claims of the named Plaintiff are typical of the claims of the Class  
13 in that the named Plaintiff was exposed to Defendant's false and misleading  
14 marketing and promotional materials and representations, purchased the Product, and  
15 suffered a loss as a result of that purchase.

16           18. Plaintiff is an adequate representative of the Class and California  
17 Subclass because her interests do not conflict with the interests of the Class members  
18 she seeks to represent, she has retained competent counsel experienced in  
19 prosecuting class actions, and she intends to prosecute this action vigorously. The  
20 interests of Class members will be fairly and adequately protected by Plaintiff and  
21 her counsel.

22           19. The class mechanism is superior to other available means for the fair  
23 and efficient adjudication of the claims of Class members. Each individual Class  
24 member may lack the resources to undergo the burden and expense of individual  
25 prosecution of the complex and extensive litigation necessary to establish  
26 Defendant's liability. Individualized litigation increases the delay and expense to all  
27 parties and multiplies the burden on the judicial system presented by the complex  
28 legal and factual issues of this case. Individualized litigation also presents a

1 potential for inconsistent or contradictory judgments. In contrast, the class action  
2 device presents far fewer management difficulties and provides the benefits of single  
3 adjudication, economy of scale, and comprehensive supervision by a single court on  
4 the issue of Defendant’s liability. Class treatment of the liability issues will ensure  
5 that all claims and claimants are before this Court for consistent adjudication of the  
6 liability issues.

7 **COUNT I**

8 **(Unfair and Deceptive Acts and Practices in Violation of the California  
9 Consumers Legal Remedies Act)**

10 20. Plaintiff incorporates by reference and re-alleges herein all paragraphs  
11 alleged above.

12 21. Plaintiff brings this cause of action on behalf of herself and members of  
13 the California Subclass.

14 22. This cause of action is brought pursuant to California’s Consumers  
15 Legal Remedies Act, Cal. Civ. Code §§ 1750-1785 (the “CLRA”).

16 23. Plaintiff and the other members of the California Subclass are  
17 “consumers,” as the term is defined by California Civil Code § 1761(d), because they  
18 bought the Product for personal, family, or household purposes.

19 24. Plaintiff, the other members of the California Subclass, and Defendant  
20 have engaged in “transactions,” as that term is defined by California Civil Code  
21 § 1761(e).

22 25. The conduct alleged in this Complaint constitutes unfair methods of  
23 competition and unfair and deceptive acts and practices for the purpose of the  
24 CLRA, and the conduct was undertaken by Defendant in transactions intended to  
25 result in, and which did result in, the sale of goods to consumers.

26 26. As alleged more fully above, Defendant has violated the CLRA by  
27 falsely representing to Plaintiff and the other members of the California Subclass that  
28

1 the Product is an “insect repellent” that “keeps away mosquitoes” and “repels for  
2 hours” when the product in fact does not.

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

5 28. CLRA § 1782 NOTICE. On July 2, 2018, a CLRA demand letter was  
6 sent to Defendant via certified mail that provided notice of Defendant’s violation of  
7 the CLRA and demanded that within thirty (30) days from that date, Defendant  
8 correct, repair, replace or other rectify the unlawful, unfair, false and/or deceptive  
9 practices complained of herein. The letter also stated that if Defendant refused to do  
10 so, a complaint seeking damages in accordance with the CLRA would be filed.  
11 Defendant has failed to comply with the letter. Accordingly, pursuant to California  
12 Civil Code § 1780(a)(3), Plaintiff, on behalf of herself and all other members of the  
13 California Subclass, seeks injunctive relief, compensatory damages, punitive  
14 damages, and restitution of any ill-gotten gains due to Defendant’s acts and  
15 practices.

16 **COUNT II**  
17 **(Violations of California’s False Advertising Law)**

18 29. Plaintiff incorporates by reference and re-alleges herein all paragraphs  
19 alleged above.

20 30. Plaintiff brings this cause of action on behalf of herself and members of  
21 the California Subclass.

22 31. As alleged more fully above, Defendant has falsely advertised the  
23 Product by falsely claiming that the Product is an “insect repellent” that “keeps away  
24 mosquitoes” and “repels for hours” when the Product in fact does not.

25 32. Plaintiff and the other members of the California Subclass have suffered  
26 injury in fact and have lost money or property as a result of Defendant’s violations of  
27 California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500 et seq.  
28



**COUNT III**  
**(Violation California's Unfair Competition Law)**

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2  
3 33. Plaintiff incorporates by reference and re-alleges herein all paragraphs  
4 alleged above.

5 34. Plaintiff brings this cause of action on behalf of herself and members of  
6 the California Subclass.

7 35. By committing the acts and practices alleged herein, Defendant has  
8 violated California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§  
9 17200-17210, as to the California Subclass, by engaging in unlawful, fraudulent, and  
10 unfair conduct.

11 36. Defendant has violated the UCL's proscription against engaging in  
12 unlawful conduct as a result of:

- 13 (a) its violations of the CLRA, Cal. Civ. Code § 1770(a)(5), (a)(7),  
14 and (a)(9), as alleged above; and  
15 (b) its violations of the FAL, Cal. Bus. & Prof. Code § 17500 *et seq.*  
16 as alleged above.

17 37. Defendant's acts and practices described above also violate the UCL's  
18 proscription against engaging in fraudulent conduct.

19 38. As more fully described above, Defendant's misleading marketing,  
20 advertising, packaging, and labeling of the Product is likely to deceive reasonable  
21 consumers. Indeed, Plaintiff and the other members of the California Subclass were  
22 unquestionably deceived regarding the nature of the Product, as Defendant's  
23 marketing, advertising, packaging, and labeling of the Product misrepresents and/or  
24 omits the true facts concerning the nature of the Product. Said acts are fraudulent  
25 business practices.

26 39. Defendant's acts and practices described above also violate the UCL's  
27 proscription against engaging in unfair conduct.  
28

1           40. As a result of these misrepresentations, Plaintiff and members of the  
2 California Subclass suffered economic injury because they would not have  
3 purchased the Product if they had known the Product was ineffective to repel  
4 mosquitoes, or would have only been willing to pay a substantially reduced price for  
5 the Product had they known the product was ineffective to repel mosquitoes.

6           41. There is no benefit to consumers or competition from deceptively  
7 marketing and labeling the Product, which purports to be an “insect repellent” that  
8 “keeps away mosquitoes” and “repels for hours” when these unqualified claims are  
9 false.

10           42. Plaintiff and the California Subclass members had no way of reasonably  
11 knowing that the Product they purchased was not as marketed, advertised, packaged,  
12 or labeled. Thus, they could not have reasonably avoided the injury each of them  
13 suffered.

14           43. The gravity of the consequences of Defendant’s conduct as described  
15 above outweighs any justification, motive, or reason therefore, particularly  
16 considering the available legal alternatives which exist in the marketplace, and such  
17 conduct is immoral, unethical, unscrupulous, offends established public policy, or is  
18 substantially injurious to Plaintiff and the California Subclass.

19           44. Defendant’s violations of the UCL continue to this day.

20           45. Pursuant to California Business and Professional Code § 17203,  
21 Plaintiff and the California Subclass seek an order of this Court that includes, but is  
22 not limited to, an order requiring Defendant to:

- 23           (a) provide restitution to Plaintiff and the other California Subclass  
24 members;
- 25           (b) disgorge all revenues obtained as a result of violations of the  
26 UCL; and
- 27           (c) pay Plaintiff’s and the California Subclass’ attorneys’ fees and  
28 costs.

**COUNT IV**

**(Violation of the Magnuson-Moss Warranty Act,  
15 U.S.C. §§ 2301, *et seq.*)**

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2  
3 46. Plaintiff incorporates by reference and re-alleges herein all paragraphs  
4 alleged above.

5 47. Plaintiff brings this case individually and on behalf of the members of  
6 the proposed Class against Defendant.

7 48. EcoSmart is a consumer product as defined in 15 U.S.C. § 2301(1).

8 49. Plaintiff and Class members are consumers as defined in 15 U.S.C. §  
9 2301(3).

10 50. Defendant is a supplier and warrantor as defined in 15 U.S.C. § 2301(4)  
11 and (5).

12 51. In connection with the sale of EcoSmart, Defendant issued written  
13 warranties as defined in 15 U.S.C. § 2301(6), which warranted that it was an “insect  
14 repellent” that “keeps away mosquitoes” and “repels for hours.” The period for  
15 effectiveness of the product was also stated in the directions: “apply every 2-3  
16 hours.”

17 52. In fact, EcoSmart is ineffective to repel mosquitoes.

18 53. By reason of Defendant’s breach of warranty, Defendant violated the  
19 statutory rights due to Plaintiff and Class members pursuant to the Magnuson-Moss  
20 Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, thereby damaging Plaintiff and Class  
21 members.

22 54. Plaintiff and Class members were injured as a direct and proximate  
23 result of Defendant’s violation because (a) they would not have purchased EcoSmart  
24 if they had known that EcoSmart was ineffective to repel mosquitos, and (b) they  
25 overpaid for EcoSmart on account of its misrepresentation that it is an “insect  
26 repellent” that “keeps away mosquitoes” and “repels for hours.”  
27  
28









1 Dated: August 7, 2018

Respectfully submitted,

2 **BURSOR & FISHER, P.A.**

3 By:           /s/ L. Timothy Fisher            
4 L. Timothy Fisher

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19 *Counsel for Plaintiff*



**CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

I, Ki Burke, declare as follows:

1. I am a plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently thereto.

2. The complaint filed in this action is filed in the proper place for trial under California Civil Code Section 1780(d) in that Defendants conduct a substantial amount of business in this District.

3. In summer 2017, while living in California, I purchased EcoSmart Organic Insect Repellent (the "Product") from a Target store located in San Pedro, California for approximately \$6. In purchasing the Product, I relied on Defendants' representation that the Product is an "insect repellent" and "keeps away mosquitoes," which were depicted in large text on the front label underneath a picture of a smiling family. I understood this representation to mean that the Product would keep away mosquitoes upon application. This representation was a substantial factor influencing my decision to purchase the Product. I would not have purchased the Product or would have only been willing to pay a substantially reduced price for the Product had I known that this representation was false and misleading.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on August 6, 2018 at Los Angeles, California.



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Ki Burke