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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

*IN RE: S.C. JOHNSON & SON, INC.
WINDEX NON-TOXIC LITIGATION*

Master File No. 4:20-cv-03184-HSG
Assigned Hon. Hayward S. Gilliam

Consolidated Case Nos. 4:20-cv-03184-HSG
(*Moran v. S.C. Johnson & Son, Inc.*, filed
5/8/2020; and 4:20-cv-03820-DMR (*Waddell
v. S.C. Johnson & Son, Inc.*, filed 6/10/2020)

**CONSOLIDATED CLASS ACTION
COMPLAINT**

1. VIOLATION OF UNFAIR
COMPETITION LAW (Cal. Bus. &
Prof. Code §§ 17200, *et seq.*);
2. VIOLATION OF FALSE
ADVERTISING LAW (Cal. Bus. &
Prof. Code §§ 17500, *et seq.*);
3. VIOLATION OF CONSUMERS
LEGAL REMEDIES ACT (Cal. Civ.
Code §§ 1750, *et seq.*); and
4. BREACH OF WARRANTY
5. UNJUST ENRICHMENT

This Document Relates To: All Actions

DEMAND FOR JURY TRIAL

1 Plaintiffs Michelle Moran (“Moran”) and Monica Waddell (“Waddell”) (collectively,
2 “Plaintiffs”), individually and on behalf of all others similarly situated (the “Class” and/or “Class
3 Members”), bring this consolidated class action against Defendant S.C. Johnson & Son, Inc. (“S.C.
4 Johnson” or “Defendant”), and allege as follows, based on information and belief, except as
5 otherwise expressly stated as based on Plaintiff(s)’s personal knowledge:

6 **NATURE OF THE ACTION**

7 1. In an effort to increase profits and to gain an advantage over its lawfully acting
8 competitors, Defendant falsely and misleadingly labels certain of its Windex cleaning products as
9 having a “NON-TOXIC FORMULA.”



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1 2. Yet the products do *not* have a “NON-TOXIC FORMULA.” That is because the
2 products’ formulas (and thus the products themselves) can cause harm to humans, animals, and/or
3 the environment.

4 3. The unlawfully labeled products at issue are: Windex Vinegar Non-Toxic Formula
5 (pictured above); Windex Original Non-Toxic Formula; Windex Ammonia-Free Non-Toxic
6 Formula; and Windex Multi-Surface Non-Toxic Formula (collectively, the “Products”).

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

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

14 6. As a result, Plaintiffs bring this action individually and on behalf of those similarly
15 situated, and seek to represent a National Class and a California Subclass (defined *infra*). Plaintiffs
16 seek injunctive relief to stop Defendant’s unlawful labeling and advertising of the Products. In
17 addition, Plaintiffs seek damages, interest thereon, reasonable attorneys’ fees and costs, other
18 equitable relief, and disgorgement of all benefits, permissible under the law, that Defendant has
19 enjoyed from its conduct. Plaintiffs’ primary litigation objective is to enjoin Defendant’s unlawful
20 labeling practices and to obtain restitution for the National Class and California Subclass.

JURISDICTION

21
22 7. This Court has original jurisdiction over this action pursuant to the Class Action
23 Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or more
24 members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and
25 minimal diversity exists. This Court also has supplemental jurisdiction over the state law claims
26 pursuant to 28 U.S.C. § 1367.

VENUE

27
28 8. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of

1 the events and omissions giving rise to Plaintiffs' claims occurred in this District. In addition,
 2 Plaintiffs purchased the unlawful Products in this District, and Defendant has marketed, advertised,
 3 and sold the Products within this District.

4 **PARTIES**

5 9. Plaintiff Michelle Moran alleges the following based upon personal knowledge: (1)
 6 Moran, who is currently a resident of Pleasanton, California, purchased the Windex Original Non-
 7 Toxic Formula Product at a grocery store in Pleasanton, California for approximately \$4 in
 8 approximately 2019. (2) In making the purchase, Moran relied upon the Product's advertising and
 9 labeling claims that are the subject of this action—namely, the “Non-Toxic” claims. (3) If Moran
 10 had known that the Product can cause harm to humans, animals, and/or the environment, she would
 11 not have purchased the Product. (4) Moran continues to see the Products available for purchase and
 12 desires to purchase them again if they were, in fact, “non-toxic”—i.e., if they truthfully did not pose
 13 a risk of harm to humans, animals, and/or the environment. (5) Moran is, and continues to be,
 14 unable to rely on the “truth” of the Products' “non-toxic” advertising claims. (6) Moran does not
 15 know the meaning or import of the Products' ingredients. Based on information and belief, the
 16 labeling of the Product purchased by Moran is typical of the labeling of the Products purchased by
 17 members of the Class.

18 10. Plaintiff Monica Waddell alleges the following based upon personal knowledge: (1)
 19 Waddell, who is currently a resident of Santa Rosa, California, purchased the Windex Vinegar Non-
 20 Toxic Formula Product at retail store in Santa Rosa, California, for approximately \$4 in
 21 approximately 2019. (2) In making the purchase, Waddell relied upon the Product's advertising
 22 and labeling claims that are the subject of this action—namely, the “Non-Toxic” claims. (3) If
 23 Waddell had known that the Product can cause harm to humans, animals, and/or the environment,
 24 she would not have purchased the Product. (4) Waddell continues to see the Products available for
 25 purchase and desires to purchase them again if they were, in fact, “non-toxic”—i.e., if they truthfully
 26 did not pose a risk of harm to humans, animals, and/or the environment. (5) Waddell is, and
 27 continues to be, unable to rely on the “truth” of the Products' “non-toxic” advertising claims. (6)
 28 Waddell does not know the meaning or import of the Products' ingredients. Based on information

1 and belief, the labeling of the Product purchased by Waddell is typical of the labeling of the Products
2 purchased by members of the Class.

3 11. If the Products' formulas were actually non-toxic as labeled and advertised, Plaintiffs
4 would purchase the Products in the future. Since Plaintiffs would like to purchase the Products again
5 to obtain the advertised "non-toxic" benefits, they would purchase them again in the future—despite
6 the fact that they were once marred by false advertising or labeling—as Plaintiffs would reasonably,
7 but incorrectly, assume the Products were improved (cannot cause harm to humans, animals, and/or
8 the environment). In that regard, Plaintiffs are average consumers who are not sophisticated in the
9 chemistry or formulations of household cleaning products, so they are at risk of reasonably, but
10 incorrectly, assuming that Defendant fixed the formulation of the Products such that Plaintiffs may
11 buy them again, believing they were no longer falsely advertised and labeled. Plaintiffs are,
12 therefore, currently and in the future deprived of the ability to rely on the falsely advertised claims.

13 12. Defendant S.C. Johnson & Son, Inc. is a Wisconsin corporation with its principal
14 place of business in Racine, Wisconsin, and was doing business in the state of California during all
15 relevant times. Directly and through its agents, Defendant has substantial contacts with and receives
16 substantial benefits and income from and through the state of California, not only in the sale of the
17 Products to consumers at issue in this action, but also in the sale of numerous products to California
18 businesses and consumers, in an annual approximate amount that exceeds millions. Defendant is
19 one of the owners, manufacturers, and/or distributors of the Products, and is one of the companies
20 that created, authorized, and/or ratified the false, misleading, and deceptive labeling for the
21 Products. Defendant and its agents promoted, marketed, and sold the Products at issue in this
22 jurisdiction and in this judicial district. Defendant and its agents disseminated the false and
23 deceptive representations throughout this state and the nation through marketing, labeling, and
24 advertising deliberately intended to encourage purchase of the Products by taking advantage of
25 consumers' desire for non-toxic products that do not pose a risk of harm to humans, animals, and/or
26 the environment.

27 **FACTUAL ALLEGATIONS**

28 13. In recent years, consumers have become increasingly concerned about using

1 household cleaning products that are safe for humans, animals, and the environment. Consumers
 2 have poured billions of dollars into the “eco-friendly” and “natural” cleaning-products market. In
 3 fact, this market segment is expected to reach over \$40 billion by 2025.

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

10 15. Recognizing this problem, the United States Federal Trade Commission (“FTC”)
 11 created the “Green Guides” to help companies avoid making misleading and deceptive claims.¹ The
 12 Green Guides specifically address the use of the term “non-toxic” in the marketing of a product,
 13 stating, “A non-toxic claim likely conveys that a product, package, or service is non-toxic both for
 14 humans and for the environment generally.”² Accordingly, “[i]t is deceptive to misrepresent,
 15 directly or by implication, that a product, package or service is non-toxic. Non-toxic claims should
 16 be clearly and prominently qualified to the extent necessary to avoid deception.”³

17 16. Indeed, in commenting on the Green Guides, the Environmental Protection Agency
 18 (“EPA”) **“believes that marketers will ‘rarely, if ever, be able to adequately qualify and
 19 substantiate such a claim of ‘non-toxic’ in a manner that will be clearly understood by
 20 consumers.’ ”**⁴ The EPA further explained:

21 [A] “non-toxic” claim conveys that a product is non-toxic for both
 22 humans and for the environment generally. Demonstrating a lack of
 23 toxicity in a generic sense involves testing for a broad array of endpoints
 24 (e.g. acute toxicity, carcinogenicity and other chronic effects,
 25 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

26 ¹ See generally 16 C.F.R. § 260 – Guides for the Use of Environmental Marketing Claims.

27 ² 16 C.F.R. § 260.10(b).

28 ³ 16 C.F.R. § 260.10(a).

⁴ 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. (last accessed
 11/13/2020)

1 a resulting finding of “no adverse effect” for each of the endpoints
2 evaluated.⁵

3 17. “According to the EPA, this inference might prevent consumers from taking necessary
4 precautions in handling a product.”⁶

5 18. The Green Guides also provide examples of marketing claims in order to “provide the
6 Commission’s views on how **reasonable consumers** likely interpret certain claims.”⁷ The FTC
7 provided the following relevant example:⁸

8 A marketer advertises a cleaning product as “essentially non-toxic” and
9 “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.

10 19. This example demonstrates that even when “non-toxic” claims are qualified by such
11 terms as “essentially” or “practically,” they are nonetheless construed by reasonable consumers as
12 “not pos[ing] any risk to humans or the environment, including household pets.” Thus, broad and
13 unqualified non-toxic claims, such as the ones present on the Products, would even more strongly
14 convey the meaning that the Products do not pose any risk of harm to humans, animals, or the
15 environment.

16 **THE NATIONAL ADVERTISING DIVISION OF THE BETTER BUSINESS BUREAU**

17 20. The National Advertising Division (“NAD”) is the investigative unit of the Better
18 Business Bureau. The NAD is charged with monitoring and evaluating the truth and accuracy of
19 advertisements directed toward consumers. As relevant here, the NAD recently evaluated
20 Defendant’s Windex Vinegar Non-Toxic Formula Product.⁹ As a result of its evaluation, on March
21 24, 2020, the NAD recommended that Defendant “discontinue the claim ‘non-toxic’ on the package
22

23 ⁵ *Id.* See also Fed. Trade Comm’n, The Green Guide Statement and Business Purpose (2012)
24 (available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf> (last accessed 11/13/2020)) (“Similarly, [Consumers
25 Union] suggested that because ‘non-toxic’ claims are so difficult to substantiate and for consumers
26 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.’”).

27 ⁶ *Id.*

⁷ 16 C.F.R. § 260.1(d).

⁸ 16 C.F.R. § 260.10.

28 ⁹ <https://bbbprograms.org/programs/all-programs/nad/nad-press-releases/nad-recommends-s.c.-johnson-discontinue-non-toxic-claim-on-windex-vinegar-glass-cleaner-advertiser-to-appeal-to-narb> (last accessed 11/13/2020)

1 labeling of its Windex Vinegar Glass Cleaner.”¹⁰

2 21. In explaining its decision, the NAD stated:

3 After considering the guidance offered by the Federal Trade
4 Commission’s Guides for the Use of Environmental Marketing Claims
5 (“Green Guides”) and FTC precedent, NAD determined that the term
6 “non-toxic,” as used on the label of Windex Vinegar Glass Cleaner,
7 reasonably conveys a message that the product **will not harm people**
8 **(including small children), common pets, or the environment.**
9 **Importantly, NAD noted that a reasonable consumer’s**
10 **understanding of the concept of “will not harm” is not limited to**
11 **death, but also various types of temporary physical illness, such as**
12 **vomiting, rash, and gastrointestinal upset.**¹¹

9 22. Even though Defendant had provided the NAD with substantiation for the non-toxic
10 claim, the NAD determined that “the evidence fell short of providing the conclusive assessment of
11 toxicity necessary to support a ‘non-toxic’ claim.” Thus, the NAD recommended that Defendant
12 discontinue the claim “non-toxic.”¹²

13 23. Defendant appealed the NAD’s decision to the National Advertising Review Board
14 (“NARB”), which is the appellate body of the Better Business Bureau’s self-regulation program.¹³

15 24. However, on August 6, 2020, the NARB agreed with the NAD’s decision and
16 recommended that Defendant discontinue the non-toxic claim on the labeling of its Windex
17 product.¹⁴ The NARB “express[ed] concern that an unqualified non-toxic claim will lead
18 reasonable consumers to conclude not only that a misused cleaning product does not pose a risk
19 of death or serious consequences, but also that product misuse **poses no health risks**, even those
20 that are not severe or are more transient in nature”.¹⁵

21 25. Because of concerns about safety, consumers have increasingly sought out safe and

22 ¹⁰ *Id.*

23 ¹¹ *Id.* (emphasis added).

24 ¹² *Id.*

25 ¹³ See [https://bbbprograms.org/media-center/newsroom/nad-recommends-s.c.-johnson-](https://bbbprograms.org/media-center/newsroom/nad-recommends-s.c.-johnson-discontinue-non-toxic-claim-on-method-cleaning-products-advertiser-to-appeal-to-narb)
26 [discontinue-non-toxic-claim-on-method-cleaning-products-advertiser-to-appeal-to-narb](https://bbbprograms.org/media-center/newsroom/nad-recommends-s.c.-johnson-discontinue-non-toxic-claim-on-method-cleaning-products-advertiser-to-appeal-to-narb) (last
27 accessed 11/13/2020); [https://bbbprograms.org/media-center/newsroom/nad-recommends-s.c.-](https://bbbprograms.org/media-center/newsroom/nad-recommends-s.c.-johnson-discontinue-non-toxic-claim-on-windex-vinegar-glass-cleaner-advertiser-to-appeal-to-narb)
28 [johnson-discontinue-non-toxic-claim-on-windex-vinegar-glass-cleaner-advertiser-to-appeal-to-](https://bbbprograms.org/media-center/newsroom/nad-recommends-s.c.-johnson-discontinue-non-toxic-claim-on-windex-vinegar-glass-cleaner-advertiser-to-appeal-to-narb)
29 [narb-](https://bbbprograms.org/media-center/newsroom/narb-recommends-s.c.-johnson-discontinue-unqualified-non-toxic-claim-on-windex-vinegar-glass-cleaner)
30 [recommends-s.c.-johnson-discontinue-unqualified-non-toxic-claim-on-windex-vinegar-glass-](https://bbbprograms.org/media-center/newsroom/narb-recommends-s.c.-johnson-discontinue-unqualified-non-toxic-claim-on-windex-vinegar-glass-cleaner)
31 [cleaner](https://bbbprograms.org/media-center/newsroom/narb-recommends-s.c.-johnson-discontinue-unqualified-non-toxic-claim-on-windex-vinegar-glass-cleaner) (last accessed 11/13/2020).

32 ¹⁴ See [https://bbbprograms.org/media-center/newsroom/narb-recommends-s.c.-johnson-](https://bbbprograms.org/media-center/newsroom/narb-recommends-s.c.-johnson-discontinue-unqualified-non-toxic-claim-on-windex-vinegar-glass-cleaner)
33 [discontinue-unqualified-non-toxic-claim-on-windex-vinegar-glass-cleaner](https://bbbprograms.org/media-center/newsroom/narb-recommends-s.c.-johnson-discontinue-unqualified-non-toxic-claim-on-windex-vinegar-glass-cleaner) (last accessed
34 11/13/2020).

35 ¹⁵ *Id.* (emphasis added).

1 non-toxic household cleaning products, the sales of which have surged in recent years.
2 Unfortunately, rather than providing consumers with products that actually have a non-toxic
3 formula, Defendant has advertised, labeled, and sold products that can cause harm to humans,
4 animals, and the environment.

5
6 **THE PRODUCTS DO NOT HAVE A “NON-TOXIC FORMULA”**

7 26. As described *supra*, Defendant manufactures, markets, advertises, labels, and sells
8 Windex Vinegar Non-Toxic Formula (pictured above); Windex Original Non-Toxic Formula;
9 Windex Ammonia-Free Non-Toxic Formula; and Windex Multi-Surface Non-Toxic Formula.

10 27. True and correct images of the Products are as follows:

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1 **Windex Vinegar Non-Toxic Formula**



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Windex Original Non-Toxic Formula



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Windex Ammonia-Free Non-Toxic Formula

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Windex Multi-Surface Non-Toxic Formula



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1 29. Defendant prominently and uniformly labels the front display panel of the Products
2 with the label “NON-TOXIC FORMULA.” The label is set against—and highlighted by—an eye-
3 catching background and/or font color.

4 30. Based on the “NON-TOXIC FORMULA” representations, reasonable consumers,
5 including Plaintiffs, believe that the Products do not pose any risk of harm to humans, animals,
6 and/or the environment.

7 31. However, in spite of the labeling, the Products do, in fact, pose a risk of harm to
8 humans, animals, and/or the environment. That is because they contain certain ingredients, which,
9 at their given concentrations in the Products, can cause harm to humans, animals, and/or the
10 environment. These ingredients include, but are not limited to, the following:

- 11 a. **Acetic Acid.** Upon information and belief, acetic acid can cause severe ocular
12 irritation at in-use concentrations.¹⁶
- 13 b. **Alkylbenzene Sulfonate (Linear Alkylbenzene Sulfonate (“LAS”)).** Upon
14 information and belief, alkylbenzene sulfonate, including sodium C10-16
15 alkylbenzenesulfonate, can cause skin and eye irritation at in-use concentrations.
16 In addition, upon information and belief, alkylbenzene sulfonate can cause
17 damage to certain plants and seedlings.
- 18 c. **Ammonium Hydroxide.** Upon information and belief, ammonium hydroxide
19 can cause conjunctivitis and corneal damage at in-use concentrations.
- 20 d. **Benzyl Benzoate.** Upon information and belief, benzyl benzoate is a skin
21 sensitizer at in-use concentrations.
- 22 e. **Fragrances.** Fragrance refers to the combination of chemicals (or “Fragrance
23 Components”) in a Product that gives the Product its distinct scent. The Fragrance
24 Components in the Products include, in varying combinations: (1) **4-Tert-**

25
26 ¹⁶ “In-use concentrations” refers to the concentration or percentage by weight of the ingredient in
27 the Products. Despite claiming to “believe that transparency is an essential part of choosing safe
28 and effective products for your home,” and unlike many companies that sell consumer products,
Defendant does not disclose the ingredients’ concentrations or percentages by weight in the
Products. Therefore, these allegations are made on information and belief, based on what the
ingredients’ likely concentrations or percentages by weight are in the Products.

1 **Butylcyclohexyl Acetate; (2) Butylphenyl Methylpropional; (3) C11-15 Sec-**
 2 **Pareth-12; (4) Citronellol; (5) Citrus Aurantium Dulcis Peel Oil; (6)**
 3 **Hexamethylindanopyran; (7) Hexyl Cinnamal; (8) Linalool; (9) Linalyl**
 4 **Acetate; (10) Methylpropional; (11) Terpineol; and (12) Tetramethyl**
 5 **Acetyloctahydronaphthalenes.**

6 f. Fragrances have an intrinsic ability to cause sensitization by skin contact. And
 7 given human heterogeneity, the achievement of zero risk of induction of contact
 8 dermatitis from fragranced products is unattainable, regardless of the small
 9 amount of fragrance added to consumer products. Indeed, a sizeable segment of
 10 the American population reports adverse reactions to fragranced products, with
 11 30.5% reporting that scented products are irritating and 19% experiencing
 12 headaches, breathing difficulties, and other problems from fragranced products.
 13 In addition, individuals with asthma and chemical sensitivity report adverse
 14 effects to scented products in higher proportions than the general public.
 15 Therefore, certain consumers exposed to these fragrances will experience some
 16 combination of eye, nose, and/or throat irritation, respiratory difficulty, possibly
 17 bronchoconstriction or asthma-like reaction, and central nervous systems
 18 reactions (e.g., dizziness, incoordination, confusion, fatigue).

19 g. In fact, Defendant admits on its website—but *not* on the Products’ labeling—that
 20 each of the Fragrance Components listed *supra* are **skin allergens**. Moreover,
 21 Citronellol; Cinnamal; and Linalool are all listed on the European Union Allergens
 22 List as recognized allergens.

23 h. Defendant fails to disclose these allergens despite its own survey research that
 24 found “88 percent [of Nordic consumers] would like to know the list of allergens
 25 in their household cleaning products” and “[r]esearch, and our conversations with
 26 consumers and stakeholders around the world, show a clear and growing desire
 27 for companies to provide more information what goes into their products and
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1 why.”¹⁷

- 2 i. **Isopropanolamine (“IPA”)**. Upon information and belief, isopropanolamine can
- 3 causes conjunctivitis at in-use concentrations.
- 4 j. **Lactic Acid**. Upon information and belief, lactic acid can cause erythema,
- 5 desquamation, and drying of the skin at in-use concentrations.
- 6 k. **Lauramine Oxide**. Upon information and belief, lauramine oxide can cause skin
- 7 irritation, with a potential for cumulative irritation at in-use concentrations. In
- 8 addition, upon information and belief, lauramine oxide can cause erythema with
- 9 edema, fissuring, and epithelial desquamation at in-use concentrations.
- 10 l. **Propylene Glycol (Propane, 1,2-Diol)**. Upon information and belief, propylene
- 11 glycol is a skin sensitizer in certain populations.
- 12 m. **Sodium Hydroxide**. Upon information and belief, sodium hydroxide can cause
- 13 skin irritation and can be corrosive at in-use concentrations.
- 14 n. **Sodium Petroleum Sulfonate**. While dermal irritation studies are mixed, upon
- 15 information and belief, sodium petroleum sulfonate can cause skin irritation at in-
- 16 use concentrations, with reactions ranging from erythema to fissure formation,
- 17 accompanied by scaling.
- 18 o. **Sodium Xylene Sulfonate**. Upon information and belief, sodium xylene
- 19 sulfonate can cause skin irritation at in-use concentrations.
- 20 p. **2-(Hexyloxy)-Ethanol (Ethylene Glycol-N-Monohexyl Ether (“EGHE”))**.
- 21 Upon information and belief, 2-(Hexyloxy)-Ethanol can cause eye injury at in-use
- 22 concentrations.

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27 ¹⁷ [https://www.scjohnson.com/en/press-releases/2017/october/sc-johnson-leading-discussion-on-](https://www.scjohnson.com/en/press-releases/2017/october/sc-johnson-leading-discussion-on-transparency-and-earning-consumer-trust)

28 [transparency-and-earning-consumer-trust](https://www.scjohnson.com/en/press-releases/2017/october/sc-johnson-leading-discussion-on-transparency-and-earning-consumer-trust) (last accessed) (citing [https://www.edelman.com/news-](https://www.edelman.com/news-awards/2017-edelman-trust-barometer-reveals-global-implosion)

[awards/2017-edelman-trust-barometer-reveals-global-implosion](https://www.edelman.com/news-awards/2017-edelman-trust-barometer-reveals-global-implosion) (last accessed 11/13/2020)

regarding 2017 Edelman Trust Barometer Study commissioned by Defendant).

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THE PRODUCTS' INGREDIENTS

32. The following describes the ingredients contained in each Product:

a. **Windex Vinegar Non-Toxic Formula Product**

- (1) 2-Hexoxyethanol
- (2) Acetic Acid
- (3) Lactic Acid
- (4) Linalool
- (5) Linalyl Acetate
- (6) Propylene Glycol

b. **Windex Original Non-Toxic Formula Product**

- (1) 2-Hexoxyethanol
- (2) Ammonium Hydroxide
- (3) Citronellol
- (4) Citrus Aurantium Dulcis Peel Oil
- (5) Hexyl Cinnamal
- (6) Isopropanolamine
- (7) Linalool
- (8) Methylpropional
- (9) Sodium C10-16 Alkylbenzenesulfonate
- (10) Sodium Xylene Sulfonate
- (11) Terpeneol

c. **Windex Ammonia-Free Non-Toxic Formula Product**

- (1) 2-Hexoxyethanol
- (2) 4-Tert-Butylcyclohexyl Acetate
- (3) Benzyl Benzoate
- (4) Butylphenyl Methylpropional
- (5) C11-15 Sec-Pareth-12
- (6) Isopropanolamine

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- 1 (7) Hexamethylindanopyran
- 2 (8) Hexyl Cinnamal
- 3 (9) Lauramine Oxide
- 4 (10) Sodium C10-16 Alkylbenzenesulfonate
- 5 (11) Sodium Hydroxide
- 6 (12) Sodium Xylene Sulfonate
- 7 (13) Tetramethyl Acetyloctahydronaphthalenes

8 d. **Windex Multi-Surface Non-Toxic Formula Product**

- 9 (1) 2-Hexoxyethanol
- 10 (2) Linalool
- 11 (3) Linalyl Acetate
- 12 (4) Propylene Glycol
- 13 (5) Sodium C10-16 Alkylbenzenesulfonate
- 14 (6) Sodium Hydroxide
- 15 (7) Sodium Petroleum Sulfonate
- 16 (8) Sodium Xylene Sulfonate

17 33. In light of these ingredients at their in-use concentrations in the Products, the
 18 Products' formulas (and thus the Products themselves) can cause harm to humans, animals, and/or
 19 the environment. Accordingly, the Products do not have a "NON-TOXIC FORMULA," which was
 20 confirmed by the Environmental Working Group.

21
 22 **THE ENVIRONMENTAL WORKING GROUP'S ANALYSIS OF CERTAIN OF THE**
 23 **PRODUCTS CONFIRMS THEY DO NOT HAVE A "NON-TOXIC FORUMULA"**

24 34. The Environmental Working Group ("EWG") is a nonprofit, non-partisan
 25 organization that specializes in research and advocacy in the areas of toxic chemicals, drinking water
 26 pollutants, agricultural subsidies, and corporate accountability.¹⁸

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28 ¹⁸ See <https://www.ewg.org/about-us> (last accessed 11/13/2020); see also
https://en.wikipedia.org/wiki/Environmental_Working_Group (last accessed 11/13/2020).

1 35. As relevant here, EWG noted:

2 U.S. law allows manufacturers of cleaning products to use almost any
3 ingredient they wish, including known carcinogens and substances that
4 can harm fetal and infant development. And the government doesn't
5 review the safety of products before they're sold. To fill those gaps,
6 EWG's staff scientists compared the ingredients listed on cleaning
7 product labels, websites and worker safety documents with the
8 information available in the top government, industry and academic
9 toxicity databases and the scientific literature on health and
10 environmental problems tied to cleaning products. They used that
11 information to create EWG's Guide to Healthy Cleaning, which
12 provides you with easy-to-navigate hazard ratings for a wide range of
13 cleaners and ingredients.¹⁹

14 36. Specifically, EWG's Guide to Healthy Cleaning "is an interactive product database
15 that contains ingredients in more than 2,000 products. EWG obtained detailed information on these
16 products from manufacturers' websites, online retailers and product packaging."²⁰ In addition:

17 EWG created a core, integrated database of health and environmental
18 assessments for chemicals and chemical classes by pooling data from
19 15 databases and sources created by government agencies, industry
20 panels, academic institutions or other credible bodies. EWG used these
21 datasets to assess potential health and environmental hazards for
22 cleaning product ingredients and evaluated how the toxicity information
23 in these datasets should be applied. . . . For many substances in EWG's
24 Guide to Healthy Cleaning, we supplemented information from these
25 datasets with additional toxicity information collected from credible
26 scientific sources and peer-reviewed research. EWG scientists reviewed
27 each piece of manually entered information and determined how it could
28 be applied to the appropriate substance. Finally, EWG staff constructed
a dataset describing U.S. and foreign regulations as to the presence or
concentration of specific chemicals of concern in cleaning products. . .
. EWG staff cross-linked the chemicals in our ingredient database with
the compounds in the toxicity datasets we compiled. These pairs form
the basis for the ratings shown in EWG's Guide to Healthy Cleaning.²¹

37. Using the extensive data EWG collected concerning thousands of products, including
their ingredients and toxicity, "EWG created a scoring system to give consumers the best
information available to make informed, healthy choices. The system analyzes toxicity and hazard
information relevant to human health and the environment and gives cleaners a letter grade
corresponding to how well or poorly they rate."²²

38. In addition, "Severity values are scaled in high, moderate and low categories

¹⁹ <https://www.ewg.org/guides/cleaners/content/methodology/> (last accessed 11/13/2020).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

1 according to their relative effects. . . . Moderate – Includes endpoints associated with: Significant
 2 but reversible physical discomfort, including respiratory or skin irritation; Dermal and respiratory
 3 allergies; Classification of moderate acute or chronic toxicity based on a numeric value, such as a
 4 mid-range [No Observable Effect Level].”²³

5 39. As relevant here, EWG analyzed the Windex Ammonia-Free Non-Toxic Formula
 6 Product.²⁴ EWG assessed the Product as having “Moderate Concern” in the “Asthma/Respiratory”
 7 category, and “Some Concern” in the “Skin Allergies & Irritation” and “Developmental &
 8 Reproductive Toxicity” categories.²⁵

9 40. EWG also determined the Product suffers from “[p]oor disclosure,” is “[c]orrosive,”
 10 and [m]ay contain ingredients with potential for respiratory effects; chronic aquatic toxicity; [and]
 11 developmental/endocrine/reproductive effects.”²⁶ As a result, EWG scored the Product with a grade
 12 of “D” on a scale of “A-F,” where “A” is the best grade and “F” is the worst grade.

13 41. EWG also analyzed the Windex Original Non-Toxic Formula Product.²⁷ EWG
 14 assessed the Product as having “Moderate Concern” in the “Asthma/Respiratory” and
 15 “Environment” categories, and “Some Concern” in the “Skin Allergies & Irritation” category.²⁸

16 42. EWG also determined the Product “[m]ay contain ingredients with potential for acute
 17 aquatic toxicity; respiratory effects; skin irritation/allergies/damage.”²⁹ As a result, EWG scored the
 18 Product with a grade of “D” on a scale of “A-F,” where “A” is the best grade and “F” is the worst
 19 grade.³⁰

20 **PLAINTIFFS AND REASONABLE CONSUMERS WERE MISLED BY THE PRODUCTS**

21 43. Labeling the Products as having a “NON-TOXIC FORMULA” when the Products
 22
 23

24 ²³ *Id.*

25 ²⁴ EWG describes this product as “Windex Crystal Rain.” *See*
<https://www.ewg.org/guides/cleaners/1399-WindexCrystalRain/> (last accessed 11/13/2020).

26 ²⁵ *Id.*

27 ²⁶ *Id.*

28 ²⁷ EWG describes this product as “Windex Original Glass Cleaner with Ammonia-D.” *See*
<https://www.ewg.org/guides/cleaners/2505-WindexOriginalGlassCleanerwithAmmoniaD/> (last
 accessed 11/13/2020).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

1 can cause harm to humans, animals, and/or the environment is wholly misleading and deceptive.

2 44. By misleadingly and deceptively labeling the Products, as described herein,
3 Defendant sought to take advantage of consumers’ desire for true non-toxic, safe cleaning products.
4 Defendant has done so at the expense of unwitting consumers—many of whom seek to protect their
5 household members and pets—and Defendant’s lawfully acting competitors, over whom Defendant
6 maintains an unfair competitive advantage.

7 45. The “NON-TOXIC FORMULA” representations were and are material to reasonable
8 consumers, including Plaintiffs, in making purchasing decisions. Indeed, Plaintiffs relied on
9 Defendant’s misrepresentations, described herein, in making the decision to purchase the Products.

10 46. At the time Plaintiffs purchased the Products, Plaintiffs did not know, and had no
11 reason to know, that the Products’ labeling and advertising were false, misleading, deceptive, and
12 unlawful as set forth herein.

13 47. Defendant materially misled and failed to adequately inform reasonable consumers,
14 including Plaintiffs, that the Products can cause harm to humans, animals, and/or the environment.

15 48. Plaintiffs would not have purchased the Products if they had known the truth.
16 Accordingly, based on Defendant’s material misrepresentations and omissions, reasonable
17 consumers, including Plaintiffs, purchased the Products to their detriment.

18 49. It is likely, however, that Plaintiffs would purchase the Products in the future if they
19 were properly labeled, and/or the Products complied with the labeling and advertising statements.
20 Specifically, Plaintiffs would like to purchase the Products again if the Products no longer posed a
21 risk of harm to humans, animals, and/or the environment. However, Plaintiffs do not know whether
22 the Products will be truly non-toxic and, otherwise, are unable to rely in the future on the Products’
23 advertising claims.

24
25 **THE PRODUCTS ARE SUBSTANTIALLY SIMILAR**

26 50. Plaintiff Moran purchased the Windex Original Non-Toxic Formula Product, and
27 Plaintiff Waddell purchased the Windex Vinegar Non-Toxic Formula Product. The additional-
28 unpurchased Products, Ammonia Free Non-Toxic Formula and Multi-Surface Non-Toxic Formula,

1 are substantially similar to the Products purchased by Plaintiffs. All four Products are cleaning
 2 products sold by Defendant that are advertised and intended to clean glass.³¹ All four Products are
 3 marketed, advertised, and sold under the Windex brand. All four Products are sold to consumers as
 4 “Non-Toxic” products. All four Products are labeled with the same “NON-TOXIC FORMULA”
 5 claim, which is presented in the same metallic silver banner and placed in the same location on each
 6 Product’s packaging. All four Products are sold in clear plastic “spray bottles” of identical shape
 7 and size, and all are designed to be applied by consumers in the same way. All Products can cause
 8 harm to humans, animals, and/or the environment. All Products contain overlapping ingredients,
 9 including ingredients that pose a risk of harm to eyes and skin. All Products contain fragrances. All
 10 The misleading effect of the Products’ labels is the same for all Products.

11 CLASS ACTION ALLEGATIONS

12
 13 51. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil
 14 Procedure 23(b)(2) and 23(b)(3) on behalf of themselves and all others similarly situated, and as
 15 members of the Classes defined as follows:

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

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

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

21 52. Excluded from the Class are: (i) Defendant, its assigns, successors, and legal
 22 representatives; (ii) any entities in which Defendant has controlling interests; (iii) federal, state,
 23 and/or local governments, including, but not limited to, their departments, agencies, divisions,
 24 bureaus, boards, sections, groups, counsels, and/or subdivisions; (iv) all persons presently in
 25 bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; and (v) any

26
 27
 28 ³¹ The Multi-Surface product is designed and intended as a glass cleaner. See
<https://www.windex.com/en-us/products/multisurface-cleaner-lavender> (last accessed 11/13/2020)
 (Defendant’s website regarding Multi-Surface cleaning applications); *see also, supra*, § ¶ 27
 (Multi-Surface product label advertising a streak free shine).

1 judicial officer presiding over this matter and person within the third degree of consanguinity to
2 such judicial officer.

3 53. Plaintiffs reserve the right to amend or otherwise alter the class definitions presented
4 to the Court at the appropriate time in response to facts learned through discovery, legal arguments
5 advanced by Defendant, or otherwise.

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

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

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

- 16 a. Whether Defendant engaged in unlawful, unfair or deceptive business practices
17 by advertising and selling the Products;
- 18 b. Whether Defendant's conduct of advertising and labeling the Products as having
19 a "NON-TOXIC FORMULA" when the Products' formulas (and thus the
20 Products themselves) can cause harm to humans, animals, and/or the environment
21 constitutes an unfair method of competition, or unfair or deceptive act or practice,
22 in violation of Civil Code section 1750, *et seq.*;
- 23 c. Whether Defendant used deceptive representations in connection with the sale of
24 the Products in violation of Civil Code section 1750, *et seq.*;
- 25 d. Whether Defendant represented that the Products have characteristics or quantities
26 that they do not have in violation of Civil Code section 1750, *et seq.*;
- 27 e. Whether Defendant advertised the Products with intent not to sell them as
28 advertised in violation of Civil Code section 1750, *et seq.*;

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- 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 Plaintiffs and the Class paid more money for the Products than they actually received;
- l. How much more money Plaintiffs and the Class paid for the Products than they actually received;
- m. Whether Defendant’s conduct constitutes breach of express warranty;
- n. Whether Plaintiffs and the Class are entitled to equitable and/or injunctive relief;
- o. Whether Defendant was unjustly enriched by its unlawful conduct;
- p. Whether Plaintiffs and the Class have sustained damages as a result of Defendant’s unlawful conduct; and
- q. The proper measure of damages sustained by Plaintiffs and Class Members.

57. **Typicality:** Plaintiffs’ claims are typical of the claims of the Class Members they seek to represent because Plaintiffs, 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. Plaintiffs and the Class sustained similar injuries arising out of Defendant’s conduct. Plaintiffs’ and Class Members’ claims arise from the same practices and course of conduct and are based on the same legal theories.

1 58. **Adequacy:** Plaintiffs are adequate representatives of the Class they seek to represent
2 because their interests do not conflict with the interests of the Class Members Plaintiffs seek to
3 represent. Plaintiffs will fairly and adequately protect Class Members’ interests and they have
4 retained counsel experienced and competent in the prosecution of complex class actions, including
5 complex questions that arise in consumer protection litigation.

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

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

24 60. Because Plaintiffs seek relief for all members of the Class, the prosecution of separate
25 actions by individual members would create a risk of inconsistent or varying adjudications with
26 respect to individual members of the Class, which would establish incompatible standards of
27 conduct for Defendant.

28 61. 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.

62. Plaintiffs and Plaintiffs’ 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

**Violation of Unfair Competition Law (“UCL”)
 (California Bus. & Prof. Code §§ 17200, *et seq.*)
 (On Behalf of Plaintiffs and the California Class)**

63. Plaintiffs re-allege and incorporate by reference all allegations contained in the complaint, as though fully set forth herein.

64. Plaintiffs bring this cause of action pursuant to California’s Unfair Competition Law (“UCL”), codified at Cal. Bus. & Prof. Code §§ 17200, *et seq.*, on Plaintiffs’ behalf as individuals and on behalf of only the California Class.

65. Defendant, in its advertising and packaging of the Products, made false and misleading statements and fraudulent omissions regarding the quality and characteristics of the Products, specifically, labeling the Products as having a “NON-TOXIC FORMULA” when the Products’ formulas (and thus the Products themselves) can cause harm to humans, animals, and/or the environment. Such claims and omissions appear on the label and packaging of the Products.

66. Defendant’s labeling and advertising of the Products has led and continues to lead reasonable consumers, including Plaintiffs, to believe that the Products are non-toxic.

67. Defendant does not have any reasonable basis for the claims about the Products made in Defendant’s advertising and on the Products’ packaging or labeling because the Products’ formulas (and thus the Products themselves) can cause harm to humans, animals, and/or the environment. Defendant has known, or reasonably should have known, that the Products’ formulas are not “non-toxic,” and, therefore, Defendant has intentionally and/or recklessly advertised and marketed the Products to deceive reasonable consumers into believing that the Products’ formulas (and thus the Products themselves) are “non-toxic”.

68. The false, misleading, and/or deceptive misrepresentations by Defendant alleged herein constitute unfair, unlawful, and fraudulent business practices within the meaning of California Business and Professions Code Section 17200.

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

7 70. Defendant failed to avail itself of reasonably available, lawful alternatives to further
8 its legitimate business interests.

9 71. All of the conduct alleged herein occurs and continues to occur in Defendant’s
10 business. Defendant’s wrongful conduct is part of a pattern, practice and/or generalized course of
11 conduct, which will continue on a daily basis until Defendant voluntarily alters its conduct or it is
12 otherwise ordered to do so.

13 72. Pursuant to Business and Professions Code Sections 17203 and 17535, Plaintiffs and
14 the members of the Class seek an order of this Court enjoining Defendant from continuing to engage,
15 use, or employ its practice of mislabeling and falsely or misleadingly advertising the sale and use
16 of the Products. Likewise, Plaintiffs and the members of the Class seek an order requiring Defendant
17 to disclose such misrepresentations, and to rectify the effective consumer misconception of the true
18 nature of Defendant’s Products. Plaintiffs have no adequate remedy at law to stop ongoing and
19 likely future harm or otherwise rectify the pervasive public misconception fostered and facilitated
20 by Defendant’s misconduct. Without equitable relief, Defendant’s unlawful, fraudulent, and unfair
21 practices will continue to harm Plaintiffs and the Class.

22 73. Plaintiffs also seek restitution pursuant to the UCL in the amounts Defendant acquired
23 through the unfair, unlawful, and fraudulent business practices described herein.

24 74. Plaintiffs and the Class have suffered injury in fact and have lost money or property
25 as a result of and in reliance upon Defendant’s false representations.

26 75. Plaintiffs and the Class would not have purchased the Products but for the “NON-
27 TOXIC FORMULA” representations.

28 76. The UCL prohibits unfair competition and provides, in pertinent part, that “unfair

1 competition shall mean and include unlawful, unfair or fraudulent business practices and unfair,
2 deceptive, untrue or misleading advertising.” Cal. Bus & Prof. Code § 17200.

3 **A. “Unfair” Prong**

4 77. Under California’s Unfair Competition Law, Cal. Bus. & Prof. Code Section 17200,
5 *et seq.*, a challenged activity is “unfair” when “any injury it causes outweighs any benefits provided
6 to consumers and the injury is one that the consumers themselves could not reasonably avoid.”
7 *Camacho v. Auto Club of Southern California*, 142 Cal.App.4th 1394, 1403 (2006). Some courts
8 conduct a balancing test to decide if a challenged activity amounts to unfair conduct under California
9 Business and Professions Code Section 17200. They “weigh the utility of the defendant’s conduct
10 against the gravity of the harm to the alleged victim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d
11 1152, 1169 (9th Cir. 2012). Some courts require that “unfairness must be tethered to some
12 legislative declared policy or proof of some actual or threatened impact on competition.” *Lozano v.*
13 *AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

14 78. Here, the California legislature has demonstrated a vested interest in protecting
15 consumers from a manufacturer and/or seller’s false, deceptive, and/or misleading advertising
16 claims in enacting several consumer protection statutes, including the Unfair Competition Law (Cal.
17 Bus. & Prof. Code 17200, *et seq.*), False Advertising Law (Cal. Bus. & Prof. Code 17500 *et seq.*),
18 and Consumers Legal Remedies Act (Cal. Civ. Code 1750, *et seq.*). The legislature has also
19 demonstrated, in the enactment of these statutes, a vested interest in prohibiting manufacturers
20 and/or sellers from gaining an unfair advantage over its competitors through unfair, unlawful, and/or
21 fraudulent business practices, including false, deceptive, and misleading advertising of consumer
22 products. Defendant’s conduct of labeling and advertising the Products as having a “NON-TOXIC
23 FORMULA” when the Products’ formulas (and thus the Products) pose a risk of harm to humans,
24 animals, and/or the environment has no utility and financially harms purchasers. There is no
25 legitimate business interest in misrepresenting the Products as “non-toxic” when they are not in fact
26 “non-toxic”. The practice does not confer any benefit to consume. Rather, it injures consumers,
27 who do not receive products commensurate with their reasonable expectations based on Defendant’s
28 false, misleading, and deceptive advertising claims, and it injures lawfully acting competitors for

1 whom Defendant's false and misleading advertising claims provide an unfair competitive
2 advantage. Consumers cannot avoid any of the injuries caused by Defendant's deceptive labeling
3 and advertising of the Products. Accordingly, consumers overpay for the Products and receive
4 Products of lesser standards than what they reasonably expected to receive. Therefore, the injuries
5 caused by Defendant's deceptive labeling and advertising outweigh any purported, albeit non-
6 existent, benefits derived from the false advertising claims.

7 79. Defendant's labeling and advertising of the Products, as alleged herein, is false,
8 deceptive, misleading, and unreasonable, and constitutes unfair conduct.

9 80. Defendant knew or should have known of its unfair conduct.

10 81. As alleged herein, the misrepresentations by Defendant constitute an unfair business
11 practice within the meaning of California Business and Professions Code Section 17200. All of the
12 conduct alleged herein has occurred and continues to occur in Defendant's business. Defendant's
13 wrongful conduct is part of a pattern or generalized course of conduct repeated on thousands of
14 occasions daily.

15 82. There existed reasonably available alternatives to further Defendant's legitimate
16 business interests, other than the conduct described herein. Defendant could have refrained from
17 labeling the Products as having a "NON-TOXIC FORMULA".

18 83. Pursuant to Business and Professions Code section 17203, Plaintiffs and the Class
19 seek an order of this Court enjoining Defendant from continuing to engage, use, or employ its
20 practice of mislabeling the Products as set forth herein. Plaintiffs have no adequate remedy at law.
21 Without equitable relief, Defendant's unlawful, fraudulent, and unfair practices will continue to
22 harm Plaintiffs and the Class.

23 84. Plaintiffs also seek restitution of the amounts Defendant acquired through the unfair,
24 unlawful, and fraudulent business practices described herein, pursuant to the UCL, plus pre and post
25 judgment interest as permitted by law. Plaintiffs and the Class have suffered injury in fact and have
26 lost money as a result of Defendant's fraudulent conduct. Plaintiffs and the Class paid an
27 unwarranted premium for the Products. Specifically, Plaintiffs and the Class paid for Products that
28 are not non-toxic, as advertised and represented by Defendant. Plaintiff and the Class would not

1 have purchased the Products if they had known that the Products were not non-toxic.

2 85. Plaintiffs further seek an award of attorneys fees and costs incurred in bringing this
3 action pursuant to the UCL.

4 86. Plaintiffs further seek an award for punitive damages.

5 **B. “Fraudulent” Prong**

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

9 88. Defendant’s conduct of labeling the Products as having a “NON-TOXIC
10 FORMULA” when the Products’ formulas (and thus the Products themselves) can cause harm to
11 humans, animals, and/or the environment is likely to deceive members of the public and therefore
12 constitutes a fraudulent misrepresentation regarding the Products.

13 89. Defendant’s labeling and advertising of the Products, as alleged herein, is false,
14 deceptive, misleading, and unreasonable, and constitutes fraudulent conduct.

15 90. Defendant knew or should have known of its fraudulent conduct.

16 91. As alleged herein, the misrepresentations by Defendant detailed above constitute a
17 fraudulent business practice in violation of California Business & Professions Code Section 17200.

18 92. Defendant had reasonably available alternatives to further its legitimate business
19 interests, other than the conduct described herein. Defendant could have refrained from labeling the
20 Products as having a “NON-TOXIC FORMULA.”

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

24 94. Pursuant to Business and Professions Code Section 17203, Plaintiffs and the Class
25 seek an order of this Court enjoining Defendant from continuing to engage, use, or employ their
26 practice of mislabeling the Products as described herein. Plaintiffs have no adequate remedy at law.
27 Without equitable relief, Defendant’s unlawful, fraudulent, and unfair practices will continue to
28 harm Plaintiffs and the Class.

1 95. Plaintiffs also seek restitution of the amounts Defendant acquired through the unfair,
2 unlawful, and fraudulent business practices described herein, pursuant to the UCL, plus pre and post
3 judgment interest as permitted by law. Plaintiffs and the Class have suffered injury in fact and have
4 lost money as a result of Defendant’s fraudulent conduct. Plaintiffs and the Class paid an
5 unwarranted premium for the Products. Specifically, Plaintiffs and the Class paid for Products that
6 are not non-toxic, as advertised and represented by Defendant. Plaintiff and the Class would not
7 have purchased the Products if they had known that the Products were not non-toxic.

8 96. Plaintiffs further seek an award of attorneys fees and costs incurred in bringing this
9 action pursuant to the UCL.

10 97. Plaintiffs further seek an award for punitive damages.

11 **C. “Unlawful” Prong**

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

15 99. Defendant’s advertising of the Products, as alleged herein, violates California Civil
16 Code Section 1750, *et seq.* and California Business and Professions Code Section 17500, *et seq.*

17 100. Defendant’s packaging, labeling, and advertising of the Products, as alleged herein,
18 are false, deceptive, misleading, and unreasonable, and constitute unlawful conduct.

19 101. Defendant knew or should have known of its unlawful conduct.

20 102. As alleged herein, the misrepresentations by Defendant detailed above constitute an
21 unlawful business practice within the meaning of California Business and Professions Code Section
22 17200.

23 103. There were reasonably available alternatives to further Defendant’s legitimate
24 business interests other than the conduct described herein. Defendant could have refrained from
25 labeling the Products as having a “NON-TOXIC FORMULA”.

26 104. All of the conduct alleged herein has occurred and continues to occur in Defendant’s
27 business. Defendant’s wrongful conduct is part of a pattern or generalized course of conduct
28 repeated on thousands of occasions daily.

1 105. Pursuant to Business and Professions Code Section 17203, Plaintiffs and the Class
2 seek an order of this Court enjoining Defendant from continuing to engage, use, or employ its
3 practice of false and deceptive labeling and advertising of the Products. Plaintiffs have no adequate
4 remedy at law. Without equitable relief, Defendant’s unlawful, fraudulent, and unfair practices will
5 continue to harm Plaintiffs and the Class.

6 106. Plaintiffs also seek restitution of the amounts Defendant acquired through the unfair,
7 unlawful, and fraudulent business practices described herein, pursuant to the UCL, plus pre and post
8 judgment interest as permitted by law. Plaintiffs and the Class have suffered injury in fact and have
9 lost money as a result of Defendant’s fraudulent conduct. Plaintiffs and the Class paid an
10 unwarranted premium for the Products. Specifically, Plaintiffs and the Class paid for Products that
11 are not non-toxic, as advertised and represented by Defendant. Plaintiff and the Class would not
12 have purchased the Products if they had known that the Products were not non-toxic.

13 107. Plaintiffs further seek an award of attorneys fees and costs incurred in bringing this
14 action pursuant to the UCL.

15 108. Plaintiffs further seek an award for punitive damages.

16 COUNT TWO

17 **Violation of False Advertising Law (“FAL”)**

18 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

19 ***(On Behalf of Plaintiffs and the California Class)***

20 109. Plaintiffs re-allege and incorporate by reference all allegations contained in the
21 complaint, as though fully set forth herein.

22 110. Plaintiffs bring this cause of action pursuant to California’s False Advertising Law
23 (“FAL”), codified at Cal. Bus. & Prof. Code §§ 17500, *et seq.*, on Plaintiffs’ behalf as individuals
24 and on behalf of only the California Class.

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

28 112. Defendant’s deceptive practices were specifically designed to induce reasonable

1 consumers like Plaintiffs to purchase the Products. Defendant’s uniform, material representations
2 and omissions regarding the Products were likely to deceive, and Defendant knew or should have
3 known that its uniform representations and omissions were untrue and misleading. Plaintiffs
4 purchased the Products in reliance on the representations made by Defendant, as alleged herein.

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

10 114. The above acts of Defendant, in disseminating materially misleading and deceptive
11 representations and statements to consumers throughout California and the nation, including
12 Plaintiffs and the Class, were and are likely to deceive reasonable consumers in violation of section
13 17500.

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

16 116. Defendant has engaged, and continues to engage, in unlawful, unfair and deceptive
17 practices in violation of §17500.

18 117. As a direct and proximate result of Defendant’s unlawful conduct in violation of
19 section 17500 of the California Business and Professions Code, Plaintiffs and the Class, pursuant to
20 section 17535, are entitled to an order of this Court enjoining such future wrongful conduct on the
21 part of Defendant, and requiring Defendant to disclose the true nature of its misrepresentations, in
22 order to prevent further consumer deception. Plaintiffs have no adequate remedy at law. Without
23 equitable relief, Defendant’s unfair, deceptive, untrue, and misleading false advertising practices
24 will continue to harm Plaintiffs and the Class. Plaintiffs and members of the California Subclass are
25 also entitled to compensatory, monetary, restitutionary, and punitive damages, plus pre and post
26 judgment interest, pursuant to the FAL, in an amount to be determined at trial. Plaintiffs further
27 seek an award of attorneys fees and costs incurred in bringing this action pursuant to the FAL.

28 ///

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COUNT THREE

Violation of Consumers Legal Remedies Act (“CLRA”)

(Cal. Civ. Code §§ 1750, *et seq.*)

(On Behalf of Plaintiffs and the California Class)

118. Plaintiffs re-allege and incorporate by reference all allegations contained in the complaint, as though fully set forth herein.

119. Plaintiffs bring this cause of action pursuant to California’s Consumers Legal Remedies Act (“CLRA”), codified at Cal. Civ. Code §§ 1750, *et seq.*, on Plaintiffs’ behalf as individuals and on behalf of only the California Class.

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

121. The Products are “goods,” as defined by the CLRA in California Civil Code §1761(a).

122. Defendant is a “person,” as defined by the CLRA in California Civil Code §1761(c).

123. Plaintiffs and members of the California Subclass are “consumers,” as defined by the CLRA in California Civil Code §1761(d).

124. Purchase of the Products by Plaintiffs and members of the California Subclass are “transactions,” as defined by the CLRA in California Civil Code §1761(e).

125. Defendant violated Section 1770(a)(5) by representing that the Products have “characteristics, . . . uses [or] benefits . . . which [they] do not have” in that the Products are falsely labeled and advertised as having a “NON-TOXIC FORMULA.” Defendant has unfairly profited from their false and misleading claims.

126. Similarly, Defendant violated section 1770(a)(7) by representing that the Products “are of a particular standard, quality, or grade . . . if they are of another” by falsely and deceptively labeling and advertising the Products as having a “NON-TOXIC FORMULA.”

127. In addition, Defendant violated section 1770(a)(9) by advertising the Products “with intent not to sell them as advertised” in that the Products are falsely labeled and advertised as having a “NON-TOXIC FORMULA.”

1 128. Defendant's uniform and material representations and omissions regarding the
2 Products were likely to deceive, and Defendant knew or should have known that its representations
3 and omissions were untrue and misleading.

4 129. Plaintiffs and members of the Class could not have reasonably avoided such injury.
5 Plaintiffs and members of the California Subclass were unaware of the existence of the facts that
6 Defendant suppressed, failed to disclose, and/or otherwise affirmatively misrepresented or
7 mischaracterized in a misleading and/or deceptive manner. Plaintiffs and the Class would not have
8 purchased the Products and/or would have purchased them on different terms had they known the
9 truth.

10 130. Plaintiffs and the Class have been directly and proximately injured by Defendant's
11 conduct. Such injury includes, but is not limited to, the purchase price of the Products and/or the
12 price of the Products at the prices at which they were offered.

13 131. Given that Defendant's conduct violated California Civil Code section 1770(a),
14 Plaintiffs and the Class are entitled to seek, and do seek, injunctive relief pursuant to section
15 1780(a)(2), to put an end to Defendant's violations of the CLRA. This includes, but is not
16 necessarily limited to, an order enjoining Defendant's unlawful conduct and/or an order requiring
17 Defendant to dispel the public misconception of the Products that has resulted from its unlawful
18 conduct. Plaintiffs have no adequate remedy at law. Without equitable relief, Defendant's unlawful
19 practices will continue to harm Plaintiffs and the Class.

20 132. Pursuant to section 1782(d) of the California Civil Code, on May 8, 2020, Plaintiffs,
21 by and through Plaintiff Moran's counsel of record, served a statutory CLRA notice on Defendant
22 (attached hereto as **EXHIBIT A**), advising Defendant that the advertising of the Products violates
23 law, including the CLRA, and to provide Defendant with the statutory period of time to rectify the
24 violations before Plaintiff seeks statutory damages. Defendant, however, has knowingly and
25 deliberately failed to take any actions to rectify the violations, including changing the advertising
26 claims, reimbursing consumers, and/or dispelling the public misconception that Defendant
27 deliberately created, fostered, and/or facilitated. Accordingly, Plaintiffs seek all just and permitted
28 monetary damages under the CLRA for the amounts Defendant acquired through its unlawful

1 practices described herein, including, but not limited to, the amount Plaintiffs and the Class paid for
2 the Products, plus pre and post judgment interest.

3 133. Moreover, Defendant's conduct is malicious, fraudulent, and wanton in that
4 Defendant intentionally misled and withheld material information from consumers to increase the
5 sale of the Products by advertising them as "non-toxic". Accordingly, Plaintiffs seek punitive
6 damages in an amount to be proven at trial.

7 **COUNT FOUR**

8 **Breach of Warranty**

9 ***(On Behalf of Plaintiffs and the Nationwide Class and California Class)***

10 134. Plaintiffs re-allege and incorporate by reference all allegations contained in the
11 complaint, as though fully set forth herein.

12 135. Plaintiffs bring this cause of action for breach of warranty on their behalf individually
13 and on behalf of the Class (which includes the Nationwide Class and California Class).

14 136. By advertising and selling the Products at issue, Defendant made promises and
15 affirmations of fact on the Products' packaging and labeling, and through its marketing and
16 advertising, as described herein. This labeling and advertising constitute express warranties and
17 became part of the basis of the bargain between Plaintiffs and members of the Class and Defendant.

18 137. Defendant purports, through the Products' labeling and advertising, to create express
19 warranties that the Products have a "NON-TOXIC FORMULA."

20 138. Despite Defendant's express warranties about the nature of the Products, the Products
21 do not have a "NON-TOXIC FORMULA." Therefore, the Products are not what Defendant
22 represented them to be.

23 139. Accordingly, Defendant breached express warranties about the Products and their
24 qualities because the Products do not conform to Defendant's affirmations and promises.

25 140. As a direct and proximate result of Defendant's breach of express warranty, Plaintiffs
26 and members of the Class were harmed in the amount of the purchase price they paid for the
27 Products. Further, Plaintiffs and the Class have suffered and continue to suffer economic losses and
28 other damages including, but not limited to, the amounts paid for the Products, plus pre and post

1 judgment interest, in an amount to be proven at trial. Moreover, Plaintiffs and the Class are entitled
2 to seek, and do seek, punitive damages as a result of Defendant’s malicious, fraudulent, and
3 oppressive conduct alleged herein.

4 **COUNT FIVE**

5 **Unjust Enrichment**

6 ***(On Behalf of Plaintiffs and the Nationwide Class and California Class)***

7 141. Plaintiffs re-allege and incorporate by reference all allegations contained in the
8 complaint, as though fully set forth herein.

9 142. Plaintiffs bring this cause of action for unjust enrichment or restitution (a quasi-
10 contract cause of action) on Plaintiffs behalf individually and on behalf of the Class (which includes
11 both the Nationwide Class and California Class).

12 143. Defendant enticed Plaintiffs and the Class to purchase the Products through false and
13 misleading labeling and advertising that identifies the Products as “non-toxic”, when the Products’
14 formulations contain ingredients that pose of risk of harm to humans, animals, and/or the
15 environment.

16 144. By purchasing the Products, Plaintiffs and members of the Class conferred a benefit
17 on Defendant in the form of the purchase price of the Products.

18 145. Defendant had knowledge of such benefit and knowingly and deliberately received
19 such benefit. Defendant appreciated the benefit because, were consumers not to purchase the
20 Products, Defendant would not generate revenue from the sales of the Products.

21 146. Defendant’s acceptance and retention of the benefit is inequitable and unjust because
22 the benefit was obtained by Defendant’s fraudulent and misleading representations and omissions
23 regarding the true nature of the Products. Therefore, Plaintiffs and the Class are entitled to seek, and
24 do seek, restitution and/or disgorgement of the monies paid to Defendant for the Products up to and
25 including the total purchase price as Plaintiffs and the Class would not have purchased the Products
26 at all, or would have otherwise purchased the Products at a lesser price, had they known that the
27 Products were not as advertised, plus pre and/or post judgment interest. Plaintiffs and the Class
28 further seek punitive damages punitive damages as a result of Defendant’s malicious, fraudulent,

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1 and oppressive conduct alleged herein.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, pray
4 for judgment against Defendant as follows:

- 5 a. **Injunction:** For an order requiring Defendant to immediately cease and desist from
6 selling the unlawful Products in violation of law; enjoining Defendant from
7 continuing to market, advertise, distribute, and sell the Products in the unlawful
8 manner described herein; and ordering Defendant to engage in corrective action to
9 dispel the public misconception regarding the Products;
- 10 b. **Declaratory Relief:** For an order declaring that Defendant’s conduct violates the
11 statutes and laws referenced herein;
- 12 c. **Monetary Damages/Restitution/Disgorgement:** For an order awarding, as
13 appropriate under the various causes of action asserted herein, compensatory
14 damages, monetary damages, restitution, and/or disgorgement to Plaintiffs and the
15 Class;
- 16 d. **Punitive Damages:** For an order awarding punitive damages;
- 17 e. **Attorneys’ Fees & Costs:** For an order awarding attorneys’ fees and costs;
- 18 f. **Pre/Post-Judgment Interest:** For an order awarding pre-and post-judgment interest;
19 and
- 20 g. **All Just and Proper Relief:** For such other and further relief as the Court deems just
21 and proper.

22 Dated: November 16, 2020

23 Respectfully submitted,

24 **CLARKSON LAW FIRM**

25 By:

26 /s/ Katherine A. Bruce
27 RYAN J. CLARKSON
28 KATHERINE A. BRUCE
LAUREN E. ANDERSON

MOON LAW APC
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Attorneys for Plaintiff Michelle Moran

29 ***Additional signature(s) on following page(s).***

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Dated: November 16, 2020

Respectfully submitted,

REESE LLP

By:

/s/ Michael R. Reese
MICHAEL R. REESE
GEORGE V. GRANADE

SHEEHAN & ASSOCIATES, P.C.
SPENCER SHEEHAN

Attorneys for Plaintiff Monica Waddell

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all causes of action so triable.

Dated: November 16, 2020

Respectfully submitted,

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By:

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Attorneys for Plaintiff Michelle Moran

Dated: November 16, 2020

Respectfully submitted,

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