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11 UNITED STATES DISTRICT COURT FOR THE
 12
 13 NORTHERN DISTRICT OF CALIFORNIA

14 DAVID MACHLAN, an individual, on behalf of
 15 himself, the general public and those similarly
 16 situated
 17
 18 Plaintiff,
 19
 20 v.
 21
 22 S. C. JOHNSON & SON, INC.;
 23 KAS DIRECT, LLC d/b/a BABYGANICS; AND
 24 DOES 1 THROUGH 50,
 25
 26 Defendants.

27 CASE NO. 3:17-cv-02442
 28 UNLIMITED CIVIL CASE
 FIRST AMENDED CLASS ACTION
 COMPLAINT FOR UNFAIR BUSINESS
 PRACTICES
 JURY TRIAL DEMANDED

1 David Machlan, by and through his counsel, brings this Class Action Complaint against
2 Defendants S. C. Johnson & Son, Inc., KAS Direct, LLC, and Does 1 through 50, inclusive, on
3 behalf of himself and those similarly situated, for unfair trade practices. The following allegations
4 are based upon information and belief, including the investigation of Plaintiff’s counsel, unless
5 stated otherwise.

6 **INTRODUCTION**

7 1. Consumers such as Plaintiff and the Class Members are willing to pay more for
8 personal care products made with plant based ingredients in order to avoid harmful chemicals or
9 products that are bad for the environment in favor of more natural ingredients. Defendants take
10 advantage of this segment of consumers by labeling the pre-moistened wipes that they sell as
11 being made from “plant based ingredients.” They charge a premium for these wipes, as compared
12 to wipes that are not marketed as being made from “plant based ingredients.” Despite the label,
13 however, the wipes are made from significant amounts of synthetic non-plant based ingredients.
14 Specifically, the substrate used in Defendants’ wipes contains polyester, which is not a plant-
15 based, but instead, is made from synthetic plastic.

16 2. Throughout the class period, Defendants have obtained substantial profits from the
17 deceptive sale of wipes marketed as being made from “plant based ingredients.” This action
18 seeks: (i) to require Defendants to pay damages to purchasers of the wipes, namely the price
19 premium paid for the Babyganics Wipes, i.e., the difference between the price consumers paid for
20 the Babyganics Wipes and the price that they would have paid but for Defendant’s
21 misrepresentation, in an amount to be proven at trial using econometric or statistical techniques
22 such as hedonic regression or conjoint analysis; (ii) an injunction precluding the sale of the wipes
23 within a reasonable time after entry of judgment, unless the wipes’ packaging and marketing is
24 modified to remove the misrepresentation and to disclose the omitted facts; and (iii) an order
25 requiring Defendants to remove the phrase “plant based ingredients” from the wipes’ packaging
26 and marketing, and to affirmatively inform purchasers that the wipes are made from non-plant
27 based ingredients.

PARTIES

1
2 3. David Machlan (“Plaintiff”) is, and at all times alleged in this Class Action
3 Complaint was, an individual and a resident of San Francisco, California.

4 4. Defendant S. C. Johnson & Son, Inc. (“S.C. Johnson”) is a corporation organized
5 and existing under the laws of the Wisconsin, having its principal place of business in Racine,
6 Wisconsin.

7 5. Defendant KAS Direct, LLC d/b/a Babyganics (“KAS Direct”) is a corporation
8 organized and existing under the laws of the State of Delaware, having its principal place of
9 business in Westbury, New York.

10 6. The true names and capacities of Defendants sued as Does 1 through 50, inclusive,
11 are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names pursuant to
12 section 474 of the California Code of Civil Procedure. Plaintiff will seek leave of Court to amend
13 this Class Action Complaint when said true names and capacities have been ascertained.

14 7. The Parties identified in paragraphs 4 and 5 of this Class Action Complaint are
15 collectively referred to hereafter as “Defendants.”

16 8. At all times herein mentioned, each of the Defendants was the agent, servant,
17 representative, officer, director, partner or employee of the other Defendants and, in doing the
18 things herein alleged, was acting within the scope and course of his/her/its authority as such
19 agent, servant, representative, officer, director, partner or employee, and with the permission and
20 consent of each Defendant.

21 9. At all times herein mentioned, each of the Defendants was a member of, and
22 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
23 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

24 10. At all times herein mentioned, the acts and omissions of each of the Defendants
25 concurred and contributed to the various acts and omissions of each and all of the other
26 Defendants in proximately causing the injuries and damages as herein alleged.

27 11. At all times herein mentioned, each of the Defendants ratified each and every act
28 or omission complained of herein.

1 12. At all times herein mentioned, each of the Defendants aided and abetted the acts
2 and omissions of each and all of the other Defendants in proximately causing the damages, and
3 other injuries, as herein alleged.

4 **JURISDICTION AND VENUE**

5 13. This action is brought by Plaintiff pursuant, *inter alia*, to the California Business
6 and Professions Code, section 17200, *et seq.* Plaintiff and Defendants are “persons” within the
7 meaning of the California Business and Professions Code, section 17201.

8 14. The injuries, damages and/or harm upon which this action is based occurred in or
9 arose out of activities engaged in by Defendants within, affecting, and emanating from, the State
10 of California.

11 15. Defendants have engaged, and continue to engage, in substantial and continuous
12 business practices in the State of California, including in San Francisco County.

13 16. In accordance with California Civil Code Section 1780(c), Plaintiff filed with his
14 original Complaint a declaration establishing that, in 2013, he purchased at least one Babyganics
15 product in San Francisco.

16 17. Plaintiff accordingly alleges that jurisdiction and venue are proper in this Court.

17 **SUBSTANTIVE ALLEGATIONS**

18 **(1) Defendants and Defendants’ Wipes at Issue**

19 18. Defendant KAS Direct is a manufacturer, marketer, and seller of consumer goods
20 in the United States. In particular, KAS Direct makes household and personal care products for
21 babies, including wipes, laundry detergent, bubble bath, dish soap, diapers and toothpaste,
22 distributed as the “Babyganics” products. The Babyganics products are widely available for
23 purchase in supermarkets, drug stores, and other brick and mortar and online retailers, such as
24 Amazon, Buy Buy Baby, Diapers.com, Walgreens, Target and Babies “R” Us.

25 19. Defendant S.C. Johnson is a manufacturer, marketer, and seller of consumer goods
26 in the United States. On or about July 27, 2016, S.C. Johnson acquired KAS Direct. Since the
27 acquisition, S.C. Johnson has exerted control over the Babyganics brand.

28 20. S.C. Johnson is a large multi-national corporation and counts among its corporate

1 holdings, numerous subsidiaries and brands. Unless S.C. Johnson is enjoined from the conduct
2 herein, it could easily take the packaging, representations, and products from the control of KAS
3 and transfer that property to itself or to one of its subsidiaries to continue to make the
4 misrepresentations, thus evading accountability.

5 21. This case concerns Defendants' marketing and sale of Babyganics pre-moistened
6 wipe products. Pre-moistened wipes consist of a non-woven substrate (which is created by
7 bonding fibers together) soaked in a liquid solution (referred to as a lotion).

8 22. The specific products as issue in this case are the following:

- 9 • The Babyganics Face, Hand, and Baby Wipes;
- 10 • The Babyganics All Purpose Surface Wipes;
- 11 • The Babyganics Toy, Table, and Highchair Wipes;
- 12 • The Babyganics Flushable Wipes; and
- 13 • The Babyganics Hand and Face Wipes.

14 These products are collectively referred to as the "Babyganics Wipes."

15 **(2) Consumer Demand for Environmentally-Friendly Products**

16 23. In recent years, consumers have become significantly more aware and sensitive to
17 their impact on the environment through the products they purchase and use. As a result, many
18 consumers demand products that are environmentally superior to similar products, in that these
19 superior products cause less harm to the environment. The term "green" is commonly used to
20 describe these products, and the environmental movement that led to them. Factors important in
21 determining that a product is environmentally superior to a similar product include the adverse
22 impact to the environment caused by the manufacturing, use, and disposal of a product.

23 24. Unfortunately for consumers a number of companies have made deceptive,
24 misleading and false statements regarding the environmental superiority of their products in order
25 to increase their profits at the expense of consumers. Companies accomplish this deception
26 through false representations regarding a product's environmental attribute. This practice is
27 commonly known as "greenwashing." As detailed below, Defendants engaged in greenwashing
28 by deceptively representing that their wipes are made from "plant based materials," when this, in

1 fact, is not true.

2 **(3) Defendants Falsely Represent that the Babyganics Wipes Are Made From “Plant**
3 **Based Ingredients”**

4 25. Throughout the class period, all Babyganics Wipes have predominately stated on
5 the front of the package that they are made from “plant based ingredients,” despite the fact that
6 the substrate, i.e., the fibrous material that forms the base of the wipe, used in the Babyganics
7 Wipes is made from non-plant based ingredients, namely polyester. Polyester is a synthetic
8 material comprised of various chemical compounds that are typically derived from petroleum.
9 Additionally, the list of the ingredients on the back of the product packaging does not disclose
10 that the wipes’ substrate is made from polyester.

11 26. For example, on the front of the Babyganics Hand and Face Wipes package,
12 Defendants advertise that the product is made from “plant based ingredients:”



1 27. The backs of all of the Babyganics Wipes packages do not disclose that the
2 substrate used in the wipes is made from polyester. For example, the back of the Hand and Face
3 Wipes package says the following:



Ingredients:

water, chamomilla
recutita flower extract,
vegetable oil, glycerin,
lauryl glucoside,
polyglyceryl-2-
dipolyhydroxystearate,
glyceryl oleate, dicaprylyl
carbonate, sodium
benzoate, citric acid,
potassium sorbate,
solanum lycopersicum
(tomato) seed oil,
helianthus annuus
(sunflower) seed oil,
vacinium macrocarpon
(cranberry) seed oil,
nigella sativa (black
cumin) seed oil, rubus
idaeus (red raspberry)
seed oil

Safety Information:

Store at room
temperature.
DO NOT FLUSH.
Dispose of in trash.

It's a problem as old as time,
babies' most sensitive places are
also the messiest. Well, it's about
time for a solution! Hydrating,
skin-nourishing wipes that are
gentle enough for faces and
bottom places. Our paraben-free
formula lets you wipe your wee
ones with no worries while our
skin conditioners gently nourish,
putting us at the forefront
of clean behinds!

NeoNourish® Natural Seed Oil
Blend is designed to help
nurture and support the unique
needs of baby's skin. Natural
tomato, sunflower, cranberry,
black cumin and red raspberry
seed oils help support healthy
skin development and deliver
antioxidant protection.

026-14614-T03



pediatrician +
dermatologist
tested



to learn more,
please visit
babyganics.com



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KAS Direct, LLC
Westbury, NY 11590



1 800 378 7803
please recycle
we do :)



made in the USA
never tested
on animals

1 Nowhere on the packages of any of the Babyganics Wipes do Defendants disclose that the wipes
2 are made from chemically-derived plastic fibers.

3 28. Defendants intend for consumers to understand that the Babyganics Wipes are a
4 “green” product, i.e., one that is made from plant based ingredients and specially designed to be
5 environmentally friendly, and have consistently marketed the product in that manner throughout
6 the class period. Defendants intend for consumers to understand that because the Babyganics
7 Wipes are made from plant based ingredients, they are made from renewable resources and not
8 petroleum, and they are biodegradable and will not harm the environment when the consumer has
9 disposed of them. Defendants also intend for consumers to understand that because the
10 Babyganics Wipes are made from plant based ingredients, they are made from natural ingredients,
11 and do not contain chemicals. Defendants have capitalized on the green movement by marketing
12 its Babyganics Wipes with promises of an environmentally friendly wipe. By making the claim
13 that the Babyganics Wipes are made from “plant based ingredients,” Defendants position these
14 products as environmentally superior to their competitors’ products that do not contain the same
15 representations.

16 29. Reasonable consumers believe that the term “plant” means a living organism.
17 Reasonable consumers do not believe that synthetic, chemically derived compounds, such as
18 plastics, are “plant based.” Further, reasonable consumers believe that wipes made from plant
19 based ingredients will biodegrade after use and are better for the environment than wipes made
20 from non-plant based ingredients.

21 30. In February of 2017, Plaintiff’s counsel had a fiber analysis performed on several
22 packages of the Babyganics Wipes. Each package was purchased online and shipped directly to
23 an independent laboratory for analysis. The laboratory determined that, contrary to Defendants’
24 representations, the Babyganics Wipes are made from non-plant based ingredients. In particular,
25 the substrate used in each of the Babyganics Wipes included polyester fibers. Polyester is a
26 synthetic polymer made of purified terephthalic acid (PTA) or dimethyl ester dimethyl
27 terephthalate (DMT) and monoethylene glycol (MEG) – in other words, polyester is a synthetic
28 plastic fiber.

1 **(4) Defendants’ Marketing of the Babyganics Wipes Violates the FTC Guidelines**

2 31. The Federal Trade Commission (“FTC”) has issued standards describing what
3 constitutes deceptive and misleading environmental claims. The FTC standards are commonly
4 known as the “Green Guides.” As detailed below, Defendants violate several provisions of the
5 FTC’s Green Guides.

6 32. Section 260.3(b) of the Green Guides requires an environmental marketing claim
7 to “specify whether it refers to the product, the product’s packaging, a service, or just to a portion
8 of the product, package, or service.” 16 C.F.R. § 260.3(b). Defendants’ “plant based ingredients”
9 representation violates this standard of the Green Guides because it fails to specify whether it
10 refers to the Babyganics Wipes, the wipes’ packaging, or just part of the wipes (i.e., the lotion).

11 33. Section 260.3(c) of the Green Guides prohibits an environmental marketing claim
12 from “overstat[ing], directly or by implication, an environmental attribute or benefit. Marketers
13 should not state or imply environmental benefits if the benefits are negligible.” 16 C.F.R. §
14 260.3(c). Defendants’ “plant based ingredients” representation violates this standard of the Green
15 Guides because it overstates the benefit of using plant based ingredients in the lotion because the
16 substrate is not made of plant based ingredients and thus the wipes are not made entirely from
17 renewable resources and will not fully biodegrade after the consumer disposes of them.

18 34. Section 260.16(a) of the Green Guides states that “[i]t is deceptive to misrepresent,
19 directly or by implication, that a product or package is made with renewable materials.” 16 C.F.R.
20 § 260.16(a). Further pursuant to 260.16(c), any “made with renewable materials” claim must be
21 qualified “unless the product or package (excluding minor, incidental components) is made
22 entirely with renewable materials.” 16 C.F.R. § 260.16(c). Defendants’ “plant based ingredients”
23 representation violates this standard of the Green Guides because plants are a renewable material,
24 but the product is not made exclusively of renewable materials.

25 35. Further, in violation of Green Guide Section 260.2, Defendant has not and cannot
26 substantiate the complained of misrepresentations. 16 C.F.R. § 260.2.

27 **(5) Defendants Intend To Continue To Market and Sell the Wipes as “Plant Based”**

28 36. Defendants’ marketing campaign has been extremely successful. In 2015, sales of

1 baby wipes in the United States exceeded \$1 billion dollars. Babygenics is a popular brand, and
2 the Babygenics Wipes are sold in grocery stores and big box stores throughout California and the
3 country. Because of the big potential for sales, Defendants have no incentive to stop selling “plant
4 based” products or change their disclaimers to discourage sales.

5 37. In marketing the Babygenics Wipes to consumers as a product made from “plant
6 based ingredients,” Defendants know that consumers will be more likely to purchase the product
7 if they believe the product is made only from plant based ingredients and thus environmentally
8 friendly. Thus, for the Babygenics Wipes, Defendants intend for consumers to rely on the
9 representation that the product is made from “plant based ingredients.” Defendants further intend
10 for consumers to rely on the omissions that the Babygenics Wipes are made from plastic fibers
11 and thus will not fully biodegrade after disposal.

12 38. Because consumers believe the wipes are made from “plant based ingredients,”
13 and therefore purchase them because they are a green or environmentally-friendly product,
14 Defendants are able to charge a premium for the Babygenics Wipes. For example, Babygenics
15 Wipes for sale on Amazon.com cost more per wipe than a comparable package of baby wipes,
16 which are not advertised as made from “plant based ingredients.” If consumers knew that the
17 Babygenics Wipes were made from non-plant based ingredients, they would not pay a premium
18 for the product, but rather, would opt to purchase cheaper wipes that do not claim to be made
19 from “plant based ingredients.”

20 **PLAINTIFF’S EXPERIENCE**

21 39. Plaintiff is a consumer of Babygenics Wipes. On or about September 9, 2013,
22 while shopping online on the website, <http://www.diapers.com>, while he was located in San
23 Francisco, California, Plaintiff noticed the Babygenics Wipes. He was interested in the fact that
24 the product was a pre-moistened wipe, preferred products without harmful chemicals that were
25 natural, and read that the wipes were made with “plant based ingredients.” He understood “plant
26 based ingredients” to mean the product would be a more natural wipe that did not contain
27 chemicals and was better for the environment. On that basis, he decided to buy two packages of
28 the Babygenics Face, Hand, and Baby Wipes for personal use. Plaintiff paid \$19.56 per package

1 of 400 count wipes. Had Plaintiff known that the Babyganics Wipes were made of synthetic
2 plastic, Plaintiff would not have purchased them, or at a minimum, would not have paid a
3 premium for them.

4 40. Plaintiff continues to desire to purchase wipes made from plant based ingredients
5 from Defendants. Without purchasing and providing Babyganics Wipes to a laboratory for a fiber
6 analysis, Plaintiff is unable to determine if the wipes are made from non-plant based ingredients.
7 Plaintiff understands that the design and construction of the Babyganics Wipes may change over
8 time. But as long as Defendants may use the phrase “plant based ingredients” to describe wipes
9 containing non-plant based ingredients, then when presented with Defendants’ packaging,
10 Plaintiff continues to have no way of determining whether the representation made from “plant
11 based ingredients” is in fact true. Thus, Plaintiff is likely to be repeatedly presented with false or
12 misleading information when shopping and he will be unable to make informed decisions about
13 whether to purchase wipes. He is further likely to be repeatedly misled by Defendants’ conduct,
14 unless and until Defendants are compelled to ensure that their wipes marketed as made from
15 “plant based ingredients” do not contain non-plant based ingredients.

16 **CLASS ALLEGATIONS**

17 41. Plaintiff brings this action against Defendants on behalf of himself and all others
18 similarly situated, as a class action pursuant to section 382 of the California Code of Civil
19 Procedure and section 1781 of the California Civil Code. Plaintiff seeks to represent a group of
20 similarly situated persons (the “Class”), defined as follows:

21 All persons who, between March 16, 2013 and the present, purchased in
22 California the Babyganics Wipes.

23 42. This action has been brought and may properly be maintained as a class action
24 against Defendants pursuant to the provisions of California Code of Civil Procedure section 382
25 because there is a well-defined community of interest in the litigation and the proposed class is
26 easily ascertainable.

27 43. Numerosity: Plaintiff does not know the exact size of the class, but it is estimated
28 that it is composed of more than 100 persons. The persons in the class are so numerous that the
joinder of all such persons is impracticable and the disposition of their claims in a class action

1 rather than in individual actions will benefit the parties and the courts.

2 44. Common Questions Predominate: This action involves common questions of law
3 and fact to the potential class because each class member's claim derives from the deceptive,
4 unlawful and/or unfair statements and omissions that led Defendants' customers to believe that
5 the Babyganics Wipes are made from "plant based ingredients." The common questions of law
6 and fact predominate over individual questions, as proof of a common or single set of facts will
7 establish the right of each member of the Class to recover. Among the questions of law and fact
8 common to the class are:

- 9 a) Whether Defendants' Babyganics Wipes are made from "plant based
10 ingredients;"
- 11 b) Whether Defendants unfairly, unlawfully and/or deceptively failed to
12 inform class members that the Babyganics Wipes are made from non-plant based ingredients;
- 13 c) Whether Defendants' advertising and marketing regarding the Babyganics
14 Wipes sold to class members was likely to deceive class members or was unfair;
- 15 d) Whether Defendants engaged in the alleged conduct knowingly, recklessly,
16 or negligently;
- 17 e) The amount of the premium lost by class members as a result of such
18 wrongdoing;
- 19 f) Whether class members are entitled to injunctive and other equitable relief
20 and, if so, what is the nature of such relief; and
- 21 g) Whether class members are entitled to payment of actual, incidental,
22 consequential, exemplary and/or statutory damages plus interest thereon, and if so, what is the
23 nature of such relief.

24 45. Typicality: Plaintiff's claims are typical of the class because, in 2013, he
25 purchased at least two packages of the Babyganics Wipes, in reliance on Defendants'
26 misrepresentations and omissions that they were made from "plant based ingredients." Thus,
27 Plaintiff and class members sustained the same injuries and damages arising out of Defendants'
28 conduct in violation of the law. The injuries and damages of each class member were caused

1 directly by Defendants' wrongful conduct in violation of law as alleged.

2 46. Adequacy: Plaintiff will fairly and adequately protect the interests of all class
3 members because it is in his best interests to prosecute the claims alleged herein to obtain full
4 compensation due to him for the unfair and illegal conduct of which he complains. Plaintiff also
5 has no interests that are in conflict with or antagonistic to the interests of class members. Plaintiff
6 has retained highly competent and experienced class action attorneys to represent his interests and
7 the interests of the class. By prevailing on his own claim, Plaintiff will establish Defendants'
8 liability to all class members. Plaintiff and his counsel have the necessary financial resources to
9 adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their
10 fiduciary responsibilities to the class members and are determined to diligently discharge those
11 duties by vigorously seeking the maximum possible recovery for class members.

12 47. Superiority: There is no plain, speedy, or adequate remedy other than by
13 maintenance of this class action. The prosecution of individual remedies by members of the class
14 will tend to establish inconsistent standards of conduct for the Defendants and result in the
15 impairment of class members' rights and the disposition of their interests through actions to
16 which they were not parties. Class action treatment will permit a large number of similarly
17 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,
18 and without the unnecessary duplication of effort and expense that numerous individual actions
19 would engender. Furthermore, as the damages suffered by each individual member of the class
20 may be relatively small, the expenses and burden of individual litigation would make it difficult
21 or impossible for individual members of the class to redress the wrongs done to them, while an
22 important public interest will be served by addressing the matter as a class action.

23 48. Nexus to California. The State of California has a special interest in regulating the
24 affairs of corporations that do business here. Defendants have more customers here than in any
25 other state. Accordingly, there is a substantial nexus between Defendants' unlawful behavior and
26 California such that the California courts should take cognizance of this action on behalf of a
27 class of individuals who reside anywhere in the United States.

28 49. Plaintiff is unaware of any difficulties that are likely to be encountered in the

1 management of this action that would preclude its maintenance as a class action.

2 **CAUSE OF ACTION**
3 **(Unfair, Unlawful and Deceptive Trade Practices,**
4 **Business and Professions Code § 17200, *et seq.*)**
5 **On Behalf of Himself and the Class**

6 50. Plaintiff realleges and incorporates by reference the paragraphs of this Class
7 Action Complaint as if set forth herein.

8 51. Within four (4) years preceding the filing of this Class Action Complaint on March
9 17, 2017, and at all times mentioned herein, Defendants have engaged, and continue to engage, in
10 unfair, unlawful and deceptive trade practices in California by engaging in the unfair, deceptive
11 and unlawful business practices outlined in this Class Action Complaint. In particular, Defendants
12 have engaged, and continue to engage, in unfair, unlawful and deceptive trade practices by,
13 without limitation, the following:

14 a. deceptively representing to Plaintiff, and those similarly situated, the
15 Babygenics Wipes were made from “plant based ingredients;”

16 b. failing to inform Plaintiff, and those similarly situated, that the Babygenics
17 Wipes were made from non-plant based ingredients;

18 c. as set forth in paragraphs 59-100 below, engaging in at least four predicate
19 unlawful acts, including the Consumer Legal Remedies Act; Section 17500 of the Business &
20 Professions Code, California’s False Advertising Law; common law fraud, deceit, and
21 misrepresentation; and Section 17580 of the Business & Professions Code, California’s
22 Environmental Marketing Claims Act.

23 52. Plaintiff and those similarly situated relied to their detriment on Defendants’
24 unfair, deceptive and unlawful business practices. Had Plaintiff and those similarly situated been
25 adequately informed and not deceived by Defendants, they would have acted differently by not
26 purchasing (or paying less for) Defendants’ Babygenics Wipes.

27 53. Defendants’ acts and omissions are likely to deceive the general public.

28 54. Defendants engaged in these unfair practices to increase their profits. Accordingly,
Defendants have engaged in unlawful trade practices, as defined and prohibited by section 17200,

1 *et seq.* of the California Business and Professions Code.

2 55. The aforementioned practices, which Defendants have used to their significant
3 financial gain, also constitute unlawful competition and provide an unlawful advantage over
4 Defendants' competitors as well as injury to the general public.

5 56. As a direct and proximate result of such actions, Plaintiff and the other members of
6 the Class have suffered and continue to suffer injury in fact and have lost money and/or property
7 as a result of such deceptive and/or unlawful trade practices and unfair competition in an amount
8 which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court.
9 In particular, Plaintiff and those similarly situated paid a price premium for the Babyganics
10 Wipes, i.e., the difference between the price consumers paid for the Babyganics Wipes and the
11 price that they would have paid but for Defendant's misrepresentation. This premium can be
12 determined by using econometric or statistical techniques such as hedonic regression or conjoint
13 analysis.

14 57. Plaintiff seeks, on behalf of those similarly situated, a declaration that the above-
15 described trade practices are fraudulent and/or unlawful.

16 58. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit the
17 sale of the Babyganics Wipes within a reasonable time after entry of judgment, unless packaging
18 and marketing is modified to remove misrepresentation and to disclose the omitted facts. Such
19 misconduct by Defendant, unless and until enjoined and restrained by order of this Court, will
20 continue to cause injury in fact to the general public and the loss of money and property in that
21 Defendants will continue to violate the laws of California, unless specifically ordered to comply
22 with the same. This expectation of future violations will require current and future consumers to
23 repeatedly and continuously seek legal redress in order to recover monies paid to Defendants to
24 which Defendants were not entitled. Plaintiff, those similarly situated and/or other consumers
25 nationwide have no other adequate remedy at law to ensure future compliance with the California
26 Business and Professions Code alleged to have been violated herein.

27
28

FIRST PREDICATE UNLAWFUL ACT

(Violation of the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*)

1
2
3 59. Plaintiff realleges and incorporates the paragraphs of this Class Action Complaint
4 as if set forth herein.

5 60. This cause of action is brought pursuant to the California Consumers Legal
6 Remedies Act, California Civil Code § 1750, *et seq.* (“CLRA”).

7 61. Defendants’ actions, representations and conduct have violated, and continue to
8 violate the CLRA, because they extend to transactions that are intended to result, or which have
9 resulted, in the sale or lease of goods or services to consumers.

10 62. Plaintiff and other class members are “consumers” as that term is defined by the
11 CLRA in California Civil Code § 1761(d).

12 63. The Babyganics Wipes that Plaintiff (and others similarly situated class members)
13 purchased from Defendants were “goods” within the meaning of California Civil Code § 1761(a).

14 64. By engaging in the actions, representations and conduct set forth in this Class
15 Action Complaint, Defendants have violated, and continue to violate, § 1770(a)(2), § 1770(a)(5),
16 § 1770(a)(7), § 1770(a)(8), and § 1770(a)(9) of the CLRA. In violation of California Civil Code
17 §1770(a)(2), Defendants’ acts and practices constitute improper representations regarding the
18 source, sponsorship, approval, or certification of the goods they sold. In violation of California
19 Civil Code §1770(a)(5), Defendants’ acts and practices constitute improper representations that
20 the goods they sell have sponsorship, approval, characteristics, ingredients, uses, benefits, or
21 quantities, which they do not have. In violation of California Civil Code §1770(a)(7), Defendants’
22 acts and practices constitute improper representations that the goods they sell are of a particular
23 standard, quality, or grade, when they are of another. In violation of California Civil Code
24 §1770(a)(8), Defendants have disparaged the goods, services, or business of another by false or
25 misleading representation of fact. In violation of California Civil Code §1770(a)(9), Defendants
26 have advertised goods or services with intent not to sell them as advertised. Specifically, in
27 violation of sections 1770 (a)(2), (a)(5), (a)(7) and (a)(9), Defendants’ acts and practices led
28 customers to falsely believe that that their Babyganics Wipes are made from “plant-based

1 ingredients.” In violation of section 1770(a)(8), Defendants falsely or deceptively market and
2 advertise that, unlike products not specifically denominated as made from “plant-based
3 ingredients,” the Babyganics Wipes are made from “plant-based ingredients,” when in fact, the
4 wipes are made from non-plant based ingredients.

5 65. Plaintiff requests that this Court enjoin Defendants from continuing to employ the
6 unlawful methods, acts and practices alleged herein pursuant to California Civil Code
7 § 1780(a)(2). If Defendants are not restrained from engaging in these types of practices in the
8 future, Plaintiff and the other members of the Class will continue to suffer harm.

9 66. CLRA § 1782 NOTICE. **Irrespective of any representations to the contrary in**
10 **this Class Action Complaint, Plaintiff specifically disclaims, at this time, any request for**
11 **damages under any provision of the CLRA.** Plaintiff, however, hereby provides Defendants
12 with notice and demand that within thirty (30) days from that date, Defendants correct, repair,
13 replace or otherwise rectify the unlawful, unfair, false and/or deceptive practices complained of
14 herein. Defendants’ failure to do so will result in Plaintiff amending this Class Action Complaint
15 to seek, pursuant to California Civil Code § 1780(a)(3), on behalf of himself and those similarly
16 situated class members, compensatory damages, punitive damages and restitution of any ill-gotten
17 gains due to Defendants’ acts and practices. In particular, Plaintiff will seek to recover on behalf
18 of himself and those similarly situated the price premium paid for the Babyganics Wipes, i.e.,
19 difference between the price consumers paid for the Babyganics Wipes and the price that they
20 would have paid but for Defendant’s misrepresentation. This premium can be determined
21 by using econometric or statistical techniques such as hedonic regression or conjoint analysis.

22 67. Plaintiff also requests that this Court award him costs and reasonable attorneys’
23 fees pursuant to California Civil Code § 1780(d).

24 **SECOND PREDICATE UNLAWFUL ACT**
25 **(False Advertising, Business and Professions Code § 17500, et seq. (“FAL”))**

26 68. Plaintiff realleges and incorporates by reference the paragraphs of this Class
27 Action Complaint as if set forth herein.

28 69. Beginning at an exact date unknown to Plaintiff, but within three (3) years
preceding the filing of the Class Action Complaint, Defendants made untrue, false, deceptive

1 and/or misleading statements in connection with the advertising and marketing of their
2 Babyganics Wipes.

3 70. Defendants made representations and statements (by omission and commission)
4 that led reasonable customers to believe that they were purchasing products that were made from
5 only plant-based ingredients. Defendants deceptively failed to inform Plaintiff, and those
6 similarly situated, that their Babyganics Wipes are made from non-plant-based ingredients.

7 71. Plaintiff and those similarly situated relied to their detriment on Defendants' false,
8 misleading and deceptive advertising and marketing practices, including each of the
9 misrepresentations and omissions set forth in paragraphs 25-35, and 39 above. Had Plaintiff and
10 those similarly situated been adequately informed and not intentionally deceived by Defendants,
11 they would have acted differently by, without limitation, refraining from purchasing Defendants'
12 Babyganics Wipes or paying less for them.

13 72. Defendants' acts and omissions are likely to deceive the general public.

14 73. Defendants engaged in these false, misleading and deceptive advertising and
15 marketing practices to increase their profits. Accordingly, Defendants have engaged in false
16 advertising, as defined and prohibited by section 17500, *et seq.* of the California Business and
17 Professions Code.

18 74. The aforementioned practices, which Defendants have used, and continue to use,
19 to their significant financial gain, also constitute unlawful competition and provide an unlawful
20 advantage over Defendants' competitors as well as injury to the general public.

21 75. As a direct and proximate result of such actions, Plaintiff and the other members of
22 the Class have suffered, and continue to suffer, injury in fact and have lost money and/or property
23 as a result of such false, deceptive and misleading advertising in an amount which will be proven
24 at trial, but which is in excess of the jurisdictional minimum of this Court. In particular, Plaintiff
25 and those similarly situated paid a price premium for the Babyganics Wipes, i.e., the difference
26 between the price consumers paid for the Babyganics Wipes and the price that they would have
27 paid but for Defendant's misrepresentation. This premium can be determined by using
28 econometric or statistical techniques such as hedonic regression or conjoint analysis.

1 82. Defendants made identical misrepresentations and omissions to members of the
2 Class regarding Defendants' Babygenics Wipes.

3 83. Plaintiff and those similarly situated relied to their detriment on Defendants'
4 fraudulent misrepresentations and omissions. Had Plaintiff and those similarly situated been
5 adequately informed and not intentionally deceived by Defendants, they would have acted
6 differently by, without limitation, not purchasing (or paying less for) Defendants' Babygenics
7 Wipes.

8 84. Defendants had a duty to inform class members at the time of their purchase that
9 the Babygenics Wipes were made from non-plant based ingredients. Defendants omitted to
10 provide this information to class members. Class members relied to their detriment on
11 Defendants' omissions. These omissions were material to the decisions of the class members to
12 purchase the Babygenics Wipes. In making these omissions, Defendants breached their duty to
13 class members. Defendants also gained financially from, and as a result of, their breach.

14 85. By and through such fraud, deceit, misrepresentations and/or omissions,
15 Defendants intended to induce Plaintiff and those similarly situated to alter their position to their
16 detriment. Specifically, Defendants fraudulently and deceptively induced Plaintiff and those
17 similarly situated to, without limitation, to pay a premium to purchase the Babygenics Wipes.

18 86. As a direct and proximate result of Defendants' misrepresentations and omissions,
19 Plaintiff and those similarly situated have suffered damages. In particular, Plaintiff seeks to
20 recover on behalf of himself and those similarly situated the price premium paid for the
21 Babygenics Wipes, i.e., the difference between the price consumers paid for the Babygenics
22 Wipes and the price that they would have paid but for Defendant's misrepresentation. This
23 premium can be determined by using econometric or statistical techniques such as hedonic
24 regression or conjoint analysis.

25 87. Defendants' conduct as described herein was willful and malicious and was
26 designed to maximize Defendants' profits even though Defendants knew that it would cause loss
27 and harm to Plaintiff and those similarly situated.

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FOURTH PREDICATE UNLAWFUL ACT
(Negligent Misrepresentation)

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3 88. Plaintiff realleges and incorporates by reference the paragraphs of this Class
4 Action Complaint as if set forth herein.

5 89. In 2013, Defendants provided false and misleading information regarding the
6 Babyganics Wipes, representing that the wipes were made from “plant-based ingredients.”

7 90. These representations were material at the time they were made. They concerned
8 material facts that were essential to the analysis undertaken by Plaintiff as to whether to purchase
9 the Babyganics Wipes.

10 91. Defendants made identical misrepresentations and omissions to members of the
11 Class regarding Defendants’ Babyganics Wipes.

12 92. Defendants should have known their representations to be false and had no
13 reasonable grounds for believing them to be true when they were made.

14 93. By and through such negligent misrepresentations, Defendants intended to induce
15 Plaintiff and those similarly situated to alter their position to their detriment. Specifically,
16 Defendants negligently induced Plaintiff and those similarly situated to, without limitation, to
17 purchase their Babyganics Wipes.

18 94. Plaintiff and those similarly situated relied to their detriment on Defendants’
19 negligent misrepresentations. Had Plaintiff and those similarly situated been adequately informed
20 and not intentionally deceived by Defendants, they would have acted differently by, without
21 limitation, not purchasing (or paying less for) Defendants’ Babyganics Wipes.

FIFTH PREDICATE UNLAWFUL ACT
(“Greenwashing” Under the Environmental Marketing Claims Act Cal. Bus. & Prof.
Code § 17580, et seq.)

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23
24 95. Plaintiff realleges and incorporates by reference the paragraphs of this Class
25 Action Complaint as if set forth herein.

26 96. Defendants’ representations and omissions complained of herein constitute
27 advertising that the Babyganics Wipes are not harmful to, or are beneficial to, the natural
28 environment, through the use of such the phrase made from “plant-based ingredients,” which is

1 like the terms “environmental choice,” “ecologically friendly,” “earth friendly,” “environmentally
2 friendly,” “ecologically sound,” “environmentally sound,” “environmentally safe,” “ecologically
3 safe,” “environmentally lite,” or “green product.”

4 97. On information and belief, in violation of Cal. Bus. & Prof. Code §17580(a),
5 Defendants have not maintained in written form in their records information and documentation
6 supporting the validity of the representations.

7 98. Further, in violation of Cal. Bus. & Prof. Code §17580.5(a), Defendants’
8 representations and omissions complained of herein constitute untruthful, deceptive, or
9 misleading environmental marketing claims, explicit or implied, including claims referenced in
10 the Green Guides published by the FTC.

11 99. Plaintiff seeks, on behalf of those similarly situated, a declaration that the above-
12 described practices are fraudulent and/or unlawful.

13 100. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit the
14 sale of the Babygenics Wipes within a reasonable time after entry of judgment, unless packaging
15 and marketing is modified to remove misrepresentation and to disclose the omitted facts. Such
16 misconduct by Defendant, unless and until enjoined and restrained by order of this Court, will
17 continue to cause injury in fact to the general public and the loss of money and property in that
18 Defendants will continue to violate the laws of California, unless specifically ordered to comply
19 with the same. This expectation of future violations will require current and future consumers to
20 repeatedly and continuously seek legal redress in order to recover monies paid to Defendants to
21 which Defendants were not entitled. Plaintiff, those similarly situated and/or other consumers
22 nationwide have no other adequate remedy at law to ensure future compliance with the California
23 Business and Professions Code alleged to have been violated herein.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment as follows against Defendants and in favor of
26 Plaintiff and the other members of the Class as follows:

27 1. for restitution of the price premium paid, i.e., the difference between the price
28 consumers paid for the Babygenics Wipes and the price that they would have paid but for

1 Defendant’s misrepresentation, in an amount to be proven at trial using econometric or
2 statistical techniques such as hedonic regression or conjoint analysis, pursuant to, without
3 limitation, the California Business & Professions Code §§ 17200, *et seq.*; and

4 2. for injunctive relief pursuant to, without limitation, the California Business &
5 Professions Code §§ 17200, *et seq.*, as follows:

- 6 a. Declaring that Defendants’ use of the term “plant based ingredients” on the
7 Babyganic Wipes is unlawful and likely to deceive reasonable consumers;
- 8 b. Enjoining Defendants, directly or through any corporation, partnership, subsidiary,
9 division, trade name, or other device, in connection with the manufacturing,
10 labeling, packaging, advertising, promotion, offering for sale, sale, or distribution
11 of any pre-moistened wipe product from making a “plant based ingredients” claim
12 unless the product does not contain polyester, plastic, or other synthetic ingredient
13 or material;
- 14 c. Enjoining Defendants, directly or through any corporation, partnership, subsidiary,
15 division, trade name, or other device, in connection with the manufacturing,
16 labeling, packaging, advertising, promotion, offering for sale, sale, or distribution
17 of any wipe from making the claim that the pre-moistened wipe product is made
18 from “plant based” ingredients or materials unless the representation is non-
19 misleading, and, at the time the representation is made, Defendants can
20 substantiate the claim.
- 21 d. Enjoining Defendants, directly or through any corporation, partnership,
22 subsidiary, division, or other device, in connection with the manufacturing,
23 labeling, packaging, advertising, promotion, offering for sale, sale, or distribution
24 of any pre-moistened wipe product to not provide to others the means and
25 instrumentalities with which to make any representation prohibited by the above.
26 For the purposes of this paragraph, “means and instrumentalities” means any
27 information, including, but not necessarily limited to, any advertising, labeling, or
28 promotional, sales training, or purported substantiation materials, for use by trade

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customers in their marketing of such product or service.

3. for reasonable attorneys' fees according to proof pursuant to, without limitation, the California Code of Civil Procedure § 1021.5;

4. for costs of suit incurred; and
for such further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: July 21, 2017

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