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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANTHONY BUSH, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

RUST-OLEUM CORPORATION, an Illinois
corporation,

Defendant.

Case No.: 3:20-cv-03268-LB

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Plaintiff Anthony Bush (“Plaintiff”), individually and on behalf of all others similarly situated, as more fully described herein (the “Class” and “Class Members”), brings this class action against Defendant Rust-Oleum Corporation (“Defendant”), and alleges as follows:

NATURE OF THE ACTION

1. In an effort to increase profits and to gain an advantage over its lawfully acting competitors, Defendant falsely and misleadingly labels certain of its Krud Kutter products as being “NON-TOXIC” and “EARTH FRIENDLY.”



2. The products are neither “NON-TOXIC” nor “EARTH FRIENDLY.” That is because the products can cause harm to humans, animals, and/or the environment.

3. The unlawfully labeled “NON-TOXIC” and “EARTH FRIENDLY” products at issue are Krud Kutter Adhesive Remover; Krud Kutter Instant Carpet Stain Remover Plus Deodorizer; Krud Kutter Original Cleaner & Degreaser; Krud Kutter Tough Task Remover (pictured above); Krud Kutter Sports Cleaner/Stain Remover; Krud Kutter Gutter & Exterior Metal Cleaner; Krud Kutter Kitchen Degreaser & All Purpose Cleaner; Krud Kutter Heavy Traffic Carpet Cleaner; Krud Kutter Deck & Fence Wash; Krud Kutter Multi-Purpose House Wash; Krud Kutter Window Wash; Krud Kutter Parts Washer Cleaner/Degreaser; Krud Kutter Driveway Cleaner & Degreaser; Krud Kutter Original Cleaner & Degreaser (Aerosol) (pictured above); Krud Kutter Tough Task Remover (Aerosol) (collectively, the “Products”).¹

4. Defendant manufactures, markets, advertises, labels, and sells the Products throughout California and the United States.

5. Through falsely, misleadingly, and deceptively labeling the Products, Defendant sought to take advantage of consumers’ desire for non-toxic cleaning products that are safe for humans, animals, and the environment. Defendant has done so at the expense of unwitting consumers, as well as Defendant’s lawfully acting competitors, over whom Defendant maintains an unfair competitive advantage.

6. As a result, Plaintiff brings this action individually and on behalf of those similarly situated, and seeks to represent a National Class and a California Subclass (defined *infra*). Plaintiff seeks injunctive relief to stop Defendant’s unlawful labeling and advertising of the Products. In addition, Plaintiff seeks damages, interest thereon, reasonable attorneys’ fees and costs, other equitable relief, and disgorgement of all benefits Defendant has enjoyed from its conduct. Plaintiff makes these allegations based on his personal knowledge and, otherwise, on information and belief based on investigation of his counsel.

7. Plaintiff’s primary litigation objective is to enjoin Defendant’s unlawful labeling practices and to obtain restitution for the National Class and California Subclass.

¹ See Exhibit 1 (images of the Products).

JURISDICTION

8. This Court has original jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or more members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

VENUE

9. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in this District. In addition, Plaintiff purchased the unlawful Products in this District, and Defendant has marketed, advertised, and sold the Products within this District.

PARTIES

10. Plaintiff Anthony Bush, who is currently a resident of Berkeley, California, purchased Krud Kutter Original Cleaner & Degreaser (Aerosol) and Krud Kutter Tough Task Remover at Home Depot in Emeryville, California for approximately \$6 and \$7, respectively, in January 2020. The labeling of the Products purchased by Plaintiff is typical of the labeling of the Products purchased by members of the Class. In making his purchase, Plaintiff relied upon the Products' advertising and labeling claims. The claims were prepared and approved by Defendant and its agents and disseminated statewide and nationwide, as well as designed to encourage consumers to purchase the Products. If Plaintiff had known that the Products were not "non-toxic" and "earth friendly" and can cause harm to humans, animals, and/or the environment, he would not have purchased the Products.

11. However, if the Products were actually non-toxic and earth friendly as labeled and advertised, Plaintiff would purchase the Products in the future. Since Plaintiff would like to purchase the Products again and obtain the advertised benefits, he might purchase them again in the future—despite the fact that they were once marred by false advertising or labeling—as he may reasonably, but incorrectly, assume the Products were improved. In that regard, Plaintiff is an average consumer who is not sophisticated in the chemistry or formulations of household cleaning products, so he is

at risk of reasonably, but incorrectly, assuming that Defendant fixed the formulation of the Products such that he might buy them again believing they were no longer falsely advertised and labeled.

12. Defendant Rust-Oleum Corporation is an Illinois corporation with its principal place of business in Vernon Hills, Illinois, and was doing business in the state of California during all relevant times. Directly and through its agents, Rust-Oleum Corporation has substantial contacts with and receives substantial benefits and income from and through the State of California. Rust-Oleum Corporation is one of the owners, manufacturers, or distributors of the Products, and is one of the companies that created and/or authorized the false, misleading, and deceptive labeling for the Products.

13. Defendant and its agents promoted, marketed and sold the Products at issue in this jurisdiction and in this judicial district. The unfair, unlawful, deceptive, and misleading advertising and labeling of the Products were prepared and/or approved by Defendant and its agents, and was disseminated by Defendant and its agents through labeling and advertising containing the misrepresentations alleged herein.

FACTUAL ALLEGATIONS

14. In recent years, consumers have become increasingly concerned about using household cleaning products that are safe for humans, animals, and the environment. Consumers have poured billions of dollars into the “eco-friendly” and “natural” cleaning-products market. In fact, this market segment is expected to reach over \$40 billion by 2025.

15. In response to consumers’ desire for safe and non-toxic cleaning products, many companies “greenwash” their products by deceptively claiming that their cleaning products are safe. Unfortunately, rather than creating the safe and non-toxic products that consumers desire, many companies, like Defendant, have chosen instead to “greenwash” their products through deceptive labeling, suggesting and outright stating that their cleaning products are safe and non-toxic when, in fact, they can cause harm to humans, animals and/or the environment.

16. Recognizing this problem, the United States Federal Trade Commission (“FTC”) created the “Green Guides” to help companies avoid making misleading and deceptive claims.² The

² See generally 16 C.F.R. § 260 – Guides for the Use of Environmental Marketing Claims.

Green Guides specifically address the use of the term “non-toxic” in the marketing of a product, stating, “A non-toxic claim likely conveys that a product, package, or service is non-toxic both for humans and for the environment generally.”³ Accordingly, “[i]t is deceptive to misrepresent, directly or by implication, that a product, package or service is non-toxic. Non-toxic claims should be clearly and prominently qualified to the extent necessary to avoid deception.”⁴

17. Indeed, in commenting on the Green Guides, the Environmental Protection Agency (“EPA”) **“believes that marketers will ‘rarely, if ever, be able to adequately qualify and substantiate such a claim of ‘non-toxic’ in a manner that will be clearly understood by consumers.’”** (Emphasis added).⁵ The EPA further explained:

[A] “non-toxic” claim conveys that a product is non-toxic for both humans and for the environment generally. Demonstrating a lack of toxicity in a generic sense involves testing for a broad array of endpoints (e.g. acute toxicity, carcinogenicity and other chronic effects, developmental and reproductive toxicity, neurotoxicity, sensitization, etc.) across a variety of species. It is highly unlikely that the typical consumer product will have been subjected to this degree of testing with a resulting finding of “no adverse effect” for each of the endpoints evaluated.⁶

18. “According to the EPA, this inference might prevent consumers from taking necessary precautions in handling a product.”⁷

19. The Green Guides also provide examples of marketing claims in order to “provide the Commission’s views on how reasonable consumers likely interpret certain claims.”⁸ The FTC provided the following relevant example:⁹

³ 16 C.F.R. § 260.10(b).

⁴ 16 C.F.R. § 260.10(a).

⁵ EPA Comments on Proposed Revisions to Green Guides (2010) (*available at* https://www.ftc.gov/sites/default/files/documents/public_comments/guides-use-environmental-marketing-claims-project-no.p954501-00288%C2%A0/00288-57070.pdf

⁶ *Id.* See also Fed. Trade Comm’n, The Green Guide Statement and Business Purpose (2012) (*available at* <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf>) (“Similarly, CU suggested that because ‘non-toxic’ claims are so difficult to substantiate and for consumers to verify, the marketplace would be better served with ‘specific claims of how a product contains less toxic or no toxic materials rather than using a ‘non-toxic’ claim.’”).

⁷ *Id.*

⁸ 16 C.F.R. § 260.1(d)

⁹ 16 C.F.R. § 260.10.

A marketer advertises a cleaning product as “essentially non-toxic” and “practically non-toxic.” **The advertisement likely conveys that the product does not pose any risk to humans or the environment, including household pets.** If the cleaning product poses no risks to humans but is toxic to the environment, the claims would be deceptive. (Emphasis added).

20. This example demonstrates that even when “non-toxic” claims are qualified by such terms as “essentially” or “practically,” they are nonetheless construed by reasonable consumers as “not pos[ing] any risk to humans or the environment, including household pets.” Thus, broad and unqualified non-toxic claims, such as the ones present on the Products, would even more strongly convey such a meaning.

21. In addressing “General Environmental Benefit Claims,” the Green Guides state:

(a) It is deceptive to misrepresent, directly or by implication, that a product, package, or service offers a general environmental benefit.

(b) Unqualified general environmental benefit claims are difficult to interpret and likely convey a wide range of meanings. In many cases, such claims likely convey that the product, package, or service has specific and far-reaching environmental benefits **and may convey that the item or service has no negative environmental impact. Because it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims, marketers should not make unqualified general environmental benefit claims.**

(c) Marketers can qualify general environmental benefit claims to prevent deception about the nature of the environmental benefit being asserted. To avoid deception, marketers should use clear and prominent qualifying language that limits the claim to a specific benefit or benefits. Marketers should not imply that any specific benefit is significant if it is, in fact, negligible. If a qualified general claim conveys that a product is more environmentally beneficial overall because of the particular touted benefit(s), marketers should analyze trade-offs resulting from the benefit(s) to determine if they can substantiate this claim.

(d) Even if a marketer explains, and has substantiation for, the product’s specific environmental attributes, this explanation will not adequately qualify a general environmental benefit claim if the advertisement otherwise implies deceptive claims. Therefore, marketers should ensure that the advertisement’s context does not imply deceptive environmental claims.

16 C.F.R. § 260.4 (emphasis added).

22. As relevant here, while the Green Guides do not specifically address the term “Earth Friendly,” they do consider its close analog, “Eco-Friendly.” According to the Green Guides, “[t]he brand name **‘Eco-friendly’ likely conveys that the product has far-reaching environmental benefits and may convey that the product has no negative environmental impact.** Because it is

highly unlikely that the marketer can substantiate these claims, the use of such a brand name is deceptive.” *Id.* (emphasis added).

23. Like “Eco-Friendly,” “EARTH FRIENDLY” conveys to reasonable consumers that the product has far-reaching environmental benefits and has no negative environmental impact.

24. Because of concerns about safety, consumers have increasingly sought out safe and non-toxic household cleaning products, the sales of which have surged in recent years.

25. As described *supra*, Defendant manufactures, markets, advertises, labels, and sells Krud Kutter Adhesive Remover; Krud Kutter Instant Carpet Stain Remover Plus Deodorizer; Krud Kutter Original Cleaner & Degreaser; Krud Kutter Tough Task Remover (pictured above); Krud Kutter Sports Cleaner/Stain Remover; Krud Kutter Gutter & Exterior Metal Cleaner; Krud Kutter Kitchen Degreaser & All Purpose Cleaner; Krud Kutter Heavy Traffic Carpet Cleaner; Krud Kutter Deck & Fence Wash; Krud Kutter Multi-Purpose House Wash; Krud Kutter Window Wash; Krud Kutter Parts Washer Cleaner/Degreaser; Krud Kutter Driveway Cleaner & Degreaser; Krud Kutter Original Cleaner & Degreaser (Aerosol) (pictured above); Krud Kutter Tough Task Remover (Aerosol).

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26. True and correct images of the Cleaner/Degreaser Aerosol and Tough Task Remover Products appear below¹⁰:



27. Defendant prominently and uniformly labels the front display panel of the Products with the labels “NON-TOXIC” and “EARTH FRIENDLY.” The labels are set against—and highlighted by—an eye-catching background and/or font color.

28. In addition, Defendant’s official website touts its Products as follows: “We believe cleaners should clean without being toxic. Krud Kutter safely removes the toughest stains and

¹⁰ See Exhibit 1 for images of all Products.

everyday messes that most ‘all-purpose’ cleaners can’t touch . . . Our eco-friendly formula is safe for the environment and your family.”¹¹

29. Based on the “NON-TOXIC” and “EARTH FRIENDLY” representations, reasonable consumers, including Plaintiff, believe that the Products do not pose any risk of harm to humans, animals, and/or the environment.

30. However, in spite of the labeling, the Products do pose a risk of harm to humans, animals, and/or the environment. That is because they contain (in varying combinations) a number of harmful ingredients, including the following: Alcohol Ethoxylates;¹² Sodium Metasilicate; Poly(oxy-1, 2-ethanediyl), .alpha.-(2-propylheptyl)-.omega.-hydroxy-; Dipropylene Glycol Monomethyl Ether; Monoethanolamine; Sodium Xylene Sulfonate; Potassium Hydroxide; Diethanolamine; Trisodium Phosphate, Dodecahydrate; and n-Butane.¹³ Accordingly, the Products are not “NON-TOXIC” and “EARTH FRIENDLY.”

31. **Alcohol Ethoxylates (“AEs”)** are surfactants, which are compounds that lower the surface tension (or interfacial tension) between two liquids, between a gas and a liquid, or between a liquid and a solid. Surfactants may act as detergents, wetting agents, emulsifiers, foaming agents, and dispersants. For those Products that contain AEs, the percentage by weight of AEs in the Products ranges from 1% to 10%. At these percentages or concentrations, the AEs (and therefore the Products) can cause harm to the skin and eyes when these surfaces are exposed to the Products. In addition, the AEs, at their given concentrations in the Products, are also phytotoxic. Therefore, the environment, when exposed to the Products, can be negatively impacted.

32. **Sodium Metasilicate (“SM”)** is used to soften water and enhance cleaning performance and efficiency. For those Products that contain SM, the percentage by weight of SM in the Products ranges from 1% to 2.5%. Because SM is very corrosive, on information and belief, it is responsible for the highly alkaline pH of the Products. Alkalinity extremes—a pH above 11.5—

¹¹ See <https://www.rustoleum.ca/product-catalog/consumer-brands/krud-kutter>.

¹² “Alcohol Ethoxylates” include “Ethoxylated Alcohols,” “Fatty Alcohol Ethoxylate,” and “C9-C11 Alcohols Ethoxylated.”

¹³ The harmful ingredients contained in each Product is described in detail *infra* and in Exhibit 2.

can cause skin and eye burns and irritation, as well as esophageal burns. In addition, highly alkaline substances can harm or kill vegetation and soil microorganisms. By way of example, the following Products have extremely high—and therefore potentially harmful—pH levels¹⁴:

- Instant Carpet Stain Remover Plus Deodorizer has a pH of **12.69**
- Tough Task Remover has a pH of **12.7**
- Tough Task Remover (Aerosol) has a pH of **12.4**
- Multi-Purpose House Wash has a pH of **12.7**
- Original Cleaner & Degreaser (Aerosol) has a pH of **12.4**

33. **Poly(oxy-1, 2-ethanediyl), .alpha.-(2-propylheptyl)-.omega.-hydroxy-** is used as an emulsifier or wetting agent. This ingredient can cause serious eye damage and is harmful if swallowed.

34. In addition, according to the Products' Safety Data Sheets (described in detail *infra* and in Exhibit 2), the following ingredients are classified as "Hazardous Substances" at their respective percentages or concentrations in the Products: Dipropylene Glycol Monomethyl Ether; Monoethanolamine; Sodium Xylene Sulfonate; Potassium Hydroxide; Diethanolamine; Trisodium Phosphate, Dodecahydrate; and n-Butane.

THE PRODUCTS' SAFETY DATA SHEETS

35. The Hazard Communication Standard (29 C.F.R. § 1910.1200, *et seq.*) requires that a chemical manufacturer, distributor, or importer provide a Safety Data Sheet ("SDS") for each hazardous chemical to downstream users to communicate information on these hazards. "Hazardous chemical means any chemical which is classified as a physical hazard or a health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified." 29 C.F.R. § 1910.1200(c).

36. An SDS includes information concerning the properties of each chemical; the physical, health, and environmental health hazards; protective measures; and safety precautions for

¹⁴ The pH level is not known for every Product.

1 handling, storing, and transporting the chemical. In addition, an SDS must provide specific
2 minimum information as detailed in Appendix D of 29 C.F.R. § 1910.1200.

3 37. Defendant created an SDS for each of the Products.¹⁵ In each SDS, Defendant details
4 information about the particular Product, including information concerning the properties of certain
5 hazardous chemicals contained in the Product, and the Product's physical, health, and
6 environmental health hazards. The Products' SDSs make clear that the Products are certainly not
7 "NON-TOXIC" and "EARTH FRIENDLY."

8 38. The following information is provided in the referenced Product's SDS:

9 **ADHESIVE REMOVER**

10 **Section 2. Hazard Identification:**

- 11
- 12 • Signal Word: Danger¹⁶

13 **GHS Hazard Statements¹⁷**

- 14
- 15 • Causes serious eye damage
 - 16 • Causes skin irritation

17 **Section 3. Composition/Information on Ingredients**

18 **Hazardous Substances:**

19 ¹⁵ See Exhibit 2. A Safety Data Sheet could not be located for the Sports Cleaner/Stain Remover
20 Product. However, on information and belief, that Product contains Ethoxylated Alcohols and
21 Sodium Metasilicate.

22 ¹⁶ A "Signal Word" is used to emphasize hazards and indicate the relative level of severity of the
23 hazard. See 29 C.F.R. § 1910.1200(c). The signal words are either "Danger," which indicates more
24 severe hazards, or "Warning," which indicates less severe hazards. See *id.*

25 ¹⁷ "GHS" is an acronym for the United Nations Globally Harmonized System of Classification and
26 Labeling of Chemicals. The GHS is a system for standardizing and harmonizing the classification
27 and labeling of chemicals, including defining health, physical and environmental hazards of
28 chemicals. The GHS covers all hazardous chemicals. In addition, the stated goal of the GHS is to
identify the intrinsic hazards of chemical substances and mixtures and to convey hazard information
about these hazards.

A "GHS Hazard Statement" is a standard phrase assigned to a hazard class and category that
describes the nature of the hazard. According to the GHS, an appropriate statement for each GHS
hazard should be included on the label for products possessing more than one hazard.

- Dipropylene Glycol Monomethyl Ether
- Ethoxylated Alcohols
- Monoethanolamine
- Sodium Xylene Sulfonate
- Potassium Hydroxide
- Coconut Oil Diethanolamine
- Diethanolamine

Section 11. Toxicological Information

- EFFECTS OF OVEREXPOSURE - EYE CONTACT: Irritating, and may injure eye tissue if not removed promptly.
- EFFECTS OF OVEREXPOSURE - SKIN CONTACT: Low hazard for usual industrial handling or commercial handling by trained personnel.
- EFFECTS OF OVEREXPOSURE - INHALATION: High gas, vapor, mist or dust concentrations may be harmful if inhaled. Avoid breathing fumes, spray, vapors, or mist.
- EFFECTS OF OVEREXPOSURE - INGESTION: Substance may be harmful if swallowed.
- PRIMARY ROUTE(S) OF ENTRY: Eye Contact, Ingestion, Inhalation, Skin Absorption, Skin Contact

Section 16. Other Information

HMIS Health Hazard Rating: 2*¹⁸

INSTANT CARPET STAIN REMOVER PLUS DEODORIZER

Section 2. Hazard Identification:

- Signal Word: Danger

GHS Hazard Statements

- Causes serious eye damage
- Causes skin irritation

Section 3. Composition/Information on Ingredients

Hazardous Substances:

¹⁸ The Hazardous Materials Identification System ("HMIS") is a numerical hazard rating system. The "Health Hazard Rating" of a material is determined by evaluating the potential for harm and relative toxicity. The Health Hazard Rating considers the toxicological properties of ingredients such as carcinogen status and permissible exposure limits. A Health Rating of "2" means Moderate Health Hazard such that temporary or minor injury may occur. A Health Rating of "1" means Slight Health Hazard such that irritation or minor reversible injury is possible. If present, the asterisk signifies a Chronic Health Hazard, meaning that long-term exposure to the material could cause a health problem such as emphysema or kidney damage.

- Poly(oxy-1, 2-ethanediyl), .alpha.-(2-propylheptyl)-.omega.-hydroxy-
- Sodium Metasilicate

Section 11. Toxicological Information

- EFFECTS OF OVEREXPOSURE - EYE CONTACT: Irritating, and may injure eye tissue if not removed promptly.
- EFFECTS OF OVEREXPOSURE - SKIN CONTACT: Low hazard for usual industrial handling or commercial handling by trained personnel.
- EFFECTS OF OVEREXPOSURE - INHALATION: High gas, vapor, mist or dust concentrations may be harmful if inhaled. Avoid breathing fumes, spray, vapors, or mist.
- EFFECTS OF OVEREXPOSURE - INGESTION: Substance may be harmful if swallowed.
- PRIMARY ROUTE(S) OF ENTRY: Eye Contact, Ingestion, Inhalation, Skin Absorption, Skin Contact

Section 15. Regulatory Information

This product has been reviewed according to the EPA 'Hazard Categories' promulgated under Sections 311 and 312 of the Superfund Amendment and Reauthorization Act of 1986 (SARA Title III) and is considered, under applicable definitions, to meet the following categories:

Skin Corrosion or Irritation, Serious eye damage or eye irritation

Section 16. Other Information

HMIS Health Hazard Rating: 2*

ORIGINAL CLEANER & DEGREASER

Section 2. Hazard Identification:

- Signal Word: Danger

GHS Hazard Statements

- Causes serious eye damage
- Causes skin irritation

Section 3. Composition/Information On Ingredients

Hazardous Substances:

- Fatty Alcohol Ethoxylate
- Sodium Metasilicate

Section 11. Toxicological Information

- EFFECTS OF OVEREXPOSURE - EYE CONTACT: Irritating, and may injure eye tissue if not removed promptly.
- EFFECTS OF OVEREXPOSURE - SKIN CONTACT: Low hazard for usual industrial handling or commercial handling by trained personnel.
- EFFECTS OF OVEREXPOSURE - INHALATION: High gas, vapor, mist or dust concentrations may be harmful if inhaled. Avoid breathing fumes, spray, vapors, or mist.
- EFFECTS OF OVEREXPOSURE - INGESTION: Substance may be harmful if swallowed.
- PRIMARY ROUTE(S) OF ENTRY: Eye Contact, Ingestion, Inhalation, Skin Absorption, Skin Contact

Section 15. Regulatory Information

This product has been reviewed according to the EPA 'Hazard Categories' promulgated under Sections 311 and 312 of the Superfund Amendment and Reauthorization Act of 1986 (SARA Title III) and is considered, under applicable definitions, to meet the following categories:

Skin Corrosion or Irritation, Serious eye damage or eye irritation

Section 16. Other Information

HMIS Health Hazard Rating: 2*

TOUGH TASK REMOVER

Section 2. Hazard Identification:

- Signal Word: Danger

GHS Hazard Statements

- Causes severe skin burns and eye damage

Section 3. Composition/Information on Ingredients

Hazardous Substances:

- Fatty Alcohol Ethoxylate
- Sodium Metasilicate

Section 11. Toxicological Information

- EFFECTS OF OVEREXPOSURE - EYE CONTACT: Substance causes severe eye irritation. Injury may be permanent.
- EFFECTS OF OVEREXPOSURE - SKIN CONTACT: Severely irritating; may cause permanent skin damage.
- EFFECTS OF OVEREXPOSURE - INHALATION: Harmful if inhaled. High gas, vapor, mist or dust concentrations may be harmful if inhaled. Avoid breathing fumes, spray, vapors, or mist. High vapor concentrations are irritating to the eyes, nose, throat and lungs.

- EFFECTS OF OVEREXPOSURE - INGESTION: Corrosive and may cause severe and permanent damage to mouth, throat and stomach. Substance may be harmful if swallowed.
- EFFECTS OF OVEREXPOSURE - CHRONIC HAZARDS: Repeated exposure to low concentrations of HCl vapor or mist may cause bleeding of nose and gums.
- PRIMARY ROUTE(S) OF ENTRY: Eye Contact, Ingestion, Inhalation, Skin Absorption, Skin Contact

Section 15. Regulatory Information

This product has been reviewed according to the EPA 'Hazard Categories' promulgated under Sections 311 and 312 of the Superfund Amendment and Reauthorization Act of 1986 (SARA Title III) and is considered, under applicable definitions, to meet the following categories:

Skin Corrosion or Irritation

Section 16. Other Information

HMIS Health Hazard Rating: 2*

GUTTER & EXTERIOR METAL CLEANER

Section 2. Hazard Identification:

- Signal Word: Danger

GHS Hazard Statements

- Causes skin irritation
- Causes serious eye damage

Section 3. Composition/Information on Ingredients

Hazardous Substances:

- Fatty Alcohol Ethoxylate
- Sodium Metasilicate

Section 11. Toxicological Information

- EFFECTS OF OVEREXPOSURE - EYE CONTACT: Irritating, and may injure eye tissue if not removed promptly.
- EFFECTS OF OVEREXPOSURE - SKIN CONTACT: Low hazard for usual industrial handling or commercial handling by trained personnel.
- EFFECTS OF OVEREXPOSURE - INHALATION: High gas, vapor, mist or dust concentrations may be harmful if inhaled. Avoid breathing fumes, spray, vapors, or mist.
- EFFECTS OF OVEREXPOSURE - INGESTION: Substance may be harmful if swallowed.
- PRIMARY ROUTE(S) OF ENTRY: Eye Contact, Ingestion, Inhalation, Skin Absorption, Skin Contact

Section 15. Regulatory Information

This product has been reviewed according to the EPA 'Hazard Categories' promulgated under Sections 311 and 312 of the Superfund Amendment and Reauthorization Act of 1986 (SARA Title III) and is considered, under applicable definitions, to meet the following categories:

Skin Corrosion or Irritation, Serious eye damage or eye irritation

Section 16. Other Information

HMIS Health Hazard Rating: 2*

KITCHEN DEGREASER & ALL PURPOSE CLEANER**Section 2. Hazard Identification:**

- Signal Word: Warning

GHS Hazard Statements

- Causes serious eye irritation

Section 3. Composition/Information on Ingredients**Hazardous Substances:**

- Poly(oxy-1, 2-ethanediyl), .alpha.-(2-propylheptyl)-.omega.-hydroxy-

Section 11. Toxicological Information

- EFFECTS OF OVEREXPOSURE - EYE CONTACT: Irritating, and may injure eye tissue if not removed promptly.
- EFFECTS OF OVEREXPOSURE - SKIN CONTACT: Low hazard for usual industrial handling or commercial handling by trained personnel.
- EFFECTS OF OVEREXPOSURE - INHALATION: High gas, vapor, mist or dust concentrations may be harmful if inhaled. Avoid breathing fumes, spray, vapors, or mist.
- EFFECTS OF OVEREXPOSURE - INGESTION: Substance may be harmful if swallowed.
- PRIMARY ROUTE(S) OF ENTRY: Eye Contact, Ingestion, Inhalation, Skin Absorption, Skin Contact

Section 15. Regulatory Information

This product has been reviewed according to the EPA 'Hazard Categories' promulgated under Sections 311 and 312 of the Superfund Amendment and Reauthorization Act of 1986 (SARA Title III) and is considered, under applicable definitions, to meet the following categories:

Serious eye damage or eye irritation

Section 16. Other Information

HMIS Health Hazard Rating: 1

HEAVY TRAFFIC CARPET CLEANER

Section 2. Hazard Identification:

- Signal Word: Danger

GHS Hazard Statements

- Causes serious eye damage
- Causes skin irritation

Section 3. Composition/Information on Ingredients

Hazardous Substances:

- Poly(oxy-1, 2-ethanediyl), .alpha.-(2-propylheptyl)-.omega.-hydroxy-
- Sodium Metasilicate

Section 11. Toxicological Information

- EFFECTS OF OVEREXPOSURE - EYE CONTACT: Irritating, and may injure eye tissue if not removed promptly.
- EFFECTS OF OVEREXPOSURE - SKIN CONTACT: Low hazard for usual industrial handling or commercial handling by trained personnel.
- EFFECTS OF OVEREXPOSURE - INHALATION: High gas, vapor, mist or dust concentrations may be harmful if inhaled. Avoid breathing fumes, spray, vapors, or mist.
- EFFECTS OF OVEREXPOSURE - INGESTION: Substance may be harmful if swallowed.
- PRIMARY ROUTE(S) OF ENTRY: Eye Contact, Ingestion, Inhalation, Skin Absorption, Skin Contact.

Section 15. Regulatory Information

This product has been reviewed according to the EPA 'Hazard Categories' promulgated under Sections 311 and 312 of the Superfund Amendment and Reauthorization Act of 1986 (SARA Title III) and is considered, under applicable definitions, to meet the following categories:

Skin Corrosion or Irritation, Serious eye damage or eye irritation

Section 16. Other Information

HMIS Health Hazard Rating: 2

DECK & FENCE WASH**Section 2. Hazard Identification:**

- Signal Word: Danger

GHS Hazard Statements

- Causes serious eye damage
- Causes skin irritation

Section 3. Composition/Information on Ingredients**Hazardous Substances:**

- Ethoxylated Alcohols
- Sodium Metasilicate
- Sodium Xylene Sulfonate

Section 11. Toxicological Information

- EFFECTS OF OVEREXPOSURE - EYE CONTACT: Irritating, and may injure eye tissue if not removed promptly.
- EFFECTS OF OVEREXPOSURE - SKIN CONTACT: Low hazard for usual industrial handling or commercial handling by trained personnel.
- EFFECTS OF OVEREXPOSURE - INHALATION: High gas, vapor, mist or dust concentrations may be harmful if inhaled. Avoid breathing fumes, spray, vapors, or mist.
- EFFECTS OF OVEREXPOSURE - INGESTION: Substance may be harmful if swallowed.
- PRIMARY ROUTE(S) OF ENTRY: Eye Contact, Ingestion, Inhalation, Skin Absorption, Skin Contact

Section 15. Regulatory Information

This product has been reviewed according to the EPA 'Hazard Categories' promulgated under Sections 311 and 312 of the Superfund Amendment and Reauthorization Act of 1986 (SARA Title III) and is considered, under applicable definitions, to meet the following categories:

Reactive Hazard, Acute Health Hazard, Chronic Health Hazard

Section 16. Other Information

HMIS Health Hazard Rating: 1

MULTI-PURPOSE HOUSE WASH**Section 2. Hazard Identification:**

- Signal Word: Danger

GHS Hazard Statements

- Causes severe skin burns and eye damage

Section 3. Composition/Information on Ingredients

Hazardous Substances:

- Ethoxylated Alcohols
- Sodium Metasilicate
- Sodium Xylene Sulfonate

Section 11. Toxicological Information

- EFFECTS OF OVEREXPOSURE - EYE CONTACT: Substance causes severe eye irritation. Injury may be permanent.
- EFFECTS OF OVEREXPOSURE - SKIN CONTACT: Severely irritating; may cause permanent skin damage.
- EFFECTS OF OVEREXPOSURE - INHALATION: Harmful if inhaled. High gas, vapor, mist or dust concentrations may be harmful if inhaled. Avoid breathing fumes, spray, vapors, or mist. High vapor concentrations are irritating to the eyes, nose, throat and lungs.
- EFFECTS OF OVEREXPOSURE - INGESTION: Corrosive and may cause severe and permanent damage to mouth, throat and stomach. Substance may be harmful if swallowed.
- EFFECTS OF OVEREXPOSURE - CHRONIC HAZARDS: Repeated exposure to low concentrations of HCl vapor or mist may cause bleeding of nose and gums.
- PRIMARY ROUTE(S) OF ENTRY: Eye Contact, Ingestion, Inhalation, Skin Absorption, Skin Contact

Section 16. Other Information

HMIS Health Hazard Rating: 1

WINDOW WASH

Section 2. Hazard Identification:

- Signal Word: Warning

GHS Hazard Statements

- Causes serious eye irritation
- Causes skin irritation

Section 3. Composition/Information on Ingredients

Hazardous Substances:

- Ethoxylated Alcohols
- Sodium Metasilicate

Section 11. Toxicological Information

- EFFECTS OF OVEREXPOSURE - EYE CONTACT: Irritating, and may injure eye tissue if not removed promptly.
- EFFECTS OF OVEREXPOSURE - SKIN CONTACT: Low hazard for usual industrial handling or commercial handling by trained personnel.
- EFFECTS OF OVEREXPOSURE - INHALATION: High gas, vapor, mist or dust concentrations may be harmful if inhaled. Avoid breathing fumes, spray, vapors, or mist.
- EFFECTS OF OVEREXPOSURE - INGESTION: Substance may be harmful if swallowed.
- PRIMARY ROUTE(S) OF ENTRY: Eye Contact, Ingestion, Inhalation, Skin Absorption, Skin Contact

Section 15. Regulatory Information

This product has been reviewed according to the EPA 'Hazard Categories' promulgated under Sections 311 and 312 of the Superfund Amendment and Reauthorization Act of 1986 (SARA Title III) and is considered, under applicable definitions, to meet the following categories:

Skin Corrosion or Irritation, Serious eye damage or eye irritation

Section 16. Other Information

HMIS Health Hazard Rating: 2*

PARTS WASHER CLEANER/DEGREASER

Section 2. Hazard Identification:

- Signal Word: Warning

GHS Hazard Statements

- Causes serious eye irritation
- Causes skin irritation

Section 3. Composition/Information on Ingredients

Hazardous Substances:

- Trisodium Phosphate, Dodecahydrate
- Sodium Metasilicate
- Dipropylene Glycol Monomethyl Ether

Section 11. Toxicological Information

- EFFECTS OF OVEREXPOSURE - EYE CONTACT: Irritating, and may injure eye tissue if not removed promptly.
- EFFECTS OF OVEREXPOSURE - SKIN CONTACT: Low hazard for usual industrial handling or commercial handling by trained personnel.
- EFFECTS OF OVEREXPOSURE - INHALATION: High gas, vapor, mist or dust concentrations may be harmful if inhaled. Avoid breathing fumes, spray, vapors, or mist.
- EFFECTS OF OVEREXPOSURE - INGESTION: Substance may be harmful if swallowed.
- PRIMARY ROUTE(S) OF ENTRY: Eye Contact, Ingestion, Inhalation, Skin Absorption, Skin Contact

Section 15. Regulatory Information

This product has been reviewed according to the EPA 'Hazard Categories' promulgated under Sections 311 and 312 of the Superfund Amendment and Reauthorization Act of 1986 (SARA Title III) and is considered, under applicable definitions, to meet the following categories:

Fire Hazard, Reactive Hazard, Acute Health Hazard, Chronic Health Hazard

Section 16. Other Information

HMIS Health Hazard Rating: 2*

DRIVEWAY CLEANER & DEGREASER**Section 2. Hazard Identification:**

- Signal Word: Danger

GHS Hazard Statements

- Causes skin irritation
- Causes serious eye damage

Section 3. Composition/Information On Ingredients**Hazardous Substances:**

- Ethoxylated Alcohols
- Sodium Metasilicate
- Sodium Xylene Sulfonate

Section 11. Toxicological Information

- EFFECTS OF OVEREXPOSURE - EYE CONTACT: Irritating, and may injure eye tissue if not removed promptly.

- EFFECTS OF OVEREXPOSURE - SKIN CONTACT: Low hazard for usual industrial handling or commercial handling by trained personnel.
- EFFECTS OF OVEREXPOSURE - INHALATION: High gas, vapor, mist or dust concentrations may be harmful if inhaled. Avoid breathing fumes, spray, vapors, or mist.
- EFFECTS OF OVEREXPOSURE - INGESTION: Substance may be harmful if swallowed.
- PRIMARY ROUTE(S) OF ENTRY: Eye Contact, Ingestion, Inhalation, Skin Absorption, Skin Contact

Section 15. Regulatory Information

This product has been reviewed according to the EPA 'Hazard Categories' promulgated under Sections 311 and 312 of the Superfund Amendment and Reauthorization Act of 1986 (SARA Title III) and is considered, under applicable definitions, to meet the following categories:

Reactive Hazard, Acute Health Hazard, Chronic Health Hazard

Section 16. Other Information

HMIS Health Hazard Rating: 1

ORIGINAL CLEANER & DEGREASER (AEROSOL)

Section 2. Hazard Identification:

- Signal Word: Warning

GHS Hazard Statements

- Causes serious eye irritation
- Causes skin irritation

Section 3. Composition/Information on Ingredients

Hazardous Substances:

- n-Butane
- C9-C11 Alcohols Ethoxylated
- Sodium Metasilicate

Section 11. Toxicological Information

- EFFECTS OF OVEREXPOSURE - EYE CONTACT: Causes Serious Eye Irritation
- EFFECTS OF OVEREXPOSURE - SKIN CONTACT: May cause skin irritation. Allergic reactions are possible.
- EFFECTS OF OVEREXPOSURE - INHALATION: Harmful if inhaled. High gas, vapor, mist or dust concentrations may be harmful if inhaled. Avoid breathing fumes, spray, vapors, or mist. High vapor concentrations are irritating to the eyes, nose, throat and lungs. Prolonged or excessive inhalation may cause respiratory tract irritation.

- EFFECTS OF OVEREXPOSURE - INGESTION: Harmful if swallowed.
- EFFECTS OF OVEREXPOSURE - CHRONIC HAZARDS: May cause central nervous system disorder (e.g., narcosis involving a loss of coordination, weakness, fatigue, mental confusion, and blurred vision) and/or damage. High concentrations may lead to central nervous system effects (drowsiness, dizziness, nausea, headaches, paralysis, and blurred vision) and/or damage. Reports have associated repeated and prolonged occupational overexposure to solvents with permanent brain and nervous system damage.
- PRIMARY ROUTE(S) OF ENTRY: Eye Contact, Ingestion, Inhalation, Skin Absorption, Skin Contact

Section 15. Regulatory Information

This product has been reviewed according to the EPA 'Hazard Categories' promulgated under Sections 311 and 312 of the Superfund Amendment and Reauthorization Act of 1986 (SARA Title III) and is considered, under applicable definitions, to meet the following categories:

Gas under pressure, Skin Corrosion or Irritation, Serious eye damage or eye irritation

Section 16. Other Information

HMIS Health Hazard Rating: 2

TOUGH TASK REMOVER (AEROSOL)

Section 2. Hazard Identification:

- Signal Word: Warning

GHS Hazard Statements

- Causes serious eye irritation
- Causes skin irritation

Section 3. Composition/Information on Ingredients

Hazardous Substances:

- n-Butane
- C9-C11 Alcohols Ethoxylated
- Sodium Metasilicate

Section 11. Toxicological Information

- EFFECTS OF OVEREXPOSURE - EYE CONTACT: Causes Serious Eye Irritation
- EFFECTS OF OVEREXPOSURE - SKIN CONTACT: May cause skin irritation. Allergic reactions are possible.
- EFFECTS OF OVEREXPOSURE - INHALATION: Harmful if inhaled. High gas, vapor, mist or dust concentrations may be harmful if inhaled. Avoid breathing fumes, spray, vapors, or mist.

High vapor concentrations are irritating to the eyes, nose, throat and lungs. Prolonged or excessive inhalation may cause respiratory tract irritation.

- EFFECTS OF OVEREXPOSURE - INGESTION: Harmful if swallowed.
- EFFECTS OF OVEREXPOSURE - CHRONIC HAZARDS: May cause central nervous system disorder (e.g., narcosis involving a loss of coordination, weakness, fatigue, mental confusion, and blurred vision) and/or damage. High concentrations may lead to central nervous system effects (drowsiness, dizziness, nausea, headaches, paralysis, and blurred vision) and/or damage. Reports have associated repeated and prolonged occupational overexposure to solvents with permanent brain and nervous system damage.
- PRIMARY ROUTE(S) OF ENTRY: Eye Contact, Ingestion, Inhalation, Skin Absorption, Skin Contact

Section 15. Regulatory Information

This product has been reviewed according to the EPA ‘Hazard Categories’ promulgated under Sections 311 and 312 of the Superfund Amendment and Reauthorization Act of 1986 (SARA Title III) and is considered, under applicable definitions, to meet the following categories:

Gas under pressure, Skin Corrosion or Irritation, Serious eye damage or eye irritation

Section 16. Other Information

HMIS Health Hazard Rating: 2

THE PRODUCTS VIOLATE THE FEDERAL HAZARDOUS SAFETY ACT

39. The Federal Hazardous Substances Act (“FHSA”) (15 U.S.C. 1261, *et seq.*) provides “nationally uniform requirements for adequate cautionary labeling of packages of hazardous substances which are sold in interstate commerce and are intended or suitable for household use.” House Comm. On Interstate and Foreign Commerce, Federal Hazardous Substances Labeling Act, H.R. Rep. No. 1861, 86th Cong., 2d Sess. 2 (1960), reprinted in 1960 U.S.C.C.A.N. 2833, 2833.

40. The FHSA is administered by the Consumer Product Safety Commission (“CPSC”), in which Congress vested the authority to promulgate regulations. If a hazardous substance’s label fails to comply with the CPSC’s regulations, then that hazardous substance is “misbranded” in violation of the FHSA.

41. The FHSA requires that certain signal words, such as “CAUTION,” must be provided on a hazardous substance’s packaging or label, as well as an “affirmative statement of the principal hazard or hazards” such as “EYE AND SKIN IRRITANT.” *See* 16 C.F.R. § 1500.3(b)(14).

42. As relevant here, under the FHSA, the Products are deemed “hazardous substances.”

1 For this reason, the Products bear the statement “CAUTION: EYE AND SKIN IRRITANT” on the
2 Products’ packaging and label.

3 43. Recognizing that other product labeling statements could detract from or dilute the
4 warnings required by the FHSA, the CPSC promulgated 16 C.F.R. § 1500.122, titled “Deceptive
5 use of disclaimers.” This regulation states that a label may not feature “words, statements, designs,
6 or other graphic materials that in any manner negates or disclaims any of the label statements
7 required by the act.” *Id.* “[F]or example, the statement ‘Harmless’ or ‘Safe around pets’ on a toxic
8 or irritant substance.” *Id.*

9 44. Here, the Products’ “NON-TOXIC” label violates 16 C.F.R. § 1500.122, because it
10 “negates or disclaims” the “CAUTION: EYE AND SKIN IRRITANT” label, which is “required by
11 the act.” *Id.* According, the Products are misbranded in violation of the FHSA.

12 **PLAINTIFF AND REASONABLE CONSUMERS WERE MISLED BY THE PRODUCTS**

13 45. Labeling the Products as “NON-TOXIC” and “EARTH FRIENDLY” when they can
14 cause harm to humans, animals, and/or the environment is wholly misleading and deceptive.

15 46. By misleadingly and deceptively labeling the Products, as described herein,
16 Defendant sought to take advantage of consumers’ desire for true non-toxic, safe cleaning products.
17 Defendant has done so at the expense of unwitting consumers—many of whom seek to protect their
18 household members and pets—and Defendant’s lawfully acting competitors, over whom Defendant
19 has an unfair competitive advantage.
20

21 47. The “NON-TOXIC” and “EARTH FRIENDLY” representations were and are
22 material to reasonable consumers, including Plaintiff, in making purchasing decisions.

23 48. Plaintiff relied on Defendant’s misrepresentations, described herein, in making the
24 decision to purchase the Products.

25 49. At the time Plaintiff purchased the Products, Plaintiff did not know, and had no reason
26 to know, that the Products’ labeling and advertising were false, misleading, deceptive, and unlawful
27 as set forth herein.

28 50. Defendant materially misled and failed to adequately inform reasonable consumers,

including Plaintiff, that the Products can cause harm to humans, animals, and/or the environment.

51. Plaintiff would not have purchased the Products if he had known the truth. Accordingly, based on Defendant's material misrepresentations and omissions, reasonable consumers, including Plaintiff, purchased the Products to their detriment.

52. It is possible, however, that Plaintiff would purchase the Products in the future if they were properly labeled, and/or the Products complied with the labeling and advertising statements. Specifically, Plaintiff would like to purchase the Products again if the Products no longer posed a risk of harm to humans, animals, and/or the environment.

THE PRODUCTS ARE SUBSTANTIALLY SIMILAR

53. Plaintiff Anthony Bush purchased Krud Kutter Original Cleaner & Degreaser (Aerosol) and Krud Kutter Tough Task Remover. The additional Products, Krud Kutter Adhesive Remover; Krud Kutter Instant Carpet Stain Remover Plus Deodorizer; Krud Kutter Original Cleaner & Degreaser; Krud Kutter Sports Cleaner/Stain Remover; Krud Kutter Gutter & Exterior Metal Cleaner; Krud Kutter Kitchen Degreaser & All Purpose Cleaner; Krud Kutter Heavy Traffic Carpet Cleaner; Krud Kutter Deck & Fence Wash; Krud Kutter Multi-Purpose House Wash; Krud Kutter Window Wash; Krud Kutter Parts Washer Cleaner/Degreaser; Krud Kutter Driveway Cleaner & Degreaser; and Krud Kutter Tough Task Remover (Aerosol) are substantially similar to the Products purchased by Plaintiff. All Products are cleaning products sold by Defendant. All Products are sold under the Krud Kutter brand. All Products are sold to consumers as "NON-TOXIC" and "EARTH FRIENDLY" products. All Products are labeled with the same "NON-TOXIC" and "EARTH FRIENDLY" claims. All Products contain overlapping ingredients and/or various combinations of the same ingredients. All Products can harm humans, animals, and/or the environment. And the misleading effect of the Products' labels is the same for all Products.

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CLASS ACTION ALLEGATIONS

54. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of himself and all others similarly situated, and as members of the Classes defined as follows:

All residents of the United States who, within the applicable statute of limitations periods, purchased the Products (“Nationwide Class”); and

All residents of California who, within four years prior to the filing of this Complaint, purchased the Products (“California Subclass”).

(“Nationwide Class” and “California Subclass,” collectively, “Class”).

55. Excluded from the Class are: (i) Defendant, its assigns, successors, and legal representatives; (ii) any entities in which Defendant has controlling interests; (iii) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; (iv) all persons presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; and (v) any judicial officer presiding over this matter and person within the third degree of consanguinity to such judicial officer.

56. Plaintiff reserves the right to amend or otherwise alter the class definitions presented to the Court at the appropriate time in response to facts learned through discovery, legal arguments advanced by Defendant, or otherwise.

57. This action is properly maintainable as a class action pursuant to Federal Rule of Civil Procedure 23 for the reasons set forth below.

58. **Numerosity:** Members of the Class are so numerous that joinder of all members is impracticable. Upon information and belief, the Nationwide Class consists of tens of thousands of purchasers (if not more) dispersed throughout the United States, and the California Subclass likewise consists of thousands of purchasers (if not more) dispersed throughout the State of California. Accordingly, it would be impracticable to join all members of the Class before the Court.

59. **Common Questions Predominate:** There are numerous and substantial questions of law or fact common to all members of the Class that predominate over any individual issues.

Included within the common questions of law or fact are:

- a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by advertising and selling the Products;
- b. Whether Defendant's conduct of advertising and selling the Products as non-toxic and earth friendly when they are not constitutes an unfair method of competition, or unfair or deceptive act or practice, in violation of Civil Code section 1750, *et seq.*;
- c. Whether Defendant used deceptive representations in connection with the sale of the Products in violation of Civil Code section 1750, *et seq.*;
- d. Whether Defendant represented the Products have characteristics or quantities that they do not have in violation of Civil Code section 1750, *et seq.*;
- e. Whether Defendant advertised the Products with intent not to sell them as advertised in violation of Civil Code section 1750, *et seq.*;
- f. Whether Defendant's labeling and advertising of the Products are untrue or misleading in violation of Business and Professions Code section 17500, *et seq.*;
- g. Whether Defendant knew or by the exercise of reasonable care should have known its labeling and advertising was and is untrue or misleading in violation of Business and Professions Code section 17500, *et seq.*;
- h. Whether Defendant's conduct is an unfair business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- i. Whether Defendant's conduct is a fraudulent business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- j. Whether Defendant's conduct is an unlawful business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- k. Whether Defendant's advertising and labeling of the Products constitute misleading environmental marketing claims in violation of California Business and Professions Code Section 17580.5;

- l. Whether Defendant's advertising and labeling of the Products violates the Federal Hazardous Substances Act, 15 U.S.C. 1261, *et seq.*;
- m. Whether Plaintiff and the Class paid more money for the Products than they actually received;
- n. How much money Plaintiff and the Class paid for the Products than they actually received;
- o. Whether Defendant's conduct constitutes breach of express warranty;
- p. Whether Plaintiff and the Class are entitled to equitable and/or injunctive relief;
- q. Whether Defendant was unjustly enriched by its unlawful conduct;
- r. Whether Plaintiff and the Class have sustained damages as a result of Defendant's unlawful conduct; and
- s. The proper measure of damages sustained by Plaintiff and Class Members.

60. **Typicality:** Plaintiff's claims are typical of the claims of the Class Members he seeks to represent because Plaintiff, like the Class Members, purchased Defendant's misleading and deceptive Products. Defendant's unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and the Class sustained similar injuries arising out of Defendant's conduct. Plaintiff's and Class Members' claims arise from the same practices and course of conduct and are based on the same legal theories.

61. **Adequacy:** Plaintiff is an adequate representative of the Class he seeks to represent because his interests do not conflict with the interests of the Class Members Plaintiff seeks to represent. Plaintiff will fairly and adequately protect Class Members' interests and has retained counsel experienced and competent in the prosecution of complex class actions, including complex questions that arise in consumer protection litigation.

62. **Superiority and Substantial Benefit:** A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. The claims presented in this case predominate over any questions of law or fact, if any exist at all, affecting any individual member of the Class;
- b. Absent a Class, the members of the Class will continue to suffer damage and Defendant's unlawful conduct will continue without remedy while Defendant profits from and enjoys its ill-gotten gains;
- c. Given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. When the liability of Defendant has been adjudicated, claims of all members of the Class can be administered efficiently and/or determined uniformly by the Court; and
- e. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and Class Members can seek redress for the harm caused to them by Defendant.

63. Because Plaintiff seeks relief for all members of the Class, the prosecution of separate actions by individual members would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendant.

64. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

65. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

COUNT ONE

Unfair and Unlawful Business Acts and Practices

(Business and Professions Code § 17200, *et seq.*)

(On Behalf of the California Subclass)

66. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this complaint, as though fully set forth herein.

67. This cause of action is brought pursuant to Business and Professions Code Section 17200, *et seq.*, on behalf of Plaintiff and a California Subclass consisting of all persons residing in

1 the State of California who purchased the Products for personal use and not for resale during the
2 time period of four years prior to the filing of the complaint through the present.

3 68. Defendant, in its advertising and packaging of the Products, made false and
4 misleading statements and fraudulent omissions regarding the quality and characteristics of the
5 Products, specifically, labeling the Products “NON-TOXIC” and “EARTH FRIENDLY” when they
6 can harm humans, animals, and/or the environment. Such claims and omissions appear on the label
7 and packaging of the Products, which are sold at retail stores, point-of-purchase displays, as well as
8 Defendant’s official website, and other retailers’ advertisements that have adopted Defendant’s
9 advertisements.

10 69. Defendant’s labeling and advertising of the Products led to, and continues to lead to,
11 reasonable consumers, including Plaintiff, believing that the Products are non-toxic and earth
12 friendly.

13 70. Defendant does not have any reasonable basis for the claims about the Products made
14 in Defendant’s advertising and on Defendant’s packaging or labeling because the Products can
15 cause harm to humans, animals, and/or the environment. Defendant knew and knows that the
16 Products are not “NON-TOXIC” or “EARTH FRIENDLY,” though Defendant intentionally
17 advertised and marketed the Products to deceive reasonable consumers into believing that Products
18 were “NON-TOXIC” and “EARTH FRIENDLY.”

19 71. The misrepresentations by Defendant alleged herein constitute unfair, unlawful, and
20 fraudulent business practices within the meaning of California Business and Professions Code
21 Section 17200.

22 72. In addition, Defendant’s use of various forms of advertising media to advertise, call
23 attention to, or give publicity to the sale of goods or merchandise that are not as represented in any
24 manner constitutes unfair competition, unfair, deceptive, untrue or misleading advertising, and an
25 unlawful business practice within the meaning of Business and Professions Code Sections 17200
26 and 17531, which advertisements have deceived and are likely to deceive the consuming public, in
27 violation of Business and Professions Code Section 17200.

28 73. Defendant failed to avail itself of reasonably available, lawful alternatives to further

1 its legitimate business interests.

2 74. All of the conduct alleged herein occurs and continues to occur in Defendant's
3 business. Defendant's wrongful conduct is part of a pattern, practice and/or generalized course of
4 conduct, which will continue on a daily basis until Defendant voluntarily alters its conduct or it is
5 otherwise ordered to do so.

6 75. Pursuant to Business and Professions Code Sections 17203 and 17535, Plaintiff and
7 the members of the California Subclass seek an order of this Court enjoining Defendant from
8 continuing to engage, use, or employ its practice of labeling and advertising the sale and use of the
9 Products. Likewise, Plaintiff and the members of the California Subclass seek an order requiring
10 Defendant to disclose such misrepresentations, and to preclude Defendant's failure to disclose the
11 existence and significance of said misrepresentations. Plaintiff has no adequate remedy at law.
12 Without equitable relief, Defendant's unlawful, fraudulent, and unfair practices will continue to
13 harm Plaintiff and the California Subclass. Plaintiff also seeks restitution of the amounts Defendant
14 acquired through the unfair, unlawful, and fraudulent business practices described herein.

15 76. Plaintiff and the California Subclass have suffered injury in fact and have lost money
16 or property as a result of and in reliance upon Defendant's false representations.

17 77. Plaintiff and the California Subclass would not have purchased the Products but for
18 the representations by Defendant about the Products as being "NON-TOXIC" and "EARTH
19 FRIENDLY."

20 78. The UCL prohibits unfair competition and provides, in pertinent part, that "unfair
21 competition shall mean and include unlawful, unfair or fraudulent business practices and unfair,
22 deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200.

23 **A. "Unfair" Prong**

24 79. Under California's Unfair Competition Law, Cal. Bus. & Prof. Code Section 17200,
25 *et seq.*, a challenged activity is "unfair" when "any injury it causes outweighs any benefits provided
26 to consumers and the injury is one that the consumers themselves could not reasonably avoid."
27 *Camacho v. Auto Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

28 80. Defendant's action of labeling the Products as "NON-TOXIC" and "EARTH

1 FRIENDLY” when they can cause harm to humans, animals, and/or the environment does not
2 confer any benefit to consumers.

3 81. Defendant’s action of labeling the Products as “NON-TOXIC” and “EARTH
4 FRIENDLY” when they can cause harm to humans, animals, and/or the environment causes injuries
5 to consumers, who do not receive products commensurate with their reasonable expectations.

6 82. Defendant’s action of labeling the Products as “NON-TOXIC” and “EARTH
7 FRIENDLY” when they can cause harm to humans, animals, and the environment causes injuries
8 to consumers, who end up overpaying for the Products and receiving Products of lesser standards
9 than what they reasonably expected to receive.

10 83. Consumers cannot avoid any of the injuries caused by Defendant’s deceptive labeling
11 and advertising of the Products.

12 84. Accordingly, the injuries caused by Defendant’s deceptive labeling and advertising
13 outweigh any benefits.

14 85. Some courts conduct a balancing test to decide if a challenged activity amounts to
15 unfair conduct under California Business and Professions Code Section 17200. They “weigh the
16 utility of the defendant’s conduct against the gravity of the harm to the alleged victim.” *Davis v.*
17 *HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

18 86. Here, Defendant’s conduct of labeling the Products as “NON-TOXIC” and “EARTH
19 FRIENDLY” when they can cause harm to humans, animals, and/or the environment has no utility
20 and financially harms purchasers. Thus, the utility of Defendant’s conduct is vastly outweighed by
21 the gravity of harm.

22 87. Some courts require that “unfairness must be tethered to some legislative declared
23 policy or proof of some actual or threatened impact on competition.” *Lozano v. AT&T Wireless*
24 *Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

25 88. Defendant’s labeling and advertising of the Products, as alleged herein, is false,
26 deceptive, misleading, and unreasonable, and constitutes unfair conduct.

27 89. Defendant knew or should have known of its unfair conduct.

28 90. As alleged herein, the misrepresentations by Defendant constitute an unfair business

1 practice within the meaning of California Business and Professions Code Section 17200.

2 91. There existed reasonably available alternatives to further Defendant's legitimate
3 business interests, other than the conduct described herein. Defendant could have refrained from
4 labeling the Products as "NON-TOXIC" and "EARTH FRIENDLY."

5 92. All of the conduct alleged herein occurs and continues to occur in Defendant's
6 business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct
7 repeated on thousands of occasions daily.

8 93. Pursuant to Business and Professions Code Sections 17203, Plaintiff and the
9 California Subclass seek an order of this Court enjoining Defendant from continuing to engage, use,
10 or employ its practice of labeling the Products as "NON-TOXIC" and "EARTH FRIENDLY."
11 Plaintiff has no adequate remedy at law. Without equitable relief, Defendant's unlawful, fraudulent,
12 and unfair practices will continue to harm Plaintiff and the California Subclass. Plaintiff also seeks
13 restitution of the amount Defendant acquired through the unfair, unlawful, and fraudulent business
14 practices described herein.

15 94. Plaintiff and the California Subclass have suffered injury in fact and have lost money
16 as a result of Defendant's unfair conduct. Plaintiff and the California Subclass paid an unwarranted
17 premium for these Products. Specifically, Plaintiff and the California Subclass paid for Products
18 that can harm humans, animals, and/or the environment. Plaintiff and the California Subclass would
19 not have purchased the Products, or would have paid substantially less for the Products, if they had
20 known that the Products' advertising and labeling were deceptive.

21 **B. "Fraudulent" Prong**

22 95. California Business and Professions Code Section 17200, *et seq.*, considers conduct
23 fraudulent (and prohibits said conduct) if it is likely to deceive members of the public. *Bank of the*
24 *West v. Superior Court*, 2 Cal. 4th 1254, 1267 (1992).

25 96. Defendant's conduct of labeling the Products as "NON-TOXIC" and "EARTH
26 FRIENDLY" when they can cause harm to humans, animals, and/or the environment is likely to
27 deceive members of the public.

28 97. Defendant's labeling and advertising of the Products, as alleged in the preceding

paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes fraudulent conduct.

98. Defendant knew or should have known of its fraudulent conduct.

99. As alleged in the preceding paragraphs, the misrepresentations by Defendant detailed above constitute a fraudulent business practice in violation of California Business & Professions Code Section 17200.

100. Defendant had reasonably available alternatives to further its legitimate business interests, other than the conduct described herein. Defendant could have refrained from labeling the Products as “NON-TOXIC” and “EARTH FRIENDLY.”

101. All of the conduct alleged herein occurs and continues to occur in Defendant’s business. Defendant’s wrongful conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.

102. Pursuant to Business and Professions Code Sections 17203, Plaintiff and the California Subclass seek an order of this Court enjoining Defendant from continuing to engage, use, or employ their practice of labeling the Products as “NON-TOXIC” and “EARTH FRIENDLY.” Plaintiff has no adequate remedy at law. Without equitable relief, Defendant’s unlawful, fraudulent, and unfair practices will continue to harm Plaintiff and the California Subclass. Plaintiff also seeks restitution of the amounts Defendant acquired through the unfair, unlawful, and fraudulent business practices described herein.

103. Plaintiff and the California Subclass have suffered injury in fact and have lost money as a result of Defendant’s fraudulent conduct. Plaintiff paid an unwarranted premium for the Products. Specifically, Plaintiff and the California Subclass paid for products that they believed were non-toxic when, in fact, they can cause harm to humans, animals, and/or the environment. Plaintiff and the California Subclass would not have purchased the Products if they had known that they were neither non-toxic nor earth friendly.

C. “Unlawful” Prong

104. California Business and Professions Code Section 17200, *et seq.*, identifies violations of other laws as “unlawful practices that the unfair competition law makes independently actionable.” *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

1 105. Here, Defendant’s labeling of the Products, as alleged herein, violates the Federal
2 Hazardous Substances Act, 15 U.S.C. 1261, *et seq.*

3 106. The FHSA provides “nationally uniform requirements for adequate cautionary
4 labeling of packages of hazardous substances which are sold in interstate commerce and are
5 intended or suitable for household use.” House Comm. On Interstate and Foreign Commerce,
6 Federal Hazardous Substances Labeling Act, H.R. Rep. No. 1861, 86th Cong., 2d Sess. 2 (1960),
7 reprinted in 1960 U.S.C.C.A.N. 2833, 2833.

8 107. The FHSA is administered by the Consumer Product Safety Commission (“CPSC”),
9 in which Congress vested the authority to promulgate regulations. If a hazardous substance’s label
10 fails to comply with the CPSC’s regulations, then that hazardous substance is “misbranded” in
11 violation of the FHSA.

12 108. The FHSA requires that certain signal words, such as “CAUTION,” must be provided
13 on a hazardous substance’s packaging or label, as well as an “affirmative statement of the principal
14 hazard or hazards” such as “EYE AND SKIN IRRITANT.” *See* 16 C.F.R. § 1500.3(b)(14).

15 109. As relevant here, under the FHSA, the Products are deemed “hazardous substances.”
16 For this reason, the Products bear the statement “CAUTION: EYE AND SKIN IRRITANT” on the
17 Products’ packaging and label.

18 110. Recognizing that other product labeling statements could detract from or dilute the
19 warnings required by the FHSA, the CPSC promulgated 16 C.F.R. § 1500.122, titled “Deceptive
20 use of disclaimers.” This regulation states that a label may not feature “words, statements, designs,
21 or other graphic materials that in any manner negates or disclaims any of the label statements
22 required by the act.” *Id.* “[F]or example, the statement ‘Harmless’ or ‘Safe around pets’ on a toxic
23 or irritant substance.” *Id.*

24 111. Here, the Products’ “NON-TOXIC” label violates 16 C.F.R. § 1500.122, because it
25 “negates or disclaims” the “CAUTION: EYE AND SKIN IRRITANT” label, which is “required by
26 the act.” *Id.* Accordingly, the Products are misbranded in violation of the FHSA.

27 112. Additionally, Defendant’s advertising of the Products, as alleged herein, violates
28 California Civil Code Section 1750, *et seq.* and California Business and Professions Code Section

1 17500, *et seq.*

2 113. Defendant's packaging, labeling, and advertising of the Products, as alleged herein,
3 are false, deceptive, misleading, and unreasonable, and constitute unlawful conduct.

4 114. Defendant knew or should have known of its unlawful conduct.

5 115. As alleged herein, the misrepresentations by Defendant constitute an unlawful
6 business practice within the meaning of California Business and Professions Code Section 17200.

7 116. Additionally, Defendant's misrepresentations constitute violations of California
8 Business and Professions Code Section 17580.5, which provides that it is "unlawful for any person
9 to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit
10 or implied."

11 117. There were reasonably available alternatives to further Defendant's legitimate
12 business interests other than the conduct described herein.

13 118. All of the conduct alleged herein occurred and continues to occur in Defendant's
14 business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct
15 repeated on thousands of occasions daily.

16 119. Pursuant to Business and Professions Code Section 17203, Plaintiff and the California
17 Subclass seek an order of this Court enjoining Defendant from continuing to engage, use, or employ
18 its practice of false and deceptive advertising of the Products. Plaintiff has no adequate remedy at
19 law. Without equitable relief, Defendant's unlawful, fraudulent, and unfair practices will continue
20 to harm Plaintiff and the California Subclass. Plaintiff also seeks restitution of the amounts
21 Defendant acquired through the unfair, unlawful, and fraudulent business practices described
22 herein.

23 120. Plaintiff and the California Subclass have suffered injury in fact and have lost money
24 as a result of Defendant's unlawful conduct. Plaintiff and the California Subclass paid an
25 unwarranted premium for the Products. Plaintiff and the California Subclass would not have
26 purchased the Products if they had known that Defendant purposely deceived consumers into
27 believing that the Products are non-toxic, earth friendly cleaning products.
28

COUNT TWO**Deceptive Advertising Practices****(California Business & Professions Code § 17500, *et seq.*)*****(On Behalf of the California Subclass)***

121. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this complaint, as though fully set forth herein.

122. Plaintiff brings this claim individually and on behalf of the California Subclass.

123. California Business & Professions Code § 17500 prohibits “unfair, deceptive, untrue or misleading advertising[.]”

124. Defendant violated § 17500 when it represented, through its false and misleading advertising and other express representations, that Defendant’s Products possessed characteristics and value that they did not actually have.

125. Defendant’s deceptive practices were specifically designed to induce reasonable consumers like Plaintiff to purchase the Products. Defendant’s uniform, material representations and omissions regarding the Products were likely to deceive, and Defendant knew or should have known that its uniform representations and omissions were untrue and misleading. Plaintiff purchased the Products in reliance on the representations made by Defendant, as alleged herein.

126. Plaintiff and members of the California Subclass have been directly and proximately injured by Defendant’s conduct in ways including, but not limited to, the monies paid to Defendant for the Products that lacked the characteristics advertised, interest lost on those monies, and consumers’ unwitting support of a business enterprise that promotes deception and undue greed to the detriment of consumers, such as Plaintiff and Subclass members.

127. The above acts of Defendant, in disseminating materially misleading and deceptive representations and statements throughout California to consumers, including Plaintiff and members of the California Subclass, were and are likely to deceive reasonable consumers in violation of § 17500.

128. In making and disseminating the statements alleged herein, Defendant knew or should have known that the statements were untrue or misleading, and acted in violation of § 17500.

1 129. Defendant continues to engage in unlawful, unfair and deceptive practices in violation
2 of §17500.

3 130. As a direct and proximate result of Defendant's unlawful conduct in violation of §
4 17500, Plaintiff and members of the California Subclass, pursuant to § 17535, are entitled to an
5 order of this Court enjoining such future wrongful conduct on the part of Defendant, and requiring
6 Defendant to disclose the true nature of its misrepresentations. Plaintiff has no adequate remedy at
7 law. Without equitable relief, Defendant's unfair, deceptive, untrue, and misleading practices will
8 continue to harm Plaintiff and the Class. Plaintiff and members of the California Subclass are also
9 entitled to compensatory, monetary, restitutionary, and punitive damages in an amount to be
10 determined at trial.

11 **COUNT THREE**

12 **Consumers Legal Remedies Act**

13 **(Cal. Civ. Code § 1750, *et seq.*)**

14 ***(On Behalf of the California Subclass)***

15 131. Plaintiff re-alleges and incorporates by reference the allegations contained in the
16 preceding paragraphs of this complaint, as though fully set forth herein.

17 132. Plaintiff brings this claim individually and on behalf of the California Subclass.

18 133. Plaintiff brings this action pursuant to California's Consumers Legal Remedies Act
19 ("CLRA"), Cal. Civ. Code § 1750, *et seq.*

20 134. The CLRA provides that "unfair methods of competition and unfair or deceptive acts
21 or practices undertaken by any person in a transaction intended to result or which results in the sale
22 or lease of goods or services to any consumer are unlawful."

23 135. The Products are "goods," as defined by the CLRA in California Civil Code §1761(a).

24 136. Defendant is a "person," as defined by the CLRA in California Civil Code §1761(c).

25 137. Plaintiff and members of the California Subclass are "consumers," as defined by the
26 CLRA in California Civil Code §1761(d).

27 138. Purchase of the Products by Plaintiff and members of the California Subclass are
28 "transactions," as defined by the CLRA in California Civil Code §1761(e).

1 139. Defendant violated Section 1770(a)(5) by representing that the Products have
2 “characteristics, . . . uses [or] benefits . . . which [they] do not have” in that the Products are falsely
3 labeled and advertised as being, among other things, non-toxic and earth friendly. Defendant knew
4 that consumers will often pay more for products with this attribute and have unfairly profited from
5 their false and misleading claims.

6 140. Similarly, Defendant violated section 1770(a)(7) by representing that the Products
7 “are of a particular standard, quality, or grade . . . if they are of another” by falsely and deceptively
8 labeling and advertising the Products as, among other things, non-toxic and earth friendly.

9 141. In addition, Defendant violated section 1770(a)(9) by advertising the Products “with
10 intent not to sell them as advertised” in that the Products are falsely labeled and advertised as, among
11 other things, being non-toxic and earth friendly.

12 142. Defendant’s uniform and material representations and omissions regarding the
13 Products were likely to deceive, and Defendant knew or should have known that its representations
14 and omissions were untrue and misleading.

15 143. Plaintiff and members of the California Subclass could not have reasonably avoided
16 such injury. Plaintiff and members of the California Subclass were unaware of the existence of the
17 facts that Defendant suppressed and failed to disclose; and Plaintiff and members of the California
18 Subclass would not have purchased the Products and/or would have purchased them on different
19 terms had they known the truth.

20 144. Plaintiff and members of the California Subclass have been directly and proximately
21 injured by Defendant’s conduct. Such injury includes, but is not limited to, the purchase price of
22 the Products and/or the price of the Products at the prices at which they were offered.

23 145. Given that Defendant’s conduct violated § 1770(a), Plaintiff and members of the
24 California Subclass are entitled to seek and seek injunctive relief to put an end to Defendant’s
25 violations of the CLRA. Plaintiff has no adequate remedy at law. Without equitable relief,
26 Defendant’s unfair and deceptive practices will continue to harm Plaintiff and the Class. Plaintiff
27 also seeks restitution of the amounts Defendant acquired through the unfair and deceptive business
28 practices described herein.

1 146. Moreover, Defendant's conduct is malicious, fraudulent, and wanton in that
2 Defendant intentionally misled and withheld material information from consumers to increase the
3 sale of the Products.

4 147. On May 13, 2020, pursuant to California Civil Code § 1782(a), Plaintiff on his own
5 behalf, and on behalf of members of the California Subclass, notified Defendant of the alleged
6 violations of the Consumers Legal Remedies Act.

7 148. Plaintiff further requests that the Court enjoin Defendant from continuing to employ
8 the unlawful methods, acts, and practices alleged herein pursuant to § 1780(a)(2). Plaintiff also
9 seeks compensatory, monetary, restitutionary, and punitive damages in an amount to be determined
10 at trial.

11 **COUNT FOUR**

12 **Breach of Express Warranty**

13 ***(On Behalf of the Nationwide Class and California Subclass)***

14 149. Plaintiff re-alleges and incorporates by reference the allegations contained in the
15 preceding paragraphs of this complaint, as though fully set forth herein.

16 150. Plaintiff brings this claim individually and on behalf of the Nationwide Class and
17 California Subclass.

18 151. By advertising and selling the Products at issue, Defendant made promises and
19 affirmations of fact on the Products' packaging and labeling, and through its marketing and
20 advertising, as described herein. This labeling and advertising constitutes express warranties and
21 became part of the basis of the bargain between Plaintiff and members of the Class and Defendant.

22 152. Defendant purports, through the Products' labeling and advertising, to create express
23 warranties that the Products are, among other things, non-toxic and earth friendly.

24 153. Despite Defendant's express warranties about the nature of the Products, the Products
25 are not non-toxic and earth friendly, and the Products are, therefore, not what Defendant represented
26 them to be.

27 154. Accordingly, Defendant breached express warranties about the Products and their
28 qualities because the Products do not conform to Defendant's affirmations and promises.

155. As a direct and proximate result of Defendant's breach of express warranty, Plaintiff and members of the Class were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial.

COUNT FIVE

Unjust Enrichment

(On Behalf of the Nationwide Class and California Subclass)

156. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

157. Plaintiff brings this claim individually and on behalf of the Nationwide Class and California Subclass.

158. By purchasing the Products, Plaintiff and members of the Class conferred a benefit on Defendant in the form of the purchase price of the Products.

159. Defendant had knowledge of such benefit.

160. Defendant appreciated the benefit because, were consumers not to purchase the Products, Defendant would not generate revenue from the sales of the Products.

161. Defendant's acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's fraudulent and misleading representations and omissions. Therefore, restitution and/or disgorgement of such economic enrichment is required.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for judgment against Defendant as follows:

- a. For an order declaring that Defendant's conduct violates the statutes and laws referenced herein;
- b. For an order requiring Defendant to immediately cease and desist from selling the unlawful Products in violation of law; enjoining Defendant from continuing to market, advertise, distribute, and sell the Products in the unlawful manner described herein; and ordering Defendant to engage in corrective action;

- c. For an order awarding, as appropriate, compensatory and monetary damages, restitution or disgorgement to Plaintiff and the Class for all causes of action;
- d. For an order awarding punitive damages;
- e. For an order awarding attorneys' fees and costs;
- f. For an order awarding pre-and post-judgment interest; and
- g. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

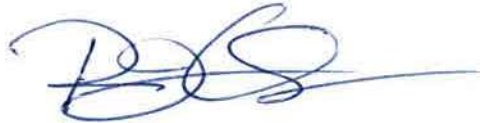
Plaintiff hereby demands a trial by jury on all causes of action.

Dated: August 24, 2020

Respectfully submitted,

CLARKSON LAW FIRM

By:



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SHIREEN M. CLARKSON
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By:



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