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Counsel for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

Owen Rosenberg, individually and on
behalf of all others similarly situated,

Plaintiff,

- against -

S. C. Johnson & Son, Inc.,

Defendant

Case No.: 02-cv-0869

Class Action Complaint

Jury Trial Demanded

Plaintiff Owen Rosenberg (“Plaintiff”) by Plaintiff’s undersigned attorneys allege upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

NATURE OF THE ACTION

1. S. C. Johnson & Son, Inc. (“Defendant”) manufactures, distributes, markets, labels and sells an array of household cleaning products under the Windex brand with the prominent description “Non-Toxic Formula” on the front of the packaging (“Products”). These include Windex “ORIGINAL”; “AMMONIA-FREE”; “VINEGAR” and “MULTISURFACE”. Examples of the relevant deceptive “Non-Toxic Formula” Windex Products are as follows:





2. The Products are available to consumers from retail and online stores of third-parties.
3. Based on the “Non-Toxic” representations, reasonable consumers believe the Products contain only non-toxic ingredients that are safe for humans, animals, and the environment. Put differently, reasonable consumers do not believe the Products contain any harmful ingredients or allergens.
4. However, in spite of the labeling, the Products actually contain, in varying combinations, ingredients that are harmful to humans, animals, and/or the environment.

5. Specifically, Windex Original contains butylphenyl methylpropional, citronellol, linalool, 2-hexoxyethanol, and isopropanolamine, all of which, as detailed below, are toxic.

6. Windex Vinegar contains 2-hexoxyethanol and linalool, all of which, as detailed below, are toxic.

7. Windex Ammonia-Free contains linalool, 2-hexoxyethanol, isopropanolamine, and butylphenyl methylpropional, all of which, as detailed below, are toxic.

8. Windex MultiSurface contains linalool and 2-hexoxyethanol, all of which, as detailed below, are toxic.

Toxic Ingredients in Windex “Non-Toxic” Products

9. As stated above, the following ingredients appear in one of more of the deceptive “Non-Toxic” Products at issue here.

10. **2- hexoxyethanol** is harmful if swallowed and can cause central nervous system depression and kidney failure and may be absorbed through the skin.¹ It also a respiratory tract irritant.²

11. **Butylphenyl methylpropional**, or “**lilial**” has been linked to bioaccumulation, organ system toxicity, endocrine disruption, and allergies.³

12. **Citronellol** has been found to be immunotoxic.⁴

13. **Isopropanolamine** is a combustible, corrosive chemical that causes skin and eye irritation as well as loss of vision.⁵ Upon ingestion, it causes a burning sensation, abdominal pains,

¹ <https://haz-map.com/Agents/3112> (last visited June 8, 2020).

² *Id.*

³ See <https://www.ewg.org/skindeep/ingredients/700872-lilial/> (last visited June 8, 2020)

⁴ <https://www.ewg.org/skindeep/ingredients/701389-citronellol/> (last visited June 8, 2020)

⁵ <http://www.inchem.org/documents/icsc/icsc/eics0905.htm> (last visited June 8, 2020)

and shock or collapse.⁶ Upon inhalation, it causes sore throat and shortness of breath.⁷

14. **Linalool** is a fragrance allergen that may cause contact dermatitis.⁸

15. Labeling the Products as “Non-Toxic” when they contain any ingredients that can be harmful to humans, animals, and/or the environment is wholly misleading and deceptive. In fact, the National Advertising Division (“NAD”) found that the representations made on the labeling and in the advertising of certain of the Products are false, misleading, and likely to deceive reasonable consumers. Specifically, on March 24, 2020, the NAD recommended that Defendant “discontinue the claim ‘non-toxic’ on the package labeling of its Windex Vinegar Glass Cleaner.” In explaining its decision, the NAD stated:

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

16. Defendant provided the NAD with certain substantiation for the non-toxic claim. However, the NAD determined that “the evidence fell short of providing the conclusive assessment of toxicity necessary to support a ‘non-toxic’ claim. Thus, the NAD recommended that Defendant discontinue the claim “non-toxic.

⁶ <http://www.inchem.org/documents/icsc/icsc/eics0905.htm> (last visited June 8, 2020)

⁷ *Id.*

⁸ <https://www.ewg.org/skindeep/ingredients/703568-LINALOOL/> (last visited June 8, 2020)

⁹ <https://www.prnewswire.com/news-releases/nad-recommends-sc-johnson-discontinue-non-toxic-claim-on-windex-vinegar-glass-cleaner-advertiser-to-appeal-to-narb-301029241.html> (last visited June 8, 2020)

17. As stated in the NAD decision, the Federal Trade Commission (“FTC”) has issued guidelines for products marketed with such non-toxic messages in the form of Green Guides (“Guides”).

18. The Guides apply to the marketing and sale of products purported to be environmentally-friendly, to “help marketers avoid making environmental marketing claims that are unfair or deceptive.” 16 C.F.R. § 260.1.

19. The Guides prohibit “deceptive acts” or representations which are “likely to mislead consumers acting reasonably under the circumstances and [are] material to consumers’ decisions,” including representations made through labeling, advertising or other promotional services. 16 C.F.R. § 260.1.

20. Specifically, “it is deceptive to misrepresent, directly or by implication, that a product, package or service is non-toxic” and “a non-toxic claim likely conveys that a product, package, or service is non-toxic for humans and for the environment generally.” 16 C.F.R. § 260.10(a).

21. To accurately and non-deceptively claim that a product is “non-toxic,” marketers must have reliable scientific evidence to substantiate such a claim or “should clearly and prominently qualify their claims to avoid deception.” 16 C.F.R. § 260.10(b).

22. The EPA has cautioned that non-toxic claims might prevent consumers from taking necessary precautions in handling a product and the FTC warned marketers to qualify non-toxic claims carefully unless the marketers can substantiate all express and implied messages inherent in an unqualified non-toxic claim.¹⁰

23. The Product’s “non-toxic” claim signifies to reasonable consumers that the Product

¹⁰ FTC, The Green Guides Statement of Basis and Purpose at 147.

will not be harmful to people (including small children), common pets or the environment.¹¹

24. A reasonable consumer's understanding of "will not harm" is not limited to toxins that cause death but "also various types of temporary physical illness, such as vomiting, rash and gastrointestinal upset."

25. Contrary to the Product's claims of being "non-toxic," the Product contains ingredients that are harmful to humans, household pets or the environment generally.

26. Defendant's branding and packaging of the Product is designed to – and does – deceive, mislead, and defraud consumers.

27. Defendant has sold more of the Products and at higher prices per unit than it would have in the absence of this misconduct, resulting in additional profits at the expense of consumers.

28. The marketing of the Product as "non-toxic" has a material bearing on price or consumer acceptance of the Products because consumers are willing to pay more for such Products.

29. Defendant's branding and packaging of the Product is designed to – and does – deceive, mislead, and defraud plaintiff and consumers.

30. Defendant sold more of the Product and at higher prices than it would have in the absence of this misconduct, resulting in additional profits at the expense of consumers like plaintiff.

31. The value of the Product that plaintiff purchased and used was materially less than its value as represented by Defendant.

32. Had plaintiff and class members known the truth, they would not have bought the

¹¹ <https://bbbprograms.org/media/details/nad-recommends-s.c.-johnson-discontinue-non-toxic-claim-on-windex-vinegar-glass-cleaner-advertiser-to-appeal-to-narb>

Product or would have paid less for them.

33. As a result of the false and misleading labeling, the Product is sold at a premium price, approximately no less than \$3.17 for containers of 23 OZ, excluding tax, compared to other similar products represented in a non-misleading way.

JURISDICTION AND VENUE

34. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2) (Class Action Fairness Act of 2005 or “CAFA”).

35. Under CAFA, district courts have original federal jurisdiction over class actions involving (1) an aggregate amount in controversy of at least \$5,000,000; and (2) minimal diversity.

36. Plaintiff Owen Rosenberg is a citizen of California.

37. Defendant S. C. Johnson & Son, Inc. is a Wisconsin corporation with a principal place of business in Racine, Wisconsin and is a citizen of Wisconsin.

38. Venue is proper Defendant is headquartered within this District.

39. This court has personal jurisdiction over defendant because it conducts and transacts business, contracts to supply and supplies goods within this state.

PARTIES

40. Plaintiff Owen Rosenberg is a citizen of Petaluma, California.

41. Defendant S. C. Johnson & Son, Inc. is a Wisconsin corporation with a principal place of business in Racine, Wisconsin.

42. During the relevant statutes of limitations, plaintiff purchased the Product within California at stores for personal and household use in reliance on the representations the Product was non-toxic.

43. Plaintiff bought the Product because Plaintiff wanted to avoid harm caused by harsh chemicals and understood non-toxic in the manner identified above.

44. Plaintiff would buy the Product again if assured it did not contain components which were inconsistent with the use of an unqualified non-toxic claim.

CLASS ALLEGATIONS

45. The class will consist of all purchasers of the Products in the United States who bought and of the Products during the time period June 8, 2017 to time of trial.

46. Common questions of law or fact predominate and include whether defendant's representations were and are misleading and if Plaintiff and class members are entitled to damages.

47. Plaintiff's claims and basis for relief are typical to other members because all were subjected to the same unfair and deceptive representations and actions.

48. Plaintiff is an adequate representatives because Plaintiff's interests do not conflict with other members.

49. No individual inquiry is necessary since the focus is only on Defendant's practices and the class is definable and ascertainable.

50. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

51. Plaintiff's counsel is competent and experienced in complex class action litigation and intends to adequately and fairly protect class members' interests.

52. Plaintiff seeks class-wide injunctive relief because the practices continue.

CAUSES OF ACTION

COUNT I

VIOLATION OF THE DECEPTIVE TRADE PRACTICES ACT,

WIS. STAT. § 100.18(1)

53. Plaintiff incorporates and realleges the paragraphs above as if fully set forth herein.

54. Defendant's Non-Toxic label constitutes false, deceptive and misleading advertising in violation of Wisconsin's Deceptive Trade Practices Act ("DTPA").

55. As set forth above, the Non-Toxic label is false, deceptive and misleading because it causes consumers to believe that Defendant's products are safer than they actually are.

56. Defendant designed the false, misleading and deceptive Non-Toxic label with intent to sell, distribute and increase the consumption of its products bearing the Non-Toxic label including Windex Original; Windex Vinegar; Windex Ammonia-Free; and Windex MultiSurface.

57. Defendant's violation of the DTPA caused Plaintiff and Class members to suffer pecuniary loss. Specifically, Defendant's false, deceptive and misleading Non-Toxic label caused consumers to purchase Defendant's products believing they were environmentally friendly and non-toxic when, in fact, they were not.

58. Because Defendant's Non-Toxic marketing program was devised, implemented and directed from Defendant's headquarters in Racine, Wisconsin, the DTPA applies to a class of purchasers of Defendant's products bearing the Non-Toxic label, both within and outside of Wisconsin, who have been harmed as a result. Moreover, Wisconsin has a substantial interest in preventing false, deceptive and misleading practices within the State which may have an effect both in Wisconsin and throughout the rest of the country.

COUNT II

UNJUST ENRICHMENT

59. Plaintiff incorporates and realleges the paragraphs above as if fully set out herein.

60. Plaintiff and Class members conferred a benefit on Defendant when they purchased products carrying the false, deceptive and misleading Non-Toxic label.

61. Defendant appreciated and had knowledge of the benefit conferred by Plaintiff and Class members.

62. Defendant's acceptance and retention of the benefit conferred by Plaintiff and Class members would be inequitable under the circumstances.

63. Accordingly, equity and good conscience demand that Defendant should return the benefit conferred by Plaintiff and Class members.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment:

- Declaring this a proper class action, certifying plaintiff as representative and the undersigned as counsel for the class;
- Entering preliminary and permanent injunctive relief by directing defendant to correct the challenged practices to comply with the law;
- Injunctive relief to remove, correct and/or refrain from the challenged practices and representations, and restitution and disgorgement for members of the class pursuant to the applicable laws;
- Awarding monetary damages and interest pursuant to the common law and other statutory claims;
- Awarding costs and expenses, including reasonable fees for plaintiff's attorneys and experts; and
- Any other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues.

Dated: June 8, 2020

Respectfully submitted,

REESE LLP

/s/ Michael R. Reese

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*Counsel for Plaintiff and the
Proposed Class*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

Place an "X" in the appropriate box (required): ☐ Green Bay Division ☐ Milwaukee Division

I. (a) PLAINTIFFS

Owen Rosenberg

(b) County of Residence of First Listed Plaintiff Sonoma County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael R. Reese (212) 643-0500

REESE LLP 100 West 93rd Street, 16th Floor New York, New York 10025

DEFENDANTS

S.C. Johnson & Son, Inc.

County of Residence of First Listed Defendant Racine County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1332

Brief description of cause:
deceptive labeling

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$
5000000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

/s/ Michael R. Reese

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE