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

**MANAL ALEISA, Individually  
and On Behalf of All Others  
Similarly Situated,**

Plaintiff,

v.

**GOJO INDUSTRIES, INC.  
D/B/A PURELL,**

Defendant.

**Case No.: 2:20-cv-01045**

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF:**

- 1) CONSUMER LEGAL REMEDIES ACT, CAL. CIVIL CODE §§ 1750, ET SEQ.;**
- 2) FALSE ADVERTISING LAW, CAL. BUS. & PROF. §§ 17500, ET SEQ.;**
- 3) UNFAIR COMPETITION LAW, CAL. BUS. & PROF. §§ 17200, ET SEQ.;**
- 4) NEGLIGENT MISREPRESENTATION; AND**
- 5) INTENTIONAL MISREPRESENTATION.**

**[JURY TRIAL DEMANDED]**

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**INTRODUCTION**

- 1  
2 1. Plaintiff Manal Aleisa (“Plaintiff”) brings this Class Action Complaint to  
3 challenge the deceptive advertising and business practices of defendant, Gojo  
4 Industries, Inc. d/b/a Purell (“Defendant”) with regard to Defendant’s false  
5 and misleading promotion of its purportedly consumable products. Based on  
6 such false and misleading advertisements, Plaintiff and others similarly  
7 situated purchased Defendant’s products.
- 8 2. Plaintiff purchased Defendant’s products, which Defendant advertised as  
9 preventing disease or infection among other claims. Specifically, Plaintiff  
10 purchased Purell Advanced Hand Sanitizer (the “Product”).
- 11 3. According to the Food and Drug Administration (“FDA”), in a warning letter  
12 sent to Defendant dated January 17, 2020 (the “Warning Letter”), the Product  
13 is an unapproved new drug.
- 14 4. According to the Warning Letter, Defendant did not apply with the FDA  
15 before marketing the unapproved Product in violation of sections 505(a) and  
16 301(d) of the FD&C Act, 21 U.S.C 355(a) and 331(d).
- 17 5. The Warning Letter characterizes the Product as a health care antiseptic.
- 18 6. The Warning Letter further outlines the misrepresentations in Defendant’s  
19 advertising of the Product.
- 20 7. Based on the characterization provided by the Warning Letter and on the  
21 Product’s intended use, Defendant’s claims about the Product in Defendant’s  
22 advertising are false and misleading.
- 23 8. Consequently, Defendant does not comply with federal and parallel state  
24 regulations. Defendant misleads consumers into believing its products can  
25 prevent disease and reduce illness along with other claims that go beyond the  
26 general intended use of a topical antiseptic. These misrepresentations allow  
27 Defendant to increase its sales and capture market shares from its competitors.  
28

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9. Plaintiff makes these allegations as follows upon personal knowledge as to Plaintiff’s own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff’s attorneys.
10. Defendant’s nationwide sale and advertising of deceptively misbranded products constitutes violations of: (1) California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*; (2) California’s False Advertising Law (“FAL”), Bus. & Prof. Code §§ 17500, *et seq.*; (3) California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*; (4) negligent misrepresentation; and (5) intentional misrepresentation.
11. This conduct caused Plaintiff and others similarly situated damages, and requires restitution and injunctive relief to remedy and prevent further harm.
12. Unless otherwise indicated, the use of Defendant’s name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers of the named Defendant.

**JURISDICTION AND VENUE**

13. This Court has jurisdiction over this matter pursuant to the Class Action Fairness Act (CAFA) because the amount in controversy in this matter exceeds \$5,000,000.00<sup>1</sup> as to all putative Class members, inclusive of attorneys’ fees and costs, and injunctive relief. *See* 28 U.S.C. § 1332(d).
14. This Court has diversity jurisdiction under 28 U.S.C. § 1332 because Plaintiff is a resident and citizen of the State of California, and Defendant is a corporation organized and existing under the laws of the State of Ohio.

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<sup>1</sup> On information and belief, Defendant sells its Products in brick and mortar stores and online retailers throughout California. Based upon the advertised price of Defendant’s products and their statewide availability, Plaintiff is informed, believes, and thereon alleges the class damages exceed the \$5,000,000 threshold as set by 28 U.S.C. § 1332(d).

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1 15. This Court has personal jurisdiction over Defendant because Defendant  
2 conducts business in the County of Los Angeles and the harm giving rise to  
3 this action occurred within this County. Therefore, Defendant has sufficient  
4 minimum contacts with this state, and otherwise purposely avails itself of the  
5 markets in this state through the promotion, sale, and marketing of its products  
6 in this state, to render the exercise of jurisdiction by this Court permissible  
7 under traditional notions of fair play and substantial justice.

8 16. Venue is proper in the United States District Court for the Central District of  
9 California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) the  
10 conduct complained of herein occurred within this judicial district; and, (ii)  
11 many of the acts and transactions giving rise to this action occurred in this  
12 district.

13 **PARTIES**

14 17. Plaintiff is a natural person residing in the City of Los Angeles, County of Los  
15 Angeles, State of California.

16 18. Upon information and belief, Defendant is a corporation that is organized and  
17 exists under the laws of the State of Ohio.

18 19. Defendant manufactures and/or distributes various products, including hand  
19 sanitizers. Defendant conducts extensive business through Internet sales and  
20 enjoys wide retail distribution at numerous stores within the United States,  
21 including California including Target.

22 **NATURE OF THE CASE**

23 20. At all times relevant, Defendant made and continues to make affirmative  
24 misrepresentations regarding its products, which it manufactures, markets, and  
25 sells in physical stores and online through its own website and other online  
26 retailers.

27 21. Defendant advertised, marketed, packaged, and sold its products to Plaintiff  
28 and other consumers similarly situated in California with the false

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1 representation that its Product prevented disease or infection from pathogens  
2 such as Ebola, MRSA, VRE, norovirus, flu, and Candida auris.

3 22. Defendant further advertised, marketed, packaged, and sold its products to  
4 Plaintiff and other consumers similarly situated in California with the false  
5 representation that the Product is effective in reducing illness and disease-  
6 related student and teacher absenteeism, which is misleading because there is  
7 no evidence that the Product actually does so.

8 23. Despite the foregoing, Defendant sells the Products to consumer knowing and  
9 intending that these consumers use the Products. For example, Defendant  
10 bottles these Products in small units of 2 and 8 oz bottles, for individual use.

11 24. On Defendant’s website, it contains reviews and experiences of consumers.  
12 Many of these reviews including testimonials that clearly have the consumer  
13 utilizing the Products for their own personal use.

14 25. The misrepresentations that Defendant made regarding the ingredients caused  
15 Plaintiff and similarly situated California consumers to purchase and use  
16 substances that the FDA considers to be unapproved. Moreover, these false  
17 claims about their products allow Defendant to gain a market share of the  
18 industry that they are in through misleading practices which is an unfair  
19 advantage to its competitors.

20 26. In short, Defendant makes false claims about products that it sells on the open  
21 market.

22 27. Defendant’s conduct as alleged herein violates several California laws, as  
23 more fully set forth herein.

24 **FACTUAL ALLEGATIONS**

25 28. Plaintiff re-alleges and incorporates by reference all of the above paragraphs  
26 of this Complaint as though fully stated herein.

27 29. On or about September 25, 2019, Plaintiff purchased Defendant’s “Purell  
28 Advanced Hand Sanitizer” for approximately \$2 from a Target store located at

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1 900 Spectrum Center Dr., Irvine, California 92618.

2 30. The Product contained the following statement on the Product’s label: “Kills  
3 more than 99.99% of Germs...”

4 31. Before purchasing the Product on September 25, 2019, Plaintiff visited  
5 Defendant’s Facebook site and read the misrepresentations by Defendant that  
6 the Product prevents disease and reduces illness.

7 32. Plaintiff relied on Defendant’s Facebook page representations in deciding to  
8 purchase the Product on September 25, 2019.

9 33. Defendant manufactures, markets, and sells the Products online through its  
10 own website and other retailers, which it advertises on its website and  
11 Facebook page and related advertising materials as preventing disease.

12 34. Defendant makes the following claims in its marketing:

13 a. On Defendant’s PURELL® Healthcare Advanced Hand Sanitizer  
14 product pages:

15 “Kills more than 99.99% of most common germs that may  
16 cause illness in a healthcare setting, including MRSA & VRE”

17 b. On Defendant’s webpage titled, “GOJO Blog What You Need to  
18 Know About Candida auris in the Healthcare Setting”:

19 “To help prevent transmission, hand hygiene with an alcohol-  
20 based hand sanitizer is recommended along with hand washing  
21 if hands are soiled. PURELL® Advanced Gel, Foam, and Ultra-  
22 Nourishing Foam Hand Sanitizer products demonstrated  
23 effectiveness against a drug resistant clinical strain of Candida  
auris in lab testing.”

24 c. On Defendant’s webpage titled, “The PURELL SOLUTION™ for  
25 Athletic Facilities”:

26 “PURELL® Products Help Eliminate MRSA & VRE . . . 100%  
27 MRSA & VRE Reduction[] . . . A recent outcome study shows  
28 that providing the right products, in a customized solution,  
along with educational resources for athletes and staff can  
reduce MRSA and VRE by 100%[]”

1 d. On Defendant’s webpage titled, “The PURELL SOLUTION™ for  
2 Education”:

3 “51% Reduced Student Absenteeism . . . PURELL® products  
4 have proven results in delivering positive health outcomes.  
5 Illness causes 144 million lost school days each year2 []. . . In a  
6 recent study, student absenteeism was reduced by 51% when  
7 PURELL hand hygiene products were used in conjunction with  
8 a curriculum to teach kids about good hand hygiene[] . . . 10%  
9 Less Teacher Absenteeism . . . PURELL® Products Help  
10 Teachers Stay Well[] . . . New teachers are particularly more  
11 susceptible to student borne illness[]. . . In one study, schools  
12 that combined hand-hygiene education with PURELL®  
13 products reduced teacher absenteeism by 10%[]”.

14 e. On Defendant’s webpage titled, “PURELL® Products are  
15 Proven to Reduce Absenteeism”:

16 “PURELL® Products are Proven to Reduce Absenteeism . . .  
17 On average, illness causes 144 million lost school days each  
18 year[] and missing school can have a significant effect on a  
19 student’s performance. . . . Research has shown that when used  
20 alongside a curriculum to teach students about hand hygiene,  
21 PURELL® products can reduce student absenteeism by up to  
22 51%[].. . . Additionally, teachers who follow this program also  
23 experience a 10% reduction of absenteeism[].”

24 f. On Defendant’s Facebook page at <https://www.facebook.com/purell/>:

25 “The PURELL SOLUTION™ has the products you need to  
26 help prevent the spread of infection this germ season. Visit  
27 GOJO.com for more information.”

28 g. In addition, Defendant makes statements within the “Frequently  
Asked Questions” on Defendant’s website, www.gojo.com, that  
suggest that PURELL® Healthcare Advanced Hand Sanitizers,  
which are formulated with ethyl alcohol, may be effective  
against viruses such as the Ebola virus, norovirus, and  
influenza. Specifically, Defendant’s website states:

Illness Outbreak. . .What Steps Can I Take to Prevent the  
Spread of Norovirus? Even though norovirus is highly

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contagious, there are ways you can reduce the risk of its spread. According to the Centers for Disease Control and Prevention, follow these steps to reduce the spread of the virus. 1. Practice good hand hygiene. Make sure to wash your hands with soap and water at key moments, especially after using the restroom since the virus can spread through stool. Alcohol-based hand sanitizers with at least 60% alcohol can be used in addition to handwashing . . .

Are PURELL® Hand Sanitizer products effective against the flu? The FDA does not allow hand sanitizer brands to make viral claims, but from a scientific perspective, influenza is an enveloped virus. Enveloped viruses in general are easily killed or inactivated by alcohol. The World Health Organization (WHO) and the Center for Disease Control and Prevention (CDC) are recommending the use of alcohol-based hand sanitizer as a preventive measure for flu prevention”

Is PURELL® Advanced Hand Sanitizer Effective Against Ebola?. . . As of today, we are not aware of any hand sanitizers that have been tested against Ebola viruses, including PURELL® Advanced Hand Sanitizer. However, it is important to note that the Ebola virus is an enveloped virus. Enveloped viruses in general are easily killed or inactivated by alcohol. **World Health Organization (WHO)** and the **Center for Disease Control and Prevention (CDC)** are recommending the use of alcohol-based hand sanitizer as a preventive measure during this outbreak . . .

35. At the time Plaintiff purchased Defendant’s Products, Plaintiff believed and relied upon the representations made on Defendant’s Products’ labels and website that the Product prevented illness. Plaintiff reasonably believed that the Product would prevent disease and reduce illness.

36. On information and belief, Defendant’s Product’s label, packaging, and advertising materials are prepared and/or approved by Defendant and/or its agents.



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1 37. As mentioned in detail above, there is no evidence that Defendant’s Products  
2 prevent disease or reduce illness.

3 38. **The “FDA is currently not aware of any adequate and well-controlled**  
4 **studies demonstrating that killing or decreasing the number of bacteria or**  
5 **viruses on the skin by a certain magnitude produces a corresponding**  
6 **clinical reduction in infection or disease caused by such bacteria or**  
7 **virus.”** [https://www.fda.gov/inspections-compliance-enforcement-and-](https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/gojo-industries-inc-599132-01172020)  
8 [criminal-investigations/warning-letters/gojo-industries-inc-599132-01172020](https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/gojo-industries-inc-599132-01172020)

9 39. Germs are made up of bacteria, viruses, fungi, and protozoa.

10 40. By Defendant stating that its Product kills 99.99% of germs, it is actually  
11 stating that the Product kills 99.99% of bacteria and viruses. Defendant then  
12 makes the jump to the conclusion that by killing 99.99% of bacteria and  
13 viruses, this results in the Product preventing disease and reducing illness,  
14 which is not true.

15 41. Consequently, Defendant’s Product is misleading by marketing it as  
16 preventing disease and reducing illness.

17 42. Defendant knew, or in the exercise of reasonable care, should have known that  
18 its Product’s label and advertising materials were misleading or false.

19 43. As a consequence of Defendant’s unfair and deceptive advertising and  
20 manufacturing practices, Plaintiff and other consumers similarly situated  
21 purchased and overpaid for Defendant’s Products under the false impression  
22 that the Products prevented disease and reduced illness.

23 44. Had Plaintiff been aware that there was no evidence that the Product prevented  
24 disease and reduced illness, Plaintiff would have purchased a different  
25 product. In other words, Plaintiff would not have purchased Defendant’s  
26 Products but for the representations on the Products’ related advertising.

27 45. Plaintiff and others similarly situated were exposed to and relied upon the  
28 same material misrepresentations made on Defendant’s Product’s labels and

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1 website, where Defendant sold, and currently sells, its Product to consumers  
2 throughout the State of California.

3 46. As a result of Defendant’s false and misleading statements and failure to  
4 disclose, Plaintiff and others similarly situated consumers purchased  
5 thousands, if not tens or hundreds of thousands, of units of Defendant’s  
6 Product, and have suffered, and continue to suffer, injury in fact through the  
7 loss of money and/or property.

8 47. Included within the demands of this Complaint are any products manufactured  
9 by Defendant, which are characterized by Defendant as “hand sanitizers”.

10 48. This action seeks, among other things, equitable and injunctive relief,  
11 restitution of all amounts illegally obtained, and disgorgement of any and all  
12 ill-gotten gains as a result of the misconduct alleged herein.

13 **CLASS ACTION ALLEGATIONS**

14 49. Plaintiff re-alleges and incorporates by reference all of the above paragraphs  
15 of this Complaint as though fully stated herein.

16 50. Plaintiff brings this action collectively and on behalf of all others similarly  
17 situated against Defendant, pursuant to Federal Rules of Civil Procedure 23(a)  
18 and (b)(3) and/or (b)(2).

19 51. Subject to additional information obtained through further investigation and/or  
20 discovery, the proposed class (the “Class”) consists of:

21 All persons within the United States who purchased Purell  
22 Hand Hygiene Products, within the four years prior to the  
23 filing of this Complaint.

24 52. Excluded from the Class is Defendant and any of its officers, directors, and  
25 employees, or anyone who purchased Defendant’s Product for the purpose of  
26 resale. Plaintiff reserves the right to modify or amend the Class definition  
27 before the Court determines whether certification is appropriate.  
28

1 53. The “Class Period” means four years prior to the filing of the Complaint in  
2 this action.

3 54. **Ascertainability**. The members of the Class are readily ascertainable from  
4 Defendant’s records and/or Defendant’s agents’ records of retail and online  
5 sales, as well as through public notice.

6 55. **Numerosity**. The members of the Class are so numerous that their individual  
7 joinder is impracticable. Plaintiff is informed and believes that the Products  
8 are sold online and the Products have hundreds of customer reviews, and on  
9 that basis, Plaintiff alleges that the putative Class consists of hundreds, if not  
10 thousands of members.

11 56. **Existence and Predominance of Common Questions of Law and Fact**.  
12 Common questions of law and fact exist as to all members of the Class and  
13 predominate over any questions affecting only individual Class members. All  
14 members of the Class have been subject to the same conduct and their claims  
15 are based on the same standardized marketing, advertisements and  
16 promotions. The common legal and factual questions include, but are not  
17 limited to, the following:

- 18 a. Whether the Products were actually advertised as preventing disease  
19 and reducing illness;
- 20 b. Whether the Products actually prevent disease and reduced illness;
- 21 c. Whether Defendant’s claims and representations, as alleged herein,  
22 are untrue, misleading, and/or reasonably likely to deceive the  
23 average consumer;
- 24 d. Whether Defendant’s conduct violates California Civil Code §§  
25 1750, *et seq.*;
- 26 e. Whether Defendant’s advertising is false, untrue, or misleading  
27 within the meaning of California Business & Professions Code §§  
28 17500, *et seq.*;

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- 1 f. Whether Defendant’s conduct is an unfair, fraudulent, or unlawful
- 2 act or practice within the meaning of California Business &
- 3 Professions Code §§ 17200, *et seq.*;
- 4 g. Whether Defendant’s advertising is unfair, deceptive, untrue or
- 5 misleading within the meaning of California Business & Professions
- 6 Code §§ 17200, *et seq.*;
- 7 h. Whether Defendant acted negligently or intentionally in making the
- 8 misrepresentations contained on the Product’s label and Defendant’s
- 9 website and Facebook site;
- 10 i. Whether Defendant, through its conduct, received money that, in
- 11 equity and good conscience, belongs to the Plaintiff and members of
- 12 the Class;
- 13 j. Whether the Plaintiff and the putative Class members are entitled to
- 14 equitable relief, including but not limited to restitution and/or
- 15 disgorgement of ill-gotten gains; and
- 16 k. Whether the Plaintiff and the putative Class members are entitled to
- 17 injunctive relief as sought herein.

18 57. **Typicality**. Plaintiff’s claims are typical of the claims of the members of the

19 Class in that the Plaintiff is a member of the Class that the Plaintiff seeks to

20 represent. Similar to members of the putative Class, Plaintiff purchased

21 Product after exposure to the same material misrepresentations appearing on

22 the Product’s labels, Defendant’s website, and Defendant’s Facebook site.

23 Plaintiff also received Product that does not actually prevent disease or reduce

24 illness. Plaintiff is advancing the same claims and legal theories on behalf of

25 herself and all absent members of the Class. Defendant has no defenses unique

26 to the Plaintiff.

27 58. **Adequacy of Representation**. Plaintiff will fairly and adequately protect the

28 interests of the members of the putative Class. Plaintiff has retained counsel

1 experienced in consumer protection law, including class actions, and  
2 specifically, false and deceptive advertising. Plaintiff has no adverse or  
3 antagonistic interest to those in the Class and will fairly and adequately protect  
4 the interests of the Class. Plaintiff's attorneys are aware of no interests  
5 adverse or antagonistic to those of Plaintiff and proposed Class.

6 59. **Superiority.** A class action is superior to all other available means for the fair  
7 and efficient adjudication of this controversy. Individualized litigation would  
8 create the danger of inconsistent and/or contradictory judgments arising from  
9 the same set of facts. Individualized litigation would also increase the delay  
10 and expense to all parties and the court system. The damages or other financial  
11 detriment suffered by individual Class members may be relatively small  
12 compared to the burden and expense that would be entailed by individual  
13 litigation of the claims against the Defendant. The injury suffered by each  
14 individual member of the proposed class is relatively small in comparison to  
15 the burden and expense of individual prosecution of the complex and  
16 extensive litigation necessitated by Defendant's conduct. It would be virtually  
17 impossible for members of the proposed Class to individually redress  
18 effectively the wrongs to them. Even if the members of the proposed Class  
19 could afford such litigation, the court system could not. Individualized  
20 litigation of the complex legal and factual issues of such a case increases the  
21 delay and expense to all parties, including the court. By contrast, the class  
22 action device presents far fewer management difficulties, and provides the  
23 benefits of single adjudication, economy of scale, and comprehensive  
24 supervision by a single court. Therefore, a class action is maintainable  
25 pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2).

26 60. Unless the Class is certified, Defendant will retain monies received as a result  
27 of Defendant's unlawful and deceptive conduct alleged herein. Unless a class-  
28 wide injunction is issued, Defendant will also likely continue to, or allow its

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1 resellers to, advertise, market, promote, and sell the Class Products in an  
2 unlawful and misleading manner, and members of the Class will continue to  
3 be misled, harmed, and denied their rights under California law.

4 61. Further, Defendant has acted or refused to act on grounds that are generally  
5 applicable to the class so that declaratory and injunctive relief is appropriate to  
6 the Class as a whole, making class certification appropriate pursuant to Fed. R.  
7 Civ. P. 23(b)(2).

8  
9 **FIRST CAUSE OF ACTION FOR**  
10 **VIOLATIONS OF CALIFORNIA’S FALSE ADVERTISING LAW (“FAL”)**  
11 **BUS. & PROF. CODE §§ 17500, ET SEQ.**

12 62. Plaintiff re-alleges and incorporates by reference all of the above paragraphs  
13 of this Complaint as though fully stated herein.

14 63. Plaintiff and Defendant are both “person[s]” as defined by California Business  
15 & Professions Code § 17506.

16 64. California Business & Professions Code § 17535 authorizes a private right of  
17 action on both an individual and representative basis.

18 65. Defendant holds its Products out as preventing disease and reducing illness,  
19 when, in fact, there is no valid evidence the Product does so.

20 66. These misrepresentations, acts, and non-disclosures by Defendant constitute  
21 false and misleading advertising in violation of Business & Professions Code  
22 §§ 17500, *et seq.*

23 67. At all times relevant, Defendant’s advertising and promotion of its Products  
24 were, and are, untrue, misleading, and likely to deceive the reasonable  
25 consumer and the public. In fact, Defendant did deceive Plaintiff and the  
26 putative Class members by representing that its Products prevented disease  
27 and reduced illness. When, in reality, Defendant knew that there is no valid  
28 evidence its Product prevented disease and reduced illness, which the FDA  
warned them about.

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1 68. Defendant engaged in the false and/or misleading advertising and marketing of  
2 its Products, as alleged herein, with the intent to directly or indirectly induce  
3 consumers to purchase its Products, which Defendant knew, or had reason to  
4 know, did not prevent disease or reduce illness.

5 69. Because Defendant knew or should have known that the representations and/or  
6 omissions alleged herein were untrue or misleading, Defendant acted in  
7 violation of California Business & Professions Code §§ 17500, *et seq.*

8 70. Had Defendant truthfully advertised that its Products did not prevent disease  
9 or reduce illness, Plaintiff and the putative Class members would not have  
10 purchased the Product or would have purchased a different product from  
11 another manufacturer.

12 71. This false and misleading advertising of the Product by Defendant presents a  
13 continuing threat to consumers, as such conduct is ongoing to this day.

14 72. As a direct and proximate result of the aforementioned acts and omissions by  
15 Defendant, Defendant received and continues to hold monies rightfully  
16 belonging to Plaintiff and the putative Class members, who were led to  
17 purchase Defendant’s Product during the Class Period.

18 **SECOND CAUSE OF ACTION FOR**  
19 **VIOLATIONS OF CALIFORNIA’S UNFAIR COMPETITION LAW (“UCL”)**  
20 **BUS. & PROF. CODE §§ 17200, *ET SEQ.***

21 73. Plaintiff re-alleges and incorporates by reference all of the above paragraphs  
22 of this Complaint as though fully stated herein.

23 74. Plaintiff and Defendant are each a “person” as defined by California Business  
24 & Professions Code § 17201. California Business & Professions Code § 17204  
25 authorizes a private right of action on both an individual and representative  
26 basis.

27 75. “Unfair competition” is defined by Business and Professions Code § 17200 as  
28 encompassing several types of business “wrongs,” including: (1) an

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1 “unlawful” business act or practice, (2) an “unfair” business act or practice, (3)  
2 a “fraudulent” business act or practice, and (4) “unfair, deceptive, untrue or  
3 misleading advertising.” The definitions in § 17200 are drafted in the  
4 disjunctive, meaning that each of these “wrongs” operates independently from  
5 the others.

6 76. By and through Defendant’s conduct alleged in further detail above and  
7 herein, Defendant engaged in conduct which constitutes unlawful, unfair,  
8 and/or fraudulent business practices, and unfair, deceptive, untrue or  
9 misleading advertising, as prohibited by California’s UCL.

10 **A. “UNLAWFUL” PRONG**

11 77. Beginning at a date currently unknown and continuing to the time of the filing  
12 of this Complaint, Defendant has committed acts of unfair competition,  
13 including those described above, by engaging in a pattern of “unlawful”  
14 business practices, within the meaning of Bus. & Prof. Code §§ 17200 *et seq.*,  
15 by marketing, manufacturing, and distributing Defendant’s Product in  
16 violation of California’s Consumers Legal Remedies Act, Civil Code § 1759,  
17 *et seq.* and California’s False Advertising Law, Business & Professions Code  
18 §§ 17500, *et seq.*, as well as other Federal regulations.

19 78. Defendant violated the above-referenced statutes by falsely representing that  
20 its Product prevented disease and reduced illness, when in fact the product did  
21 not prevent disease or reduce illness.

22 79. By advertising, promoting, manufacturing, and selling its Product in violation  
23 of those California laws, Defendant engaged in a pattern of “unlawful”  
24 business practices within the meaning of California’s UCL.

25 **B. “UNFAIR” PRONG**

26 80. Beginning at a date currently unknown and continuing to the time of the filing  
27 of this Complaint, Defendant has committed acts of unfair competition as  
28 prohibited by Bus. & Prof. Code §§ 17200, *et seq.*



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1 81. Had Plaintiff and the putative class members been informed that Defendant’s  
2 Product did not prevent disease and reduce illness, they would not have  
3 purchased the Products or would have purchased a different product. In other  
4 words, Defendant earned the business of Plaintiff and the putative Class  
5 members by using deceptive advertising, which placed competitors at a  
6 disadvantage. Furthermore, Plaintiff and the putative Class members were  
7 harmed in that they paid a price premium for the Products.

8 **C. “FRAUDULENT” PRONG**

9 82. Beginning at a date currently unknown and continuing to the time of the filing  
10 of this Complaint, Defendant engaged in acts of unfair competition, including  
11 those described above and herein, in violation of Bus. & Prof. Code §§ 17200,  
12 *et seq.*, by engaging in a pattern of “fraudulent” business practices within the  
13 meaning of Bus. & Prof. Code §§ 17200, *et seq.*, by falsely advertising its  
14 Product as preventing disease and reducing illness, when, in fact, the Product  
15 does not prevent disease and reduce illness.

16 83. Plaintiff reserves the right to allege further conduct that constitutes other  
17 fraudulent business acts or practices. Such conduct is ongoing and continues  
18 to this date.

19 **D. “UNFAIR, DECEPTIVE, UNTRUE OR MISLEADING ADVERTISING” PRONG**

20 84. Defendant’s advertising is unfair, deceptive, untrue, and/or misleading within  
21 the meaning of Bus. & Prof. Code §§ 17200, *et seq.*, in that consumers are led  
22 to believe that Defendant’s Product prevents disease and reduces illness,  
23 when, in fact, the Product does not prevent disease or reduce illness, as alleged  
24 herein.

25 85. Plaintiff and other such reasonable consumers are likely to be, and were,  
26 deceived and misled by Defendant’s advertising of its Products, as preventing  
27 disease and reducing illness.  
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1 86. As a direct and proximate result of Defendant’s unlawful, unfair, and  
2 fraudulent conduct described herein, Defendant received and continues to  
3 receive an unfair competitive advantage and unearned commercial benefits at  
4 the expense of its competitors and the public, who unwittingly provided  
5 money to Defendant based on Defendant’s misleading representations.

6 87. Plaintiff and the putative Class members suffered an injury in fact because  
7 Plaintiff’s money was taken by Defendant as a result of Defendant’s false  
8 representations as set forth on the Products’ label and Amazon.com and other  
9 3rd party retailers as mentioned herein.

10 88. Such acts and omissions by Defendant are unlawful and/or unfair and/or  
11 fraudulent, and constitute multiple violations of California’s UCL. Plaintiff  
12 reserves the right to identify additional violations by Defendant as may be  
13 established through discovery.

14 89. In prosecuting this action for the enforcement of important rights affecting the  
15 public interest, Plaintiff seeks the recovery of attorneys’ fees, which reward is  
16 available to a prevailing plaintiff in a class action such as this.

17 **THIRD CAUSE OF ACTION**  
18 **NEGLIGENT MISREPRESENTATION**

19 90. Plaintiff repeats, re-alleges, and incorporates by reference the above  
20 allegations as if fully stated herein.

21 91. Beginning at a date currently unknown and continuing to the time of the filing  
22 of this Complaint, Defendant represented to Plaintiff and others similarly  
23 situated, through product packaging and advertising materials, that  
24 Defendant’s Product prevented disease and reduced illness.

25 92. Defendant made these representations knowing, or having reason to know, that  
26 its Products did not prevent disease and reduce illness.

27 93. Defendant acted with the intent to induce the public, including Plaintiff and  
28 putative Class members, to purchase Defendant’s Product.

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1 94. Plaintiff and the putative Class members saw, believed, and relied upon  
2 Defendant’s representations in making the decision to purchase Defendant’s  
3 Product.

4 95. At all times relevant, Defendant knew or should have known that such  
5 representations were untrue, and Defendant had no reasonable basis for  
6 believing the representations to be true.

7 96. As a proximate result of Defendant’s negligent misrepresentations, Plaintiff  
8 and other consumers similarly situated were induced to purchase, purchase  
9 more of, or pay more for Defendant’s Products due to the unlawful acts of  
10 Defendant, in an amount to be determined at trial, during the Class Period.

11 **FOURTH CAUSE OF ACTION**  
12 **INTENTIONAL MISREPRESENTATION**

13 97. Plaintiff repeats, re-alleges, and incorporates herein by reference the above  
14 allegations as if fully stated herein.

15 98. Beginning at a date currently unknown and continuing to the time of the filing  
16 of this Complaint, Defendant intentionally represented to Plaintiff and others  
17 similarly situated, through Product’s packaging and advertising materials, that  
18 Defendant’s Product prevented disease and reduced illness.

19 99. Defendant acted intentionally by marketing its Product as one that prevents  
20 disease and reduces illness.

21 100. Because the FDA found there is no evidence that shows the Product prevents  
22 disease or reduces illness, the Product does not have the benefits that  
23 Defendant advertises.

24 101. Furthermore, by including the statement that the Product “[k]ills more than  
25 99.99% of germs” on the label of the Product, Defendant is implying that this  
26 Product prevents disease and reduces illness, for which there is no evidence.

27 102. Defendant knew or had reason to know such representations were false, and  
28 continued to advertise its Product in a false or misleading way.

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1 103. Defendant further knew that retailers were advertising its Product as  
2 preventing disease and reducing illness, because Defendant designed,  
3 manufactured, and affixed the product labeling to its Products before  
4 supplying the Products to the retailers.

5 104. Plaintiff and the putative Class members saw, believed, and relied upon  
6 Defendant’s representations in making the decision to purchase Defendant’s  
7 Product.

8 105. As a proximate result of Defendant’s intentional misrepresentations, Plaintiff  
9 and the putative Class members were damaged in an amount to be determined  
10 at trial.

11 106. Plaintiff alleges the “who, what, when, where, and how” of the alleged  
12 deception by Defendant as follows:

- 13 i. The “who” is Defendant;
- 14 ii. The “what” is the representation that Defendant’s Product, and  
15 substantially similar products, had ingredients that prevented disease  
16 or reduced illness;
- 17 iii. The “when” is the date Plaintiff purchased the Product, and the Class  
18 Period of four years prior to the filing of this Complaint;
- 19 iv. The “where” is in Defendant’s product labeling, advertisements, and  
20 online marketing; and
- 21 v. The “how” is the allegation that Defendant did not disclose that its  
22 Product did not prevent disease or reduce illness.

23 107. By engaging in the acts described above, Defendant is guilty of malice,  
24 oppression, and fraud, and Plaintiff and the putative Class are therefore  
25 entitled to recover exemplary or punitive damages.

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**RESERVATION OF RIGHT TO ASSERT CLAIM FOR VIOLATIONS OF THE  
CALIFORNIA CONSUMERS LEGAL REMEDIES ACT  
CAL. CIV. CODE §§ 1750, ET SEQ.**

108. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

109. On or about January 31, 2020, Plaintiff served on Defendant a demand for corrective action pursuant to California Civil Code § 1750.

110. Plaintiff reserves the right to amend the Complaint to assert a cause of action under the CLRA, specifically, Civil Code Sections 1770(a)(4), (5) and (7), should Defendant not take timely and appropriate corrective action.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests the Court grant Plaintiff and the putative Class members the following relief against Defendant:

- that this action be certified as a Class Action;
- that Plaintiff be appointed as the Class Representatives;
- that Plaintiff’s attorneys be appointed as Class Counsel;
- that Defendant’s wrongful conduct be adjudged and decreed to violate the consumer protection statutes raised herein;
- An order requiring imposition of a constructive trust and and/or disgorgement of Defendant’s ill-gotten gains and to pay restitution to Plaintiff and all members of the Class and to restore to the Plaintiff and members of the class all funds acquired by means of any act or practice declared by this court to be an unlawful, fraudulent or unfair business act or practice, in violation of laws, statutes or regulations, or constituting unfair competition;
- Distribution of any monies recovered on behalf of members of the Class via fluid recovery or *cy pres* recovery were necessary and as applicable, to prevent Defendant from retaining the benefits of their wrongful conduct;
- that Plaintiff and each of the other members of the Class recover the

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amounts by which Defendant has been unjustly enriched;

- A temporary, preliminary and/or permanent order for injunctive relief requiring Defendant to: (i) discontinue its false and/or misleading statement/s; and (ii) undertake an immediate public information campaign to inform members of the proposed class as to their prior practices;
- that Defendant be enjoined from continuing the wrongful conduct alleged herein and be required to comply with all applicable laws;
- Pre-judgment interests from the date of filing of this suit;
- that Plaintiff and each member of the putative Class recover their costs of suit.

**FIRST CAUSE OF ACTION FOR  
VIOLATIONS OF CALIFORNIA’S FALSE ADVERTISING LAW  
CAL. BUS. & PROF. CODE §§ 17500, ET SEQ.**

- Restitution and injunctive relief pursuant to Bus. & Prof. Code § 17203;
- recovery of reasonable attorney’s fees pursuant to, *inter alia*, California Code of Civil Procedure § 1021.5.

**SECOND CAUSE OF ACTION FOR  
VIOLATIONS OF CALIFORNIA’S UNFAIR COMPETITION LAW  
CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.**

- Restitution and injunctive relief pursuant to Bus. & Prof. Code § 17535; and
- recovery of reasonable attorneys’ fees pursuant to, *inter alia*, California Code of Civil Procedure § 1021.5.

**THIRD CAUSE OF ACTION FOR  
NEGLIGENT MISREPRESENTATION**

- A judgment against Defendant for general and compensatory damages in an amount to be determined at trial; and

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**FOURTH CAUSE OF ACTION FOR  
INTENTIONAL MISREPRESENTATION**

- A judgment against Defendant for general and compensatory damages in an amount to be determined at trial;
- punitive damages pursuant to Cal. Civ. Code § 3294; and
- that Plaintiff and the members of the Class be granted any other relief the Court may deem just and proper.

**FIFTH CAUSE OF ACTION FOR  
VIOLATIONS OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT  
CAL. BUS. & PROF. CODE §§ 1750, ET SEQ.**

- Actual damages, injunctive relief, restitution, and punitive damages pursuant to Cal. Civ. Code § 1780(a); and
- an award of costs and attorney’s fees pursuant to Cal. Civ. Code § 1780(d).

**TRIAL BY JURY**

111. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to and demands a trial by jury.

Dated: January 31, 2020

Respectfully submitted,

**KAZEROUNI LAW GROUP, APC**

By: /s/ Ryan L. McBride  
RYAN L. MCBRIDE, ESQ.  
ABBAS KAZEROUNIAN, ESQ.  
*Attorneys for Plaintiff*